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Reuters

Should bin Laden have been captured and tried?

By Erik Kirschbaum

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BERLIN (Reuters) - While many world leaders applauded the U.S. operation that killed al Qaeda leader Osama bin Laden, there were concerns in parts of Europe that the United States was wrong to act as policeman, judge and executioner.

U.S. Attorney General Eric Holder defended the action as lawful Tuesday, but some in Europe said bin Laden should have been captured and put on trial.

"It was quite clearly a violation of international law," former West German Chancellor Helmut Schmidt told German TV. "The operation could also have incalculable consequences in the Arab world in light of all the unrest."

Ehrhart Koerting, Interior Minister in the city-state of Berlin, said: "As a lawyer, I would have preferred to have seen him put on trial at the International Criminal Court (ICC)."

Gert-Jan Knoops, a Dutch-based international law specialist, said bin Laden should have been arrested and extradited to the United States. He drew parallels with the arrest of former Yugoslav president Slobodan Milosevic, who was put on trial at the war crimes tribunal in The Hague after his arrest in 2001.

"The Americans say they are at war with terrorism and can take out their opponents on the battlefield," Knoops said. "But in a strictly formal sense, this argument does not stand up."

RULES OF ENGAGEMENT

Reed Brody, counsel at New York-based Human Rights Watch, said it was too early to say whether the U.S. operation was legal because too few details were known.

"We would want to know what the orders were, what the rules of engagement were. We want to know exactly what happened ... and what the U.S. alleges that bin Laden was actually engaged in," he said.

"Is the world a better place because bin Laden is not here? People can obviously answer that question. But does that mean you have the right to violate protocols of human rights or international law to do that? Then no.

"It may be that we may never know enough," Brody said.

The United States is not a signatory to the ICC and the court only has a mandate to investigate crimes that took place after its establishment in 2002, meaning the attack on the World Trade Center in 2001 is out of its jurisdiction.

U.N. High Commissioner for Human Rights Navi Pillay urged the United States to give the United Nations full details about bin Laden's killing. "The United Nations has consistently emphasized that all counter-terrorism acts must respect international law," she said.

In Brussels, European Union Home Affairs Commissioner Cecilia Malmstrom wrote in a blog: "It would have been preferred to see Osama bin Laden before a court."

In Italy, former prime minister Massimo D'Alema, from the center-left opposition, said: "You don't rejoice at the death of a man. Maybe if bin Laden had been captured and put on trial it would have been an even more significant victory."

That view was echoed in several newspaper editorials.

"We Europeans would have preferred bin Laden to be captured and tried because executions are contrary to our culture. Yet America -- where the death penalty is in force -- needed to strike the man who struck it so heavily," said the left-leaning La Repubblica daily.

There is no capital punishment in European Union member states and many, including Germany, criticize the death penalty used in some U.S. states and other nations.

This unease was reflected in the cautious reaction by German government officials. Foreign Minister Guido Westerwelle pointedly avoided using the word "killed," saying he was glad bin Laden had "been stopped."

LAWFUL, LEGITIMATE, APPROPRIATE

The U.S. Attorney General said the acts taken were "lawful, legitimate and appropriate in every way.

"The people who were responsible for that action, both in the decision-making and the effecting of that decision, handled themselves I think quite well," Eric Holder told the House of Representatives' Judiciary Committee.

A range of U.S. legal experts said they believed Washington was on firm legal ground.

"They're on extremely solid legal footing," said Ben Wittes, a senior fellow at the Brookings Institution in Washington.

The fact that the United States has announced it is in an armed conflict with al Qaeda makes the operation legal under international law, said Kenneth Anderson, a fellow in national security and law at the conservative Hoover Institution.

"It's lawful for the United States to be going after bin Laden if for no other reason than he launched an attack against the U.S." Anderson said.

And while Pakistan may be able to complain before the United Nations about an act committed on its soil, it is unlikely to do so, U.S. experts agreed.