1.8 Transfer to torture: the case of Muhammad Zammar

The secret arrest and subsequent "disappearance" of Muhammad Haydar Zammar has all the hallmarks of a case in which an individual has been rendered for the purposes of interrogation under torture. Muhammad Zammar, a German national of Syrian descent, was suspected of involvement with the "Hamburg Cell" – a group that included the presumed leaders of the 11 September 2001 attacks in the USA – and had been under surveillance in Germany for some years. He was questioned by German police after 11 September, and was brought before a court in Hamburg less than a week later. There was not enough evidence to hold him, but the Federal Public Prosecutor initiated an investigation into allegations that he had "supported a terrorist organization".[35] Intelligence information supplied by Germany is thought to have been instrumental in his arrest in Morocco and rendition to Syria.

On 27 October 2001 Muhammad Zammar left Germany for Morocco, travelling on his German passport, and spent some weeks there and 12 days in Mauritius before attempting to return to Germany. He was reportedly taken into custody by Moroccan intelligence agents at the airport in Casablanca in early December, and was then interrogated by Moroccan and US intelligence officials for over two weeks. Towards the end of December 2001, he was reportedly put on the CIA's Gulfstream V jet, N379P, and taken to Damascus, Syria. A US official declined to provide details on whether the USA was directly involved with Muhammad Zammar's capture or transfer, but said that the US government was aware of the detention and the transfer as they occurred.[36]

The German government was reportedly not informed of Muhammad Zammar's arrest by the USA, Morocco or Syria, and learned of the transfer through media reports during June of 2002.[37] While US officials have said they do not have direct access to Muhammad Zammar in Syria, they have reportedly provided written questions to his Syrian interrogators. Murhaf Jouejati, an expert on Syrian politics and a former adviser to the Syrian government, testified before the 9/11 Commission: "Syrian cooperation was also highlighted by an earlier revelation that a key figure in the September 11 plot, Muhammad Haydar Zammar, had been arrested in Morocco and sent to Syria for interrogation, with American knowledge. Although US officials have not been able to interrogate Zammar, Americans have submitted questions to the Syrians."[38]

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After learning through the media of his arrest and transfer, the German government reportedly ordered their intelligence agents to locate Muhammad Zammar, and was subsequently informed by US officials on 13 June 2002 that he was in the custody of the Syrian government. In November 2002, six German intelligence agents arrived in Damascus and interrogated Muhammad Zammar for three days. No details of these interrogations have been released or used in other investigations; as *Der Spiegel*

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35 Holger Stark, "The Forgotten Prisoner: A Tale of Extraordinary Renditions and Double-Standards", Der Spiegel, November 2005.

36 Peter Finn, "Al Qaeda Recruiter Reportedly Tortured", *Washington Post*, 31 January 2003.

37 Peter Finn, "Syria Interrogating Al Qaeda Recruiter", *Washington Post*, at A01, 19 June 2002.

38 See: http://www.globalsecurity.org/security/library/congress/9-11_commission/030709-joujati.htm.

magazine noted: "no court operating under the rule of law would ever accept an interrogation conducted in a Damascus prison notorious for its torture practices".[39] German diplomatic officials, on the other hand, have not been able to visit Muhammad Zammar; they have filed eight *notes verbale* seeking clarification of the reasons for Muhammad Zammar's detention and seeking a lawyer for him. The Syrian government has not responded to these notes.[40]

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In early 2003, a Moroccan national, recently released from the Far' Falastin (Palestine Branch) of Military Intelligence in Damascus, said that Muhammad Zammar was being tortured by Syrian officials. The former CIA official Robert Baer told Amnesty International that he had sought an interview with Muhammad Zammar in April 2003, while working in Syria for a US television network, but was told that "he is no longer with us". In an interview with a Swedish television channel, Robert Baer said: "there was not enough evidence obviously that he broke US law, but we still wanted him off the streets so we arranged with the Moroccan government to have him arrested, sent to Jordan and then to Syria where he is either dead or alive, I don't know. With the Syrians engaging in torture, there is no bones about it."[41] There were persistent reports that Muhammad Zammar's physical condition had deteriorated, and even that he had died.

In 2004 Amnesty International learned through former prisoners that Muhammad Zammar had been held in solitary confinement at the Far' Falastin since he was brought to Damascus in late 2001. His underground cell was believed to be 185cm long, less than 90cm wide, and under 2m high. Although photographs taken before he left Germany show him as a large, heavy-set man, Amnesty International was told that his condition was now "skeletal".

Former detainees have told Amnesty International that the underground section of Far' Falastin is infested with rats and lice. There is no bed or mattress in a "tomb" cell, just a couple of old and filthy blankets. One plastic bottle is provided for drinking water, and another for urination. Three short visits to the bathroom are allowed daily -- usually limited to several minutes each time, with 10 minutes allowed on Fridays to also take a shower or bath and to wash clothes. Access to fresh air and sunlight in the yard is restricted to a maximum of 10 minutes each month, but can be as infrequent as 10 minutes each six to eight months. Released detainees have told Amnesty International that the food provided is barely enough to keep a person alive, and is often rotten and always dirty, resulting in frequent bouts of diarrhoea.

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Torture and ill-treatment are commonly reported at Far' Falastin. In addition to the prolonged solitary confinement in cramped and wretched conditions, detainees are commonly beaten or subjected to other methods of torture. Amnesty International has documented some 40 different types of torture and ill-treatment reportedly used against detainees in prisons and detention centres in Syria.

39 Holger Stark, "A Tale of Extraordinary Renditions and Double-Standards", *Der Spiegel*, November 2005.

40 «German, CIA Roles in Terror Suspect's Torture in Syria", BBC Monitoring International Reports, 22 November 2005.

41 *Sweden TV4*, Kalla Fakta Programme, broadcast 22 November 2004.

Amnesty International received information that Muhammad Zammar was taken from his solitary confinement cell in the Far' Falastin in October 2004. He may then have been held in Sednaya prison on the outskirts of Damascus. His family in Germany was given their first real indication that he was still alive when a letter from him, dated 8 June 2005, was sent to them through the International Committee of the Red Cross (ICRC) in Damascus. The letter, which contains just 43 words, suggests that he had been returned to the Far' Falastin. His current whereabouts are unknown, and he has yet to be seen by his family or anyone known to them since he was first detained.

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1.9 A practice predating 2001: the case of Abdul Rahman al-Yafi

"'We're going to kill you and bury you here', they told me, and all the time I was wishing that they would."

Abdul Rahman al-Yaf'i, on his interrogation in Jordan in 2000

Although shipping people off to third countries for "vigorous" interrogation has become a more common practice since September 2001, it was already an established means of trying to gather intelligence about al-Qa'ida. A network of intelligence agencies from different countries helped to carry out the practice of rendition, and US involvement may not always have been direct, although the aims and results of the interrogations were the same.

Abdul Rahman Muhammad Nasir Qasim al-Yaf'i, now 38 years old, was one of the pre-2001 victims of rendition. He spoke to Amnesty International in February 2006 about his rendition from Egypt to Jordan five years before. As with most of the other rendition victims interviewed by Amnesty International[42], his interrogations did not appear to have been aimed at investigating a specific criminal offence, but at gathering intelligence about the activities of others. As in the cases of Muhammad Bashmilah and Salah 'Ali Qaru described above, it appears that the standard of evidence needed to warrant months of torture and interrogation was nothing stronger than his admission of a previous visit to Afghanistan.

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Abdul Rahman al-Yaf'i, who lives in Sana'a in Yemen with his wife and six children, said that he took his aunt and brother to Cairo in Egypt for medical treatment in October 2000. When he told airport immigration officials, in response to a question, that he had visited Afghanistan 10 years before, they detained him at the airport for about 13 hours, then told him he would have to return for his passport. When he came back for it two days later, an Egyptian policeman cuffed and blindfolded him, and took him to a place where they put him in a cell so small he could not stand upright. When he asked why they were holding him, he said he was told "we just want some general information".

42 Most of the rendition victims interviewed by Amnesty International have been released, suggesting that their captors determined they did not have valuable or specific information. Their experiences of interrogation may therefore be substantively different from those who are believed to have "high value" intelligence.

After some hours in the tiny cell, he said, they took him to interrogation, and began calling him names and making him stand up and sit down over and over again. They asked him repeatedly about what he had done in Afghanistan, where he had gone, and whom he had met there. He was also questioned about bombings in Kenya, Tanzania and Riyadh in Saudi Arabia. When he could not answer, he said, they strangled him, all the while insulting his parents, wife and religion. He was interrogated like this three times a day. "If they beat me in Egypt", he said, "it would have been more bearable than what they did... They accused me of everything that ever happened in the world... perhaps it is the price you have to pay for having been in Afghanistan". They asked him to work with them, and offered to put his aunt and brother in the "finest hospitals in Cairo". He refused, and they told him he would now be turned over to the USA.

After four days, they returned him to the airport, where they took him through the VIP entrance and straight to a waiting plane.[43] The plane was "full of military, you could feel the presence of military even if it was a civilian plane." He says he kept asking what was happening to him and where he was going, but eventually "stopped asking questions because there were no answers". He said he was surprised when the plane took him to Amman airport in Jordan, where his guards handed him over to Jordanian security. He was again blindfolded and taken by car to a detention centre, which he described as a new building, about four stories tall, with good facilities. He thought it might be the General Intelligence Department (Mukhabarat al-'amma), which is indeed a modern building, located near Wadi Sir in Amman, about 30 minutes from the airport. "I was exhausted from the Egyptian terrorism [sic] and asked for some medication," he said, "and then I prayed and slept". B5

The next evening he was taken to interrogation, cuffed and blindfolded, and was told to write down everything that had happened in Egypt. After he finished, he said, they kept asking him "do you love Osama bin Laden?", and then they beat him and forced him to stand in his cell for more than 24 hours without sleep.

The following evening, they took him to a covered yard, where he saw large stains of what looked like blood on the concrete ground. His ankles were tied to a stick, and two soldiers picked it up from either end, so that he was suspended upside-down above the ground. They then took turns beating the soles of his feet until the stick they were using broke. "They reach a point where the blood is about to come out of your feet," he said, "and they stop there for a little while." There was a man in white clothes, who he thought was a doctor, supervising the procedure, and giving instructions on how long and how hard he should be beaten. *Falaqa*, sleep deprivation and long-term standing are commonly used forms of torture in Jordan.

Abdul Rahman al-Yaf'i felt that the interrogators were fishing for information. "They just kept saying 'confess, confess. Confess to Kenya, confess to Riyadh.' I kept saying the *Shahadah* [Muslim statement of faith] and they kept beating me and

43 The typical processing of transfer for rendition – including the hooding, shackling and jumpsuits – was established after 11 September 2001.

mocking my religion." When his feet swelled from the beating, they took him down and made him run around the yard, then made him stand in salt, while they poured cold water on his feet to bring the swelling down. Then they strung him back up and it started all over again. On the first day this happened at least three times. "They told me: 'We're going to kill you and bury you here', and all the time I was wishing that they would."

He "disappeared" in Jordan for more than four months. His family never discovered his whereabouts; a brother living in the USA came to Egypt to search for him, while members of his tribe made persistent inquiries with the Egyptian ambassador in Yemen, who finally said that he did not know where Abdul Rahman al-Yaf'i was, only that he had left Egypt.

Abdul Rahman al-Yaf'i told Amnesty International that about twice a month, when the ICRC visited the detention centre, he and other detainees were told to get their things together and they would then be taken to underground cells, which he thinks might have been underneath the kitchen. In these cells, he and other prisoners wrote their names on the walls with the soot from the lantern wicks. He was not held in the same cell every time and could read on the walls the names of other detainees; there had been Saudis, Palestinians, Tunisians and Egyptians there. He thinks he was moved with about a dozen other people each time. B5

The interrogation was intensive for the first week or two, and after that intermittent, but always focused on general information. He was often shown photographs of people, most of whom he said he did not know. Throughout interrogation, he said, they would smack him (here he mimed a full back and forth open-handed blow) until his face swelled. He told us that even now, after five years, his ears are still ringing. There were three or four interrogators, he said, and "you really felt like they had been specially trained to insult religion, in particular beards... What I was most worried about all the time I was there was being raped. The interrogators threatened me tens of times with rape. I kept the same clothes on all the time I was there, I didn't take my robe off even when I went to the washroom, I never washed my clothes, I hoped that the smell would put them off." B5

Abdul Rahman al-Yaf'i was returned to Yemen in March 2001. One day guards came to his cell and told him they were sending him to the USA, a threat he said that they often used. Instead, he was taken to the airport with another Yemeni, where they were turned over to Yemeni guards and put on a Yemeni airlines passenger plane.

When the plane landed in Sana'a, he was taken directly to the Political Security prison, where he stayed for just under two months. It was better in Yemen, he said, "because they didn't hit me". When he asked why they were holding him, the Yemeni authorities said: "American pressure". He believes that his eventual release was due to the insistence of powerful tribal leaders.

Abdul Rahman al-Yaf'i knew of several other cases similar to his own, but said that most of these people are too frightened to talk to anyone about their experiences – a point which underscores the difficulty of getting any precise idea of the number of people who may have been subjected to rendition.

2. Planes and airports – the support network for rendition flights

"Yes. It's very convenient. It's finding someone else to do your dirty work."
Michael Scheuer, who as a senior counter-terrorism official with the CIA, helped establish the rendition programme

2.1 International aviation law and renditions

The Convention on International Civil Aviation, also known as the Chicago Convention, establishes the rules of airspace, plane registration and safety, and sets out the rights of the signatory states in relation to air travel. It establishes a system under which all transit and landing rights for airlines and their aircraft require the explicit or tacit approval of the national governments in or above whose territory they operate. The current version of the Convention was adopted in 2000 and it has 189 contracting states.[44]

Of particular importance for rendition cases is the clause that allows private, non-commercial flights to fly over a country, or make technical stops there, without prior authorization or notification. The CIA planes identified to date have been chartered from private companies, real or fictional. "State aircraft" – defined by the Convention as those "used in military, customs and police services" – do require specific agreement or authorization to fly over the territory of another state or to use its airports. Experts on rendition believe that this is one of the main reasons why privately contracted aircraft are used in rendition operations, rather than military or other official aircraft.

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The intelligence and military community of the USA has long used private air carriers for secret operations. Some of the covert carriers identified by past US congressional inquiries and other investigations[45] are still in business. In November 2003, for example, carriers such as Southern Air, Kalitta Air, Evergreen International Airways, and Tepper Aviation – all known for their connections to covert intelligence and military operations – received a "US Transportation Command Certificate of Appreciation" for their support of Operations Enduring Freedom and Iraqi Freedom, in the "Global War on Terrorism".[46]

The use of planes able operating as private aircraft, without the restrictions placed on official or military flights, has been a key component of the rendition programme since the mid-1990s. According to Michael Scheuer, when the outlines of the current

44 Further information: 'Enabling Torture: International Law Applicable to State Participation in the Unlawful Activities of other States', Briefing Paper by The Center for Human Rights and Global Justice, New York University School of Law, February 2006

45 Ariadne's Thread, report to the MacArthur Foundation, 2003; J Peleman, The logistics of sanction busting: the airborne component, in Angola's War Economy, Pretoria, ISS, 2000; Netherlands Institute for War Documentation, http://213.222.3.5/srebrenica/ Appendix II.

46 USTRANSCOM News Service, Release Number: 031113-1, 13 November 2003.

system were established in 1995, the CIA needed the means to locate, detain and remove terror suspects.[47] A small fleet of private jets able to land discreetly at both commercial airports and US military bases worldwide was the essential ingredient for making the system work.

2.2 CIA-front companies

The CIA rendition programme has relied on private planes contracted from companies listed as private air charter services. In some cases, these are CIA front companies that exist only on paper. Premier Executive Transport, for instance, first appeared as a Delaware company in 1994, and was then re-registered in Massachusetts in 1996 as a "Foreign Corporation".[48] It listed a President and Treasurer whose only known addresses were post office boxes outside Washington DC, who appeared to have no credit or personal history, and who both had Social Security numbers issued in the mid-1990s.[49]

Premier was the listed owner of only two planes: the Gulfstream jet most frequently identified with rendition operations, originally registered as N379P; and a Boeing 737, initially N313P, which appeared regularly in locations such as Afghanistan, Libya, Jordan, Baghdad, Germany and the UK, and which Amnesty International believes was used to render Khaled el-Masri from Macedonia to Afghanistan in January 2004. Flight records show that the plane flew from Skopje to Kabul, touching down in Baghdad, on 24 January 2004, the day Khaled el-Masri was transferred from Macedonia to Afghanistan. Both planes had previously been registered by Stevens Express Leasing and Amnesty International has landing declarations showing that both continued to identify Stevens Express as their operator in 2003 and 2004. Stevens Express has an office address in Tennessee, but no actual premises, although it currently appears in US Federal Aviation Administration (FAA) records as the operator of four planes.[50] Stevens Express was in turn incorporated by the same lawyer listed as the official representative of Devon Holding, another company identified with rendition flights. Premier Executive Transport ceased operations in late 2004; the Boeing's ownership was transferred in November 2004 to Keeler and Tate Management, another non-existent front company with no other planes, no website and no premises. A few days later, the Gulfstream was transferred to Bayard Foreign Marketing, a company whose named corporate officer, Leonard Bayard, cannot be found in any public record.

Other transport contractors have actual premises and staff, but appear to be largely controlled by the CIA. Aero Contractors, for instance, was described by the *New York*

47 Jane Mayer, "Outsourcing Torture", *New Yorker*, February 2005.

48 Massachusetts registration certificate 521857292, can be viewed at:
http://corp.sec.state.ma.us/corp/corpsearch/CorpSearchSummary.asp?ReadFromDB=True&UpdateAllowed=&FEIN=521857292.

49 All US citizens are now required to have a Social Security number before their first birthday. The US Social Security Administration told the Boston Globe that those who receive their numbers in adulthood are either recent immigrants or people being given a new identity. Farah Stockman, Terror suspects' torture claims have Massachusetts Link, 29 November 2004.

50 FAA Registry Inquiry, 22 March 2006, see: http://registry.faa.gov/aircraftinquiry.

Times newspaper as "a major domestic hub of the Central Intelligence Agency's secret air service". The *New York Times* went on to say that the CIA owns at least 26 planes, and "concealed its ownership behind a web of seven shell corporations that appear to have no employees and no function apart from owning the aircraft. The planes, regularly supplemented by private charters, are operated by real companies controlled by or tied to the agency, including Aero Contractors and two Florida companies, Pegasus Technologies and Tepper Aviation."[51]

In other cases, the CIA leases their planes from ordinary charter agents, such as Richmor Aviation, which the *Boston Globe* newspaper identified as "one of the nation's oldest aircraft chartering and management companies". The CIA has made frequent use of Richmor's Gulfstream IV, N85VM, later N227SV, which has made over 100 trips to Guantánamo Bay, and which appears to have carried out the rendition of Abu Omar from Ramstein to Cairo in 2003.[52] The plane's owner confirmed to the *Boston Globe* in March 2005 that he charters his plane through Richmor to the CIA, as well as to other clients. The plane is currently advertised for charter at a rate of US$5,365 per hour.

Individual aircraft may change their registration numbers, but they remain largely traceable. Given the concentrated attention now being devoted to tracking rendition flights, it seems that the intelligence services have now decided that the notorious Gulfstream V, variously registered as N379P, N8068V and N44982, has become too conspicuous. It was put up for sale in November 2005; the advertisement on www.usaircraftsales.com emphasized its "16 pax capacity, dual DVD players, mid and aft seating in Brown leather, and Walnut matte finish woodwork", but the plane had to be "priced below market" due to its heavy usage.[53] Premier Executive Transport itself seems to have vanished as well; there are no planes registered with the company and its landing contracts expired in 2005 and have not been renewed. It is likely that other companies have been created to take Premier's place, and that other, less well-known planes are now being used for CIA rendition activities.

It is likewise the case that the number of flights carried out by the planes identified for monitoring in this report have fallen over the last year. This does not necessarily indicate that renditions are not being carried out, but that companies and aircraft previously involved in the programme are being replaced, making the rendition programme increasingly difficult to monitor.

2.3 Other US agencies involved in rendition

Although renditions have largely been carried out under the auspices of the CIA, other US agencies have apparently been involved in both flight leasing and operations. Contracts for identified rendition planes have been issued through an obscure US Navy office, rather than the CIA, according to US Department of Defense (DoD)

51 Scott Shane, Stephen Grey and Margot Williams, *CIA Expanding Terror Battle Under Guise of Charter Flights*, New York Times, 31 May 2005.

52 Abu Omar, an Egyptian cleric, was kidnapped in Italy and then flown on this jet from Germany to Egypt.

53 http://www.usaircraftsales.com/Forsale/SPECS%20GV%20581%20%202.pdf.

documents obtained by *Associated Press (AP)*.[54] In September 2005, *AP* reported that the Navy Engineering Logistics Office (NELO)[55] had issued classified contracts with 10 different companies and 33 planes for the "occasional airlift of USN (Navy) cargo worldwide." This was the first indication that the DoD had participated in the rendition programme; the companies previously identified as operators of rendition planes were widely believed to be under CIA contracts.

According to the *AP* article, permits to land and buy fuel in US bases worldwide were granted to all of the 10 companies under NELO contract between 2001 and 2004. The 2004, 2005 and 2006 contract lists examined by Amnesty International show that permission to land in US bases worldwide is currently held by 12 companies, but had previously been granted to a total of 38 companies, among them Aviation Specialties; Devon Holding & Leasing; Path Corporation; Rapid Air Trans; Richmor Aviation; Stevens Express Leasing; and Tepper Aviation, all allegedly involved in rendition operations through one or more of their planes.[56] Many of these companies also appeared in lists of commercial agreements for buying fuel under US Defense Energy Support Center contracts.[57]

There have been other indications that responsibility for the rendition programme should not be laid solely at the door of the CIA. It has been reported that the teams that actually carry out the rendition operations include members of military Special Forces units, as well as CIA personnel. Amnesty International has copies of police investigation reports into CIA flights in Spain that suggest that the pilots of the rendition planes were US military officers; when their names were checked against FAA databases, it was found that not all were currently registered as private pilots. If any pilots involved in rendition flights were found to be US military officers, the legal implications would be important: members of the armed forces are not only subject to

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54 Seth Hettena, *Navy Secretly Contracted Jets Used by CIA*, Associated Press, 24 September 2005.

55 Further research carried out by Amnesty International has shown that the Office's name and address were removed from the US DoD's DARF (Defense Federal Acquisition Regulations Supplement - Appendix G, Activity Address Numbers) March 2000. NELO was until 1999 listed in Appendix G with the identification number N41756 and addressed as Navy Engineering Logistics Office, LE Washington, DC 20000. Since 14 November 2003, Appendix G has been entirely removed from the Defense Federal Acquisition Regulations Supplement. (See: http://farsite.hill.af.mil/archive/DFars/DCN19990101/DFARSApxG.htm, http://www.acq.osd.mil/dpap/dars/dfars/html/previous/r20031001/appendix_g-3.htm). NELO also appears as contracting agent in a "Broad Agency Announcement in Joint Support of the Technical Support Working Group and Defense Advanced Research Projects Agency/Information Exploitation Office, Srcsgt" dated 5 June 2003 (solicitation number 03-Q-4110) and its address is posted as "Department of the Navy, Navy Engineering Logistics Office TSWG, P.O. Box 16224 Arlington, VA 22202". According to *AP*, NELO "operates under different names: it is also known as the Navy Office of Special Projects and its San Diego location is called the Navy Regional Plant Equipment Office." Its principal function is "the conduct of foreign intelligence or counterintelligence activities."

56 The list also includes the following companies: Aeromet (L-3/Aeromet); Air Transport International; Air Trek; Airmed International; Atlas Air; BK Associates; Centurion Aviation Services; Continental Airlines; Continental Micronesia; Crowell Aviation Technologies; Delta Air Lines; Eastern Shore Holding; Evergreen International Airlines; Falcon Air Express; Federal Express; Gemini Air Cargo; North American Airlines; Omni Air International; Orbital Sciences Corp.; Raytheon Aircraft Company; Southern Air; United Parcel Service, Co.; US Airways Group; Vantage Leasing; World Airways.

57 Defense Energy Support Center, Commercial Purchase Agreement Customers - DODAAC Database, various editions from 2001 to 2005.

international legal standards and to US criminal law, but also to the Uniform Code of Military Justice, which explicitly forbids both "unlawful detention" and "cruelty and maltreatment". The armed forces do not appear to be covered by the memorandum authorizing the CIA to carry out renditions.

According to a former CIA officer interviewed by the *Chicago Tribune*, Gulfstream N379P/ N8068V/ N44982 was operated by "the Joint Special Operations Command, an inter-agency unit that organizes counter-terrorist operations in conjunction with the CIA and military special forces."[58] The Joint Special Operations Command is the coordinating agency for all military special operations forces and operations, and its headquarters are at Fort Bragg, North Carolina. According to its website, Fort Bragg is the "Home of the Airborne and Special Operations Forces. Fort Bragg houses the 82nd Airborne Division and the XVIII Airborne Corps, the US Army Special Operations Command and the US Army Parachute Team." The CIA's deputy executive director Christopher Kojm told the 9/11 Commission that "the CIA had two main operational responsibilities for combating terrorism: rendition and disruption... The CIA often plays an active role, sometimes calling upon the support of other agencies for logistical or transportation assistance."[59]

A *United Press International* (*UPI*) report in January 2005 noted that the FBI also carries out renditions, but that it transports its suspects by US Air Force jet rather than private plane.[60]

2.4 Role of third countries

Countries that allow CIA planes to cross their air space and use their airports have defended these actions by citing their obligations under the Chicago Convention. They may claim that the state party has no authority to question the reasons for the flight or to board the airplane during the stay in the airport because of the rights guaranteed by the Convention.

However, the Chicago Convention holds that every state has the right to require that an aircraft flying over its territory must land at a designated airport for inspection if there are "reasonable grounds to conclude that it is being used for any purpose inconsistent with the aims of the convention". Given that the practice of rendition violates international human rights law, it follows that transferring or aiding and abetting in the transfer of a detainee in such circumstances cannot be a purpose consistent with the aims of the Chicago Convention, especially considering the internationally recognized, absolute prohibition of torture. The extensive reporting by the media, human rights organizations and parliamentary bodies of specific flight numbers and chartering companies which appear to be involved in renditions constitutes "reasonable grounds" for suspicion. This would give states the right to stop certain aircraft suspected of being involved in the unlawful transfer of detainees.

58 "Mystery man takes to skies; Elusive owner's jet linked to CIA torture", *Chicago Tribune*, 9 January 2005.

59 Transcript: Wednesday's 9/11 Commission Hearings, FDCH E-Media, Wednesday, 24 March 2004.

60 Richard Sale, "Renditions pro and con", UPI, 19 January 2005.

2.5 Flight movements: 2001-2005

Amnesty International and TransArms[61] have records of nearly 1,000 flights directly linked to the CIA, most of which have used European airspace; these are flights by planes that appear to have been permanently operated by the CIA through front companies. In a second category, there are records of some 600 other flights made by planes confirmed as having been used at least temporarily by the CIA. Finally there are well over 1,000 other flights made by planes owned by companies that have been linked to the CIA, but which are not known to be connected to any known cases of rendition.

The flight information comes from several sources: FAA flight records; European flight records; actual flight logs; aircraft movements recorded by airport authorities; airport records acquired in police and parliamentary investigations; photographs of aircraft in selected airports; and some press reports. Flight logs contain all movements carried out by the plane, including all stopovers between origin and destination airports.

Flight records, however, only tell part of the story. Records maintained by the FAA, for instance, do not include all of the stops a plane has made during a trip away from US airspace. The information usually provided includes the origin airport in the USA or in FAA monitored airspace – including Ireland and the UK – and the first destination of the flight outside monitored airspace. It does not pick up again until the plane reappears in FAA monitored airspace. It also shows the flight date, time and duration.

What this means in practice is that large parts of a flight's itinerary may not be shown by FAA flight records. In January 2004, for instance, the CIA's Boeing 737, N313P, left from Washington DC and stopped off in Ireland, Cyprus, Morocco, Algeria, Spain, Macedonia, Iraq, Afghanistan, Romania and Spain before returning to Washington DC, apparently carrying out the rendition of Khaled el-Masri on the way. FAA records show the Washington to Ireland and Ireland to Cyprus flights, but do not record the landings in Morocco, Algeria, Spain, Macedonia, Iraq, Afghanistan or Romania. Amnesty International has obtained this information from another source. The final leg of the journey, the return flight from Spain to the USA, is also shown. The shortcomings – for the purposes of monitoring – are obvious; such flight records do not show the precise activities of the planes in locations where renditions are most likely to occur, they can only show whether planes were active in a certain region at the time in question.

It also seems likely that not all relevant traffic is recorded by the FAA; between 2001 and 2005, for instance, two of Premier Executive Transport's jets made a total of 50 landings at Shannon Airport in Ireland, yet the records show that they only took off 35

61 TransArms, Research Center for the Logistics of Arms Transfers.

times. Flight records originating from European sources provide additional information on flights that have originated or terminated in European airspace.

Flight lists are useful, but they cannot tell whether or not any particular plane has carried out a rendition. The information they contain is indicative rather than conclusive; Amnesty International has constructed a database of flights in order to check it against case information as it becomes available. It remains the case that raw data on the flights themselves is of limited use without specific details of cases; case details are hard to come by precisely because the secret nature of the practice is aimed at avoiding scrutiny and oversight. Where cases become known, and the details and dates of the abduction or transfer can be pinpointed, it has often been able to match a rendition with a flight record. Amnesty International cannot, however, infer possible cases or even make estimates of the extent of the rendition programme solely from the flight information.

2.6 Companies and aircraft

Amnesty International and TransArms have compiled a list of companies likely to have had some level of involvement in renditions and other covert operations. This includes the owners or operators of aircraft that have been detected in known cases of rendition or in other CIA operations, as well as some of the companies – believed to be intelligence-linked – that are mentioned in both the US Army Aeronautical Service Agency's worldwide landing permits and in US DoD fuelling contracts.

The tentative list of companies involved in covert activities has in turn formed the basis for the list of aircraft whose flights Amnesty International has tracked over the 2001-2006 period. Once the flight logs were analysed, some of these companies and aircraft were dropped from the list, because flight logs indicated that they had only flown in and out of locations unlikely to have been connected to either the rendition programme or to covert CIA activities. In a number of cases, there was mixed activity – a plane which has made repeated flights in and out of bases in Afghanistan and Egypt, for instance, has also appeared in holiday resorts or business centres in the USA – suggesting that the agency may be trying to vary its use of planes, so that individual aircraft cannot be so closely linked to covert activity.

The other indication of a shifting landscape in the world of front companies is the current list of companies with a Civil Aircraft Landing Permit (CALP) that authorizes them to land on US military bases worldwide. The 10 companies that currently hold such certificates are listed below, but equally important are those that are no longer listed. Notably absent from the 2006 list are some of the companies with the most widely and frequently reported rendition links: Aeromet, Inc; Devon Holding and Leasing, Inc; Premier Executive Transport Services, Inc; Rapid Air Trans; Raython Aircraft Company; Richmor Aviation, Inc; Stevens Express Leasing, Inc; and Tepper Aviation, Inc. The permits of all of these companies expired in 2005 and none has been renewed.

PRIVATE COMPANIES WITH CURRENT PERMITS TO LAND IN US MILITARY BASES WORLDWIDE[62]

NAME	CALP	EXPIRATION
CENTURION AVIATION SERVICES, INC. *	01-04-121 01-05-132	1 OCTOBER 2005 1 OCTOBER 2006
EVERGREEN INTERNATIONAL AIRLINES, INC. *	01-04-179 01-05-059	1 APRIL 2005 1 APRIL 2006
FALCON AIR EXPRESS*	01-04-021 01-05-163	8 NOVEMBER 2004 16 JULY 2006
GEMINI AIR CARGO, INC. *	01-04-124 01-05-117	22 JULY 2005 1 AUGUST 2006
OMNI AIR INTERNATIONAL, INC.	01-04-141 01-05-130	1 AUGUST 2005 1 AUGUST 2006
ORBITAL SCIENCES CORPORATION *	01-04-020 01-04-117 01-05-118	1 JULY 2004 1 JULY 2005 1 JULY 2006
PHOENIX AIR GROUP	01-05-113	1 AUGUST 2006
POLAR AIR CARGO, INC *	01-05-037	31 DECEMBER 2006
RYAN INTERNATIONAL AIRLINES	01-05-152	15 MAY 2006
SOUTHERN AIR, INC.	01-04-161 01-05-166*	13 NOVEMBER 2005 13 NOVEMBER 2006

(*) EXCEPT THE BUCHOLZ US ARMY AIRFIELD, KWAJALEIN ATOLL, KIRIBATI, MARSHALL ISLANDS

COMPANIES AND AIRCRAFT LINKED TO RENDITION FLIGHTS IN PRESS AND PARLIAMENTARY REPORTS

OWNER/OPERATOR	REGISTRATION NUMBER	MANUFACTURER'S NUMBER	AIRCRAFT TYPE
AERO CONTRACTORS			
APACHE AVIATION	N404AC	1384	G-IV
AVIATION SPECIALTIES	N5139A	BL-144	BEECH B200C
AVIATION SPECIALTIES	N4489A	BL-145	BEECH B200C
BAYARD FOREIGN MARKETING LLC	N44982	581	G-V
BRAXTON MNG/CENTURION AVIATION SERVICES	N478GS	1478	G-IV
DEVON HOLDING/AEROCONTRACTORS	N168D	C-135	CASA CN-235-300
DEVON HOLDING/AEROCONTRACTORS	N196D	C-139	CASA CN-235
DEVON HOLDING/AEROCONTRACTORS	N187D	C-143	CASA CN-235
GEMINI LEASING INC.	N600GC	46965	DC-10-

62 www.usaasa.belvoir.army.mil, various period 2004-2006.

OWNER/OPERATOR	REGISTRATION NUMBER	MANUFACTURER'S NUMBER	AIRCRAFT TYPE
			30F
IMPERIAL AIR	N331P	7323	DC3-G202A
KEELER & TATE MGM	N4476S	33010	B-737-7ET BBJ
MARK J. GORDON	N829MG	327	G-III
PEGASUS TECHNOLOGIES			
PHOENIX AVIATION GROUP	N547PA	012	LEARJET 36
PHOENIX AVIATION GROUP	N541PA	053	LEARJET 35
PHOENIX AVIATION GROUP/CFF AIR INC	N549PA	119	LEARJET 35A
PREMIER EXECUTIVE TRANSPORT SERVICES	N313P	33010	B-737-7ET BBJ
PREMIER EXECUTIVE TRANSPORT SERVICES, INC	N379P	581	G-V
PREMIER EXECUTIVE TRANSPORT SERVICES, INC	N8068V	581	G-V
RAPID AIR TRANS INC./TEPPER AVIATION	N2189M	4582	L-382G-44K-30
RAPID AIR TRANS INC./TEPPER AVIATION	N8183J	4796	L-382G-44K-30
RICHMOR AVIATION-ASSEMBLY POINT AV	N85VM	1172	G-IV
RICHMOR AVIATION-ASSEMBLY POINT AV.	N227SV	1172	G-IV
S&K AVIATION LLC	N259SK	327	G-III
STEVENS EXPRESS LEASING	N4009L	B300C	Raytheon

3. Amnesty International's recommendations

Amnesty International makes the following recommendations as immediate and essential steps towards putting an end to the rendition programme and its associated practices, including enforced disappearance, torture and incommunicado and secret detention.

Recommendations to all governments:

No renditions

- Do not render or otherwise transfer to the custody of another state anyone suspected or accused of security offences unless the transfer is carried out under judicial supervision and in full observance of due legal process. B5
- Ensure that anyone subject to transfer has the right to challenge its legality before an independent tribunal, and that they have access to an independent lawyer and an effective right of appeal.
- Do not receive into custody anyone suspected or accused of security offences unless the transfer is carried out under judicial supervision and in full observance of due legal process.
- Information on the numbers, nationalities and current whereabouts of all terror suspects rendered, extradited or otherwise transferred into custody from abroad should be publicly available. Full personal details should be promptly supplied to the families and lawyers of the detainees, and to the International Committee of the Red Cross (ICRC). B5
- Bring all such detainees before a judicial authority within 24 hours of entry into custody.
- Ensure that detainees have prompt access to legal counsel and to family members, and that lawyers and family members are kept informed of the detainee's whereabouts.
- Ensure that detainees who are not nationals of the detaining country have access to diplomatic or other representatives of their country of nationality or former habitual residence.

No 'disappearances', no secret detention

- End immediately the practices of incommunicado and secret detention wherever and under whatever agency it occurs.
- Hold detainees only in officially recognized places of detention with access to family, legal counsel and courts.
- Ensure that those responsible for "disappearances" are brought to justice, and that victims and families receive restitution, compensation and rehabilitation.
- Investigate any allegations that their territory hosts or has hosted secret detention facilities, and make public the results of such investigations.

No torture or other ill-treatment

- Ensure that interrogations are carried out in accordance with international standards, in particular without any use of torture or other cruel, inhuman or degrading treatment.
- Investigate all complaints and reports of torture or other ill-treatment promptly, impartially and effectively, using an agency independent of the alleged perpetrators, and ensure that anyone found responsible is brought to justice.
- Ensure that victims of torture obtain prompt reparation from the state including restitution, fair and adequate financial compensation and appropriate medical care and rehabilitation.

No diplomatic assurances

- Prohibit the return or transfer of people to places where they are at risk of torture or other ill-treatment.
- Do not require or accept "diplomatic assurances" or similar bilateral agreements to justify renditions or any other form of involuntary transfers of individuals to countries where there is a risk of torture or other ill-treatment.

No renditions flights

- Identify to the aviation authorities any plane or helicopter used to carry out the missions of the intelligence services as a state aircraft, even if the aircraft in question is chartered from a private company.
- Ensure that airports and airspace are not used to support and facilitate renditions or rendition flights.
- Maintain and update a register of aircraft operators whose planes have been implicated in rendition flights, and require them to provide detailed information before allowing them landing or flyover rights. Such information should include: the full flight plan of the aircraft, including onward stops and full itinerary, the full names and nationalities of all passengers on board, and the purposes of their travel.
- If any passengers are listed as prisoners or detainees, more detailed information about their status and the status of their flight should be required, including their destination and the legal basis for their transfer.
- Refuse access to airspace and airfields if requested information is not provided.
- If there are grounds to believe that an aircraft is being used in connection with renditions or other human rights violations, board the plane or require it to land for inspection.
- If such inspection indicates that the flight is being used for the unlawful transfer of people, or other human rights violations, the flight should be held until the lawfulness or otherwise of its purpose can be established, and appropriate law enforcement action taken.

B5

Additional recommendations to the US government:

- Ensure that anyone held in US custody in any part of the world can exercise the right to legal representation and to a fair and transparent legal process;
- Disclose the location and status of the detention centres where Muhammad Abdullah Salah al-Assad, Muhammad Faraj Ahmed Bashmilah and Salah Nasser Salim 'Ali Qaru were held between October 2003 and May 2005;
- Disclose the identities and whereabouts of all others held in secret locations and their legal status, and invite the ICRC to have full and regular access to all those detained;
- Release all detainees in US custody at undisclosed locations unless they are to be charged with internationally recognizable criminal offences and brought to trial promptly and fairly, in full accordance with relevant international standards, and without recourse to the death penalty;
- Promptly and thoroughly investigate all allegations of "disappearance", and bring those suspected of having committed, ordered or authorized a "disappearance" before the competent civil authorities for prosecution and trial.

B5

Recommendations to private aircraft operators and leasing agents:

- Ensure that the company is aware of the end use of any aircraft it is leasing or operating;
- Do not lease or otherwise allow the operation of any aircraft where there is reason to believe it might be used in human rights violations, including rendition or associated operations;
- Develop an explicit human rights policy, ensuring that it complies with the UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights.

Appendix: Planes monitored

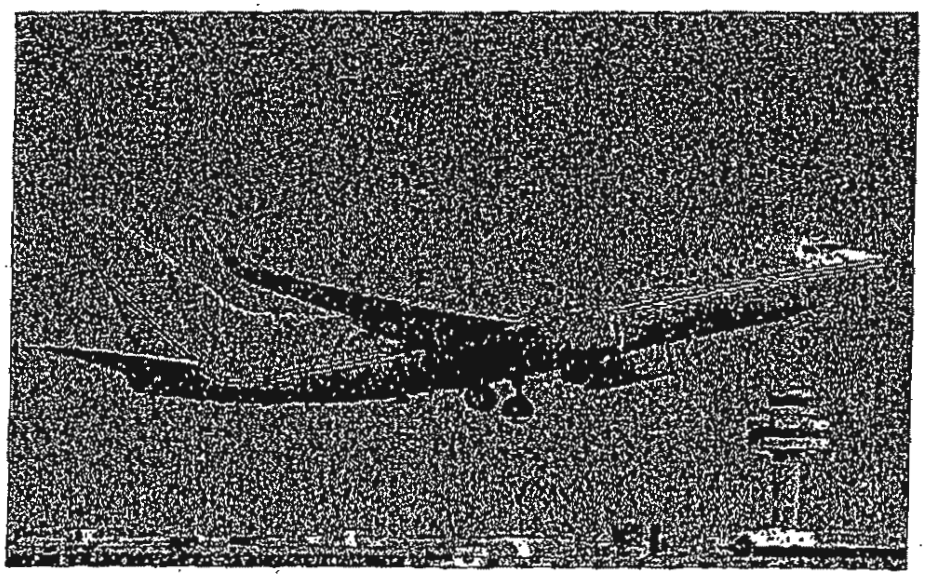
1. N313P-N4476S

N313P-N4476S is a Boeing 737-7ET (BBJ) aircraft (m/n 33010) for which there are 396 recorded landings or taking offs between 22 November 2002 and 8 September 2005. Flight records show that it was the plane that took Khaled el-Masri from Skopje to Afghanistan in January 2004, and Human Rights Watch has identified it as the "plane that the CIA used to move several prisoners to and from Europe, Afghanistan, and the Middle East in 2003 and 2004 – it landed in Poland and Romania on direct flights from Afghanistan on two occasions in 2003 and 2004."

Registration: First registered by Stevens Express Leasing Inc, and then re-registered on 1 May 2002 by Premier Executive Transport Services. Keeler & Tate Management re-registered the aircraft on 1 December 2004, as N4476S. This is the only aircraft registered under this company name.

Landing rights: Stevens Express Leasing Inc. and Premier Executive Transport Services were both permitted to land at US military bases worldwide. Their permits expired in 2005 and have not been renewed.

Range and capacity: average range of 5,510 nautical miles at 522/542 knots (non-stop Washington Dulles-Tashkent in 11 hours, for example), and can transport up to 127 passengers.



N313P plane used in rendition flights. Later re-registered as N4476S. © Toni Marimon

Destinations: movements of N313P-N4476S include landings and take offs from the following airports:

COUNTRY	CITY / AIRPORT	PASSAGES THROUGH THE AIRPORT
AFGHANISTAN	KANDAHAR	1
AFGHANISTAN	KHWAJA RAWASH (KABUL)	9
ALGERIA	ALGIERS	3
AZERBAIJAN	BAKU	1
BAHRAIN	BAHRAIN	1
CROATIA	DUBROVNIK	2
CYPRUS	LARNACA	8
CZECH REPUBLIC	PRAGUE	6
ESTONIA	PARNU	3
FIJI	NADI, VITI LEVU	2
GERMANY	FRANKFURT	73
GERMANY	RAMSTEIN	3
GREECE	ATHENS	1
IRAQ	BAGHDAD	10
IRELAND	DUBLIN	2
IRELAND	SHANNON	23
ITALY	PISA	2
JORDAN	AMMAN	20
KUWAIT	KUWAIT	6
LIBYA	MITIGA	17
LIBYA	TRIPOLI	2
MACEDONIA	SKOPJE	2
MALTA	VALLETTA	2
MOROCCO	RABAT	8
PAKISTAN	ISLAMABAD	5
PAKISTAN	KARACHI	1
PORTUGAL	PORTO (OPORTO)	5
PORTUGAL	SANTA MARIA (AZORES)	2
ROMANIA	BUCHAREST	1
ROMANIA	TIMISOARA	1
RUSSIA	MOSCOW	1
SAUDI ARABIA	RIYADH	1
SPAIN	PALMA DE MALLORCA	5
SWITZERLAND	GENEVA	2
UNITED ARAB EMIRATES	ABU DHABI	1
UNITED ARAB EMIRATES	DUBAI	4
UNITED KINGDOM	GLASGOW	19
UNITED KINGDOM	LONDON GATWICK	1
UNITED KINGDOM	LUTON	9
UNITED KINGDOM	MANCHESTER	2
UNITED KINGDOM	MILDENHALL	3
UNITED KINGDOM	NORTHOLT	9
UNITED KINGDOM	OXFORD BRIZE NORTON	3
UNITED KINGDOM	PROVIDENCIALES (TURKS AND CAICOS)	8
UNITED STATES OF AMERICA	GUANTÁNAMO BAY US NAVAL AIR STATION, CUBA	7
UZBEKISTAN	TASHKENT	1

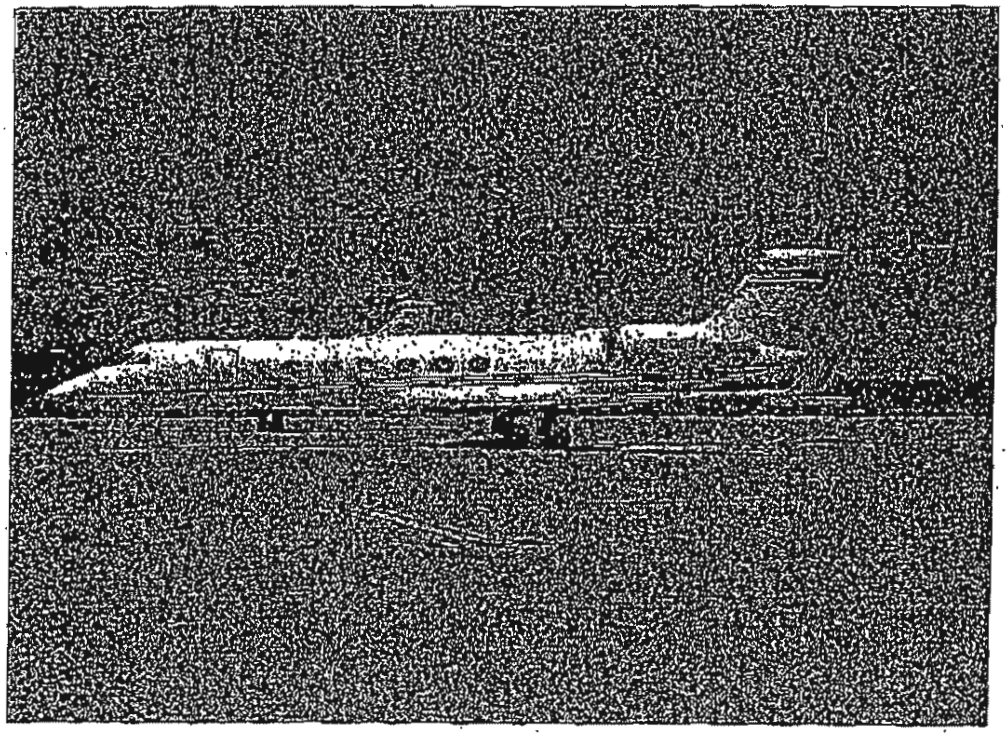
2. N379P-N8068V-N44982

The Gulfstream V executive jet, variously registered as N379P, N8068V and N44982 has been the plane most often identified with known cases of rendition. AI has records of 590 landings and take offs between February 2001 and September 2005.

Registration: registered in February 2000 by Premier Executive Transport Services; it was re-registered as N8068V at the beginning of 2004; and again re-registered as N44982 in December 2004 by Bayard Foreign Marketing, a phantom company registered in Oregon State since August 2003. No other aircraft were registered by Bayard Foreign Marketing. The aircraft was put up for sale in late 2005, and is now the property of a company based in Miami, Florida.[63]

Landing rights: Premier Executive Transport Services aircraft were permitted to land in the US bases worldwide (expiration 15 October 2005).

Range and capacity: average range of 5,800 nautical miles at 459/585 knots (non-stop Washington Dulles-Kabul in 12 hours, for example). The aircraft can transport up to 18 passengers, but it is usually configured for 8 passengers.



N8068V plane used in rendition flights. Earlier registered as N379P and later re-registered as N44982.
© Jean Luc Altherr

Destinations: movements of N379P-N8068V-N44982 include landings and take offs from the following airports:

COUNTRY	CITY / AIRPORT	PASSAGES THROUGH THE AIRPORT
AFGHANISTAN	KHWAJA RAWASH (KABUL)	5
ALGERIA	ALGIERS	1
AZERBAIJAN	BAKU	1
BAHRAIN	MUHARRAQ MILITARY AIRPORT	1
CYPRUS	LARNACA	10
CYPRUS	PAPHOS	2
CZECH REPUBLIC	PRAGUE	11
DJIBOUTI	DJIBOUTI	2
EGYPT	CAIRO	14
GAMBIA	BANJUL	2
GERMANY	FRANKFURT	70
GERMANY	MUNICH	2
GERMANY	RAMSTEIN	2
GERMANY	STUTTGART	2
GREECE	ATHENS	7
IRAQ	BAGHDAD	6
IRELAND	SHANNON	22
ITALY	ROME	4
ISRAEL	TEL AVIV	4
JORDAN	AMMAN	18
KUWAIT	KUWAIT	3
LIBYA	MITIGA	2
MALAYSIA	KUALA LUMPUR	1
MOROCCO	MARRAKECH	2
MOROCCO	RABAT	7
NETHERLANDS	AMSTERDAM	1
PAKISTAN	KARACHI	2
POLAND	WARSAW	2
PORTUGAL	LISBON	1
PORTUGAL	PORTO (OPORTO)	15
QATAR	DOHA	2
SAUDI ARABIA	RIYADH	2
SPAIN	PALMA DE MALLORCA	3
SPAIN	SANTA CRUZ DE TENERIFE (CANARY ISLANDS)	3
SWITZERLAND	GENEVA	3
THAILAND	BANGKOK	1
TURKEY	DIYARBAKIR	2
UNITED ARAB EMIRATES	ABU DHABI	1
UNITED ARAB EMIRATES	DUBAI	4
UNITED KINGDOM	GLASGOW	20
UNITED KINGDOM	LUTON	4
UNITED KINGDOM	OXFORD BRIZE NORTON	2
UNITED KINGDOM	PRESTWICK	36
UNITED KINGDOM	PROVIDENCIALES (TURKS AND CAICOS)	6
UNITED STATES OF AMERICA	GUANTÁNAMO BAY US NAVAL AIR STATION,	20

[63] See an advertisement for the sale of this Gulfstream V executive jet at US Aircraft Sales: http://www.usaircraftsales.com/Forsale/SPECS%20GV%20581%20%202.pdf.

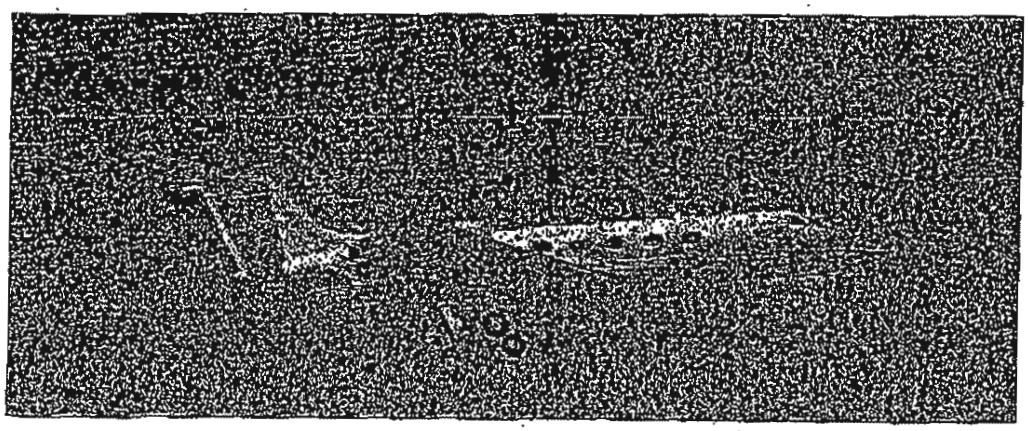
	CUBA	
UZBEKISTAN	KARSHI AIRBASE	1
UZBEKISTAN	TASHKENT	13

3. N829MG-N259SK

A Gulfstream III (Grumman G-1159A), this plane carried Canadian national Maher Arar from the US to Jordan, where he was transferred overland to Syria. He was tortured during 13 months of detention without charge, and was released in October 2003. The plane has also made over 100 trips to Guantánamo Bay. There are 380 relevant FAA recorded landings or takeoffs between March 2001 and May 2005.

Registration: registered by MJG Aviation in October 2000 in Florida; the company dissolved July 2004. MJG's owner also owned Presidential Aviation, a company first registered in Florida in 1998 and dissolved November 2004. The aircraft was re-registered as 259SK in March 2004 by S&K Aviation LLC. S&K Aviation was first registered in Florida in December 2003 and is an active company with a registered agent.

Range and capacity: average range of 3,715 nautical miles. The aircraft can transport up to 22 passengers, but it is usually configured for 10/12 people.



Gulfstream III: N829MG (Later re-registered as N259SK). © Sam Chui

Destinations: Recorded movements of N829MG-N259SK include landings and take offs from the following airports:

COUNTRY	CITY / AIRPORT	PASSAGES THROUGH THE AIRPORT
BELGIUM	ANTWERP	1
CANADA	GANDER, NEWFOUNDLAND	10
FRANCE	LE BOURGET	2
GERMANY	FRANKFURT	1
GERMANY	FRANKFURT-HAHN	1
GERMANY	NURNBERG	1
IRELAND	SHANNON	2
ITALY	ROME	3
JORDAN	AMMAN	2
NETHERLANDS	AMSTERDAM	2
NETHERLANDS	GRONINGEN	1
PORTUGAL	SANTA MARIA (AZORES)	6
SPAIN	MALAGA	2
UNITED KINGDOM	BIGGIN HILL	2
UNITED KINGDOM	HAMILTON US NAVAL AIR STATION, BERMUDA	6
UNITED KINGDOM	LONDONDERRY	2
UNITED KINGDOM	PROVIDENCIALES (TURKS AND CAICOS)	7
UNITED STATES OF AMERICA	GUANTÁNAMO BAY US NAVAL AIR STATION, CUBA	2
UNITED STATES OF AMERICA	TETERBORO	3
UNITED STATES OF AMERICA	WASHINGTON, DC	2

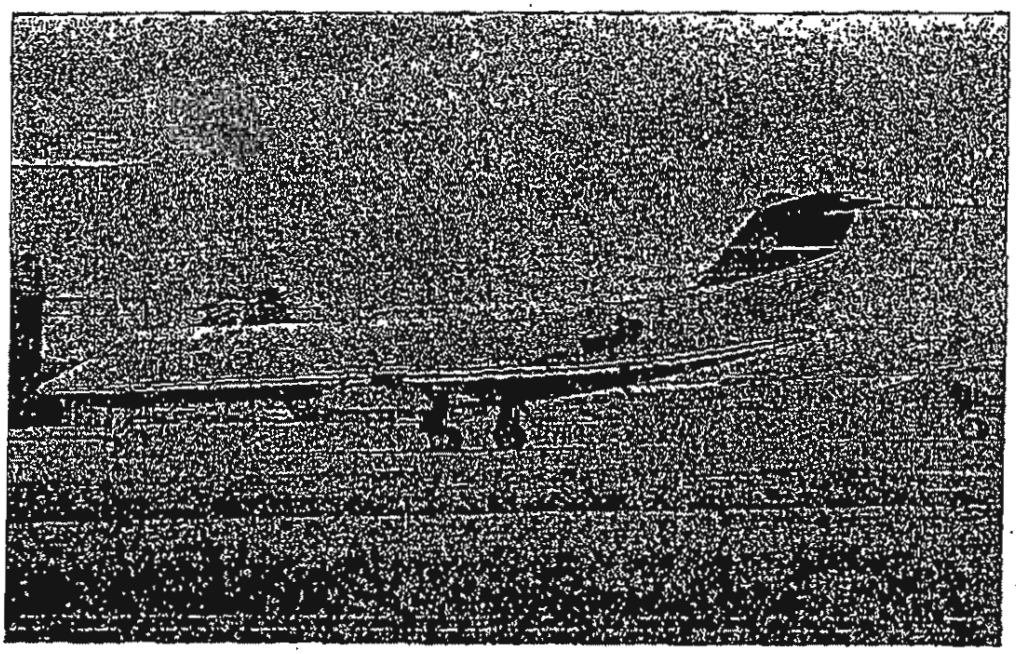
4. N85VM-N227SV

The Gulfstream IV plane that took Abu Omar to Egypt from Germany after his kidnapping in Italy. Its owners have admitted leasing the plane to the CIA, but have said it is not used exclusively by the agency. There are 488 relevant recorded landings or takeoffs between February 2001 and July 2005.

Registration: owned by Assembly Point Aviation Inc., registered May 1995 in New York State. The aircraft was registered as N85VM until September 2004, when it was re-registered as N227SV. Operated by Richmor Aviation, a company based at the Columbia County airport (Hudson, New York) and Scotia (New York). Richmor Aviation owns or manages a fleet of about 15 business jets.

Landing rights: Richmor Aviation aircraft were permitted to land at US military bases worldwide (expiration February 15, 2005).

Range and capacity: average range of 3,633 nautical miles at 460/582 knots; can transport up to 19 passengers, but it is usually configured for 8/14 passengers.



Gulfstream IV: N227SV plane used in rendition flights. Earlier registered as N85VM. This aircraft is currently available for charter at a rate of US$5365 per hour. © Wallace

Destinations: Recorded movements of N85VM-N227SV include landings and take offs from the following airports:

COUNTRY	CITY / AIRPORT	PASSAGES THROUGH THE AIRPORT
AFGHANISTAN	KHWAJA RAWASH (KABUL)	1
AZERBAIJAN	BAKU	2
BAHRAIN	MUHARRAQ MILITARY AIRPORT	2
CANADA	GANDER, NEWFOUNDLAND	2
CYPRUS	LARNACA	1
CYPRUS	PAPHOS	2
CZECH REPUBLIC	PRAGUE	3
EGYPT	CAIRO	1
EGYPT	SHARM EL SHEIKH	1
FINLAND	HELSINKI	1
FRANCE	LE BOURGET	4
GERMANY	FRANKFURT	10
GERMANY	KOLN-BONN	2
GERMANY	RAMSTEIN	1
ICELAND	KEFLAVIK	1
IRELAND	DUBLIN	1
IRELAND	SHANNON	30
ITALY	ROME	1
JAPAN	OSAKA	1
KUWAIT	KUWAIT	1
MOROCCO	RABAT	7
NORWAY	EVENES	2
PORTUGAL	LISBON	2
PORTUGAL	SANTA MARIA (AZORES)	4
SPAIN	BARCELONA	1
SPAIN	PALMA DE MALLORCA	3
SPAIN	SAN CRISTOBAL (CANARY ISLANDS)	2
SPAIN	SANTA CRUZ DE TENERIFE (CANARY ISLANDS)	2
SWITZERLAND	GENEVA	2
SWITZERLAND	ZURICH	2
UNITED ARAB EMIRATES	DUBAI	3
UNITED KINGDOM	BELFAST	2
UNITED KINGDOM	EDINBURGH	1
UNITED KINGDOM	GLASGOW	2
UNITED KINGDOM	HAMILTON US NAVAL AIR STATION, BERMUDA	2
UNITED KINGDOM	LEUCHARS	10
UNITED KINGDOM	LONDON STANSTED	1
UNITED KINGDOM	LONDONDERRY	1
UNITED KINGDOM	LUTON	6
UNITED KINGDOM	PROVIDENCIALES (TURKS AND CAICOS)	21
UNITED STATES OF AMERICA	GUANTÁNAMO BAY US NAVAL AIR STATION, CUBA	114

L Press Guidance
June 7, 2006

MARTY REPORT ON RENDITIONS

Question:

Comment on Marty report to the Council of Europe regarding rendition flights. Is there anything new in this report?

Answer:

- While we continue to review today's report, based on an initial review, we are disappointed with the tone and content of the report. It appears that the report is filled with inaccuracies and innuendo. We are particularly disappointed that the report failed to account for much of the information we recently provided the European parliamentarians and U.N. Committee Against Torture on this issue.

- As we've said before, we're not in a position to confirm or deny specific intelligence activities.

- As Secretary Rice made clear in discussions with the European Foreign Ministers in December, we believe that renditions are a useful tool in fighting terrorism in certain rare circumstances where an individual would otherwise not be able to be brought to justice or would otherwise be able to escape and avoid capture.

- We note that the Marty Report affirms our previous statement that it would be irresponsible to speak of thousands or even hundreds of rendition flights through Europe. The overwhelming majority of intelligence flights have no connection at all to renditions.

- As the Secretary of State made clear in December, the United States complies with its laws and its treaty obligations, and respects the sovereignty of other countries, in engaging in such activities.

- The suggestion that intelligence flights are engaged in illegal activity is unfounded and undermines cooperation between the United States and Europe that is essential to foiling deadly plots.

- We never transfer persons where we believe it is more likely than not that the person would be tortured.

[redacted] B5

Background:

Swiss Senator Dick Marty presented a report to the 46 members of the Council of Europe today in response to allegations that the CIA was running secret prisons in Europe. The report found there was no direct evidence that any such prisons existed in Europe, although it stated, "a number of coherent and convergent elements indicated that secret detention centers have indeed existed and unlawful inter-state transfers have taken place in Europe." The report alleges that Romania and Poland were stops on a "rendition circuit," and accused 14 European countries, including the U.K., Germany, and Italy of violating human rights in connection with CIA activities.

Drafted:	L/PM:	VPadmanabhan (x7-7965) Doc # 125873 June 7, 2006
Cleared:	L:	JBellinger (ok)
	L/PM:	JDorosin (ok)
	L/HRR:	RHarris (ok)
	S/WCI:	KMcGeeney (ok)
	DRL:	JNoyes (ok)
	EUR/PPD:	TDavidson (ok)

L141A

went on to claim—*in his defense*—that scientists "don't know....They just don't know."

So, presumably, those scientists do not belong to the "consensus." Yet their research is forced [redacted] global-warming [redacted] alarmism. To be [redacted] ignore the truly inconvenient facts. To take the issue of rising sea levels, these include: that the Arctic was as warm or warmer in 1940; that icebergs have been known since time immemorial; that the evidence so far suggests that the Greenland ice sheet is actually growing on average. A likely result of all this is increased pressure pushing ice off the coastal perimeter of that country, which is depicted so ominously in Mr. Gore's movie.

[redacted]

timidate the public and even scientists—especially those outside the area of climate dynamics. Secondly, given that the question of human attribution largely cannot be resolved, its use in promoting visions of disaster constitutes nothing so much as a bait-and-switch scam. That is an inauspicious beginning to what Mr. Gore claims is not a political issue but a "moral" crusade.

Lastly, there is a clear attempt to establish truth not by scientific methods but by [redacted]. An earlier attempt at [redacted]ed by tragedy. Perhaps [redacted]s time around we may [redacted] lucky.

Mr. Lindzen is the Alfred P. Sloan Professor of Atmospheric Science at MIT.

[redacted]

focus on arrest warrant

27 JUN 06

By Terry Davis

W55

At about 10 in the morning on Sunday August 15, 1994, a small plane landed at Villacoublay military airport outside Paris. On board was a team of agents from the *Direction de la Surveillance du Territoire*, or DST—broadly speaking, the French equivalent to the CIA. Their handcuffed and hooded prisoner had been captured only hours before in the Sudanese capital of Khartoum. His name was Illich Sanchez Ramirez, better known as Carlos the Jackal, self-styled revolutionary, terrorist and murderer.

Two years later, the European Commission on Human Rights, a predecessor of the European Court of Human Rights, rejected his complaint and ruled that the circumstances of his arrest and transfer to France did not violate the European Convention on Human Rights.

This ruling by a Council of Europe body has been repeatedly used by the highest officials in the U.S. State Department to try to prove that so-called extraordinary renditions are justified and lawful under [redacted] European hu[redacted] this is noth[redacted] in the case of *Sanchez Ramirez v. France* is only seven pages long and can be read in a couple of minutes. It is available on the Council of Europe's Web site [redacted] straightforw[redacted] guistic difficulties.

'In Europe, we reject the bogus choice between our security and our freedom.'

[redacted] Carlos and so-called extraordinary renditions of al Qaeda terrorist suspects are a few basic and very important details.

Carlos did not disappear, nor did he end up in some Caribbean gulag. He was taken to Paris and brought before a judge, [redacted] tional law, which was drafted in difficult and uncertain times and has been tested in [redacted]e Convention balances [redacted]ms of individuals [redacted] of the larger commu[redacted] robust, effective and [redacted] threats faced by soci[redacted] terrorism. In Europe, [redacted] choice between our se[redacted]m.

After his arrest, Illich Ramirez Sanchez [redacted] and was sentenced to [redacted]ay he may be an an[redacted] not a martyr. He [redacted] complaints through [redacted] set out to destroy [redacted] Carlos has atoned [redacted] it is important is that [redacted] deprived of the opportunity to commit new crimes or alternatively inspire other people to follow his example.

There is a message in all that. A really effective fight against terrorism is one which stops more terrorists than it helps to recruit.

Mr. Davis is secretary general of the Council of Europe.

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Deeks, Ashley S

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From: Deeks, Ashley S
Sent: Tuesday, December 05, 2006 10:52 AM
To: Bellinger, John B(Legal)
Cc: Dorosin, Joshua L; Padmanabhan, Vijay M; Filippatos, James
Subject: FW: possible letter to editor on renditions

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"The United States has been in a useful dialogue with the EU, both in a multilateral context and with individual EU member states, about the appropriate legal framework for the fight against terrorism. However, contrary to recent press reports, the United States has not tried to develop a "framework agreement" on renditions with either Austria or the EU. Rather, as part of our constructive dialogue with the EU on legal issues, the United States has explained the limited circumstances under which the United States has used renditions and the legal basis for those renditions.

The United States has also pointed out that European countries have used renditions. The U.S. Government is well aware that the renditions reviewed and upheld by the European Court of Human Rights involved renditions of an individual to face criminal prosecution, but renditions of suspects to stand trial are not the only situations in which renditions are appropriate. The Council of Europe's Venice Commission asserts that there are only four legal ways to transfer a prisoner to foreign authorities: deportation, extradition, transit, and transfer of a sentenced person to serve that sentence in his country of origin. Thus, under the Venice guidelines, even the French rendition of Carlos the Jackal would have been improper.

We disagree with the Venice Commission's conclusion. Renditions are not per se unlawful, though renditions should not be used to transfer terrorist suspects to face torture, and the United States does not transport anyone, and will not transport anyone, for this purpose. We believe, however, that the international community must continue to be able to use renditions not only to bring terrorists to justice but also to prevent terrorist suspects from remaining at large to plan future attacks."

EUROPEAN PARLIAMENT

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REPORT

on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners
(2006/2200(INI))Temporary Committee on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners

Rapporteur: Giovanni Claudio Fava

PR_INI

CONTENTS

MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners
(2006/2200(INI))

The European Parliament,

– having regard to its resolution of 15 December 2005 on the presumed use of European countries for the transportation and illegal detention of prisoners by the CIA[1],

– having regard to its decision of 18 January 2006 setting up a Temporary Committee on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners[2],

– having regard to its resolution of 6 July 2006 on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners, adopted midway through the work of the Temporary Committee[3],

– having regard to the delegations which the Temporary Committee sent to the Former Yugoslav Republic of Macedonia, the United States, Germany, the United Kingdom, Romania, Poland and Portugal,

– having regard to the hearings, numbering no fewer than 130, held by the Temporary Committee in the course of its meetings, delegation missions and confidential interviews,

– having regard to all the written contributions received by the Temporary Committee or to which it has had access, particularly the confidential documents forwarded to it (in particular by the European Organisation for the Safety of Air Navigation (Eurocontrol) and the German Government or which it has obtained from various sources,

– having regard to its resolution of 30 November 2006 on the progress made in the EU towards the Area of freedom, security and justice (AFSJ) (Articles 2 and 39 of the EU Treaty)[4], notably its paragraph 3,

– having regard to its resolution of 13 June 2006 on the situation of prisoners at Guantánamo[5],

– having regard to Rule 175 of its Rules of Procedure,

– having regard to the report of the Temporary Committee on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners (A6-0000/2006),

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1 *Texts Adopted*, P6_TA(2005)0529.
2 *Texts Adopted*, P6_TA(2006)0012.
3 *Texts Adopted*, P6_TA(2006)0316.
4 *Texts Adopted*, P6_TA-PROV(2006)0525.
5 *Texts Adopted*, P6_TA(2006)0254.

A. whereas, in its resolution of 6 July 2006, Parliament decided that 'the Temporary Committee would continue its work for the remainder of its established twelve-month term, without prejudice to the provisions of Rule 175 of its Rules of Procedure on the possibility of extending the term',

B. whereas, in adopting its resolution of 22 November 1990 on the Gladio affair[1], it drew attention, more than 16 years ago, to the existence of clandestine operations involving intelligence services and military organisations without adequate democratic control,

C. whereas the Member States cannot circumvent the requirements imposed on them by European Community (EC) and international law by allowing other countries' intelligence services, which are subject to less stringent legal provisions, to work on their territory; whereas, in addition, the operations of intelligence services are consistent with fundamental rights only if adequate arrangements exist for monitoring them;

D. whereas the principle of the inviolability of human dignity is enshrined in international human rights law, notably in the preamble to the Universal Declaration of Human Rights and the preamble to and Article 10 of the International Covenant on Civil and Political Rights, and whereas that principle is guaranteed by the jurisprudence of the European Court of Human Rights; whereas this principle appears in most Member States' constitutions, as well as in Article 1 of the Charter of Fundamental Rights of the European Union[2] and whereas that principle should not be undermined, even for the purposes of security, in times of peace or war,

E. whereas the principle of inviolability of human dignity underlies every other fundamental right guaranteed by international, European and national human rights instruments, in particular the right to life, the right to freedom from torture and inhuman or degrading treatment or punishment, the right to liberty and security, the right to protection in the event of removal, expulsion or extradition and the right to an effective remedy and to a fair trial,

F. whereas extraordinary rendition and secret detention involve multiple violations of human rights, in particular violations of the right to liberty and security, the freedom from torture and cruel, inhuman or degrading treatment, the right to an effective remedy, and, in extreme cases, the right to life; whereas, in some cases, where rendition leads to secret detention, it constitutes enforced disappearance,

G. whereas the prohibition of torture is a peremptory norm of international law (*jus cogens*) from which no derogation is possible and the obligation to protect against, investigate and sanction torture is an obligation owed by all states (*erga omnes*), as provided by Article 5 of the Universal Declaration of Human Rights, Article 7 of the International Covenant on Civil and Political Rights, Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and the related case law, Article 4 of the Charter of Fundamental Rights, and national constitutions and laws; whereas specific conventions and protocols on torture and monitoring mechanisms adopted at the European and international level demonstrate the importance attached to this inviolable norm by the international community; whereas the use of diplomatic assurances is incompatible with this obligation,

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[1] OJ C 324, 24.12.1990, p. 201.
[2] OJ C 364, 18.12.2000, p. 1.

H. whereas in democracies in which the respect for the rules of law is inherent, the fight against terrorism cannot be won by sacrificing or limiting the very principles that terrorism seeks to destroy, notably, the protection of human rights and fundamental freedoms must never be compromised; whereas terrorism can and must be fought by legal means and must be defeated while respecting international and national law,

I. whereas the United States (US) administration's strategy to combat terrorism has made use of pervasive instruments to monitor sensitive data relating to European citizens, such as the Passenger Names Record (PNR) agreement, and to monitor bank details through the Society for Worldwide Interbank Financial Telecommunication (Swift) network,

J. whereas on 6 September 2006, US President George W. Bush confirmed that the Central Intelligence Agency (CIA) was operating a secret detention programme outside the United States,

K. whereas President George W. Bush said that the vital information derived from the extraordinary rendition and secret detention programme had been shared with other countries and that the programme would continue, which raises the strong possibility that some European countries may have received, knowingly or unknowingly, information obtained under torture,

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L. whereas the Temporary Committee has obtained, from a confidential source, records of the informal transatlantic meeting of European Union (EU) and North Atlantic Treaty Organisation (NATO) foreign ministers, including US Secretary of State Condoleezza Rice, of 7 December 2005, confirming that Member States had knowledge of the programme of extraordinary rendition, while all official interlocutors of the Temporary Committee provided inaccurate information on this matter,

M. whereas the Temporary Committee has obtained, from a confidential source, records of meetings of the Council's Working Party on Public International Law (COJUR) and Transatlantic Relations Working Party (COTRA) with senior representatives of the US Department of State during the first half of 2006 (notably on 8 February and 3 May 2006), while it was provided by the Council Presidency only with a summarised version of these documents; whereas the documents sent by the Council to Parliament concerning those meetings in answer to Parliament's specific request, were incomplete summaries of the proceedings with essential parts missing,

N. whereas the information on these meetings was not notified to Parliament and absolute secrecy was maintained in relation to their proceedings,

O. whereas, in the present resolution, 'European countries' should be understood as meaning Member States and candidate and associate countries, as outlined in the mandate of the Temporary Committee adopted on 18 January 2006,

1. Recalls that terrorism represents one of the main threats to the security of the European Union and that it must be fought with lawful and coordinated efforts by all European governments, in close collaboration with international partners and notably with the United States, along the lines of the strategy defined at United Nations (UN) level; underlines that the fight against terrorism must be fought on the basis of, and in order to

protect, our common values of democracy, the rule of law, human rights and fundamental freedoms; furthermore stresses that all the work carried out by the Temporary Committee is intended to make a contribution towards the development of clear and focused measures in the fight against terrorism, which are commonly accepted and respect national and international law;

2. Considers that after 11 September 2001, the so-called 'war on terror', in its excesses, has produced a serious and dangerous erosion of human rights and fundamental freedoms, as noted by the outgoing UN Secretary-General Kofi Annan; B5

3. Is convinced that the rights of the individual and full respect for human rights contribute to security; considers it necessary that in the relationship between the need for security and the rights of individuals, human rights must always be fully respected, ensuring that suspected terrorists are tried and sentenced while due process is observed;

4. Emphasises that the positive obligation to respect, protect and promote human rights is binding, regardless of the legal status of the individual concerned, and that any discrimination among EU nationals, residents of Member States or any other person entitled to protection from, or otherwise under the jurisdiction of, the Member States must be avoided;

5. Recalls that the purpose of this resolution, based on the report of the Temporary Committee, is to determine responsibilities for the facts that it has been able to examine on the one hand and to consider ways of preventing any repetition of the abuses and violations perpetrated in connection with measures against terrorism on the other;

6. Notes the statement made by US President George W. Bush on 6 September 2006, according to whom "a small number of suspected terrorist leaders and operatives captured during the war have been held and questioned outside the United States, in a separate programme operated by the CIA" and that many of the persons who had been detained there, had subsequently been transferred to Guantánamo and it is strongly suspected that other prisoners are still held in secret places of detention; notes the report of the Federal Bureau of Investigation (FBI) of 2 January 2007 mentioning 26 testimonies of mistreatment in Guantánamo since 11 September 2001;

7. Deplores, in this context, the inability of the Council - due to the opposition of certain Member States - to adopt conclusions in response to that statement at the General Affairs and External Relations Council of 15 September 2006, and requests that the Council adopt them urgently, to dissipate any doubt as to the Member State governments' cooperation with and connivance in the extraordinary rendition and secret prisons programme in the past, present and future;

8. Calls on the Council and the Member States to issue a clear and forceful declaration calling on the US Administration to put an end to the practice of extraordinary arrests and renditions, in line with the position of Parliament;

9. Deplores the fact that the governments of European countries did not feel the need to ask the US administration for clarifications regarding the existence of secret prisons outside US territory;

10. Notes the statements by the legal adviser to the US State Department at a meeting on 3 May 2006 with representatives of the Member States meeting within the Council,

according to which, in carrying out the extraordinary rendition programme, whose existence he confirmed, the sovereignty of the countries concerned had always been fully respected; notes that this remark was subsequently confirmed at the meeting with the Temporary Committee delegation which visited Washington;

11. Thanks the former CIA agents who agreed to cooperate with the Temporary Committee, particularly at certain confidential meetings at which they confirmed that the extraordinary rendition programme had already begun during the 1990s;

12. Welcomes the announcement by the new majority established by the elections to the US Senate that it will investigate the CIA's extraordinary rendition programme; notes that this is further confirmation of the relevance of the work of the Temporary Committee;

13. Denounces the lack of cooperation of many Member States, and of the Council of the European Union towards the Temporary Committee; stresses that the behaviour of Member States, and in particular the Council and its Presidencies, has fallen far below the standard that Parliament is entitled to expect;

14. Believes that the serious lack of concrete answers to the questions raised by victims, non-governmental organisations (NGOs), the media and parliamentarians has only strengthened the validity of already well-documented allegations;

15. Stresses the serious and rigorous work undertaken by the judicial authorities of Italy, Germany and Spain concerning the allegations which fall within the remit of the Temporary Committee, and invites the judicial authorities in other Member States to act similarly on the basis of the substantial information made available by the Temporary Committee;

16. Encourages the national parliaments of European countries to continue or launch thorough investigations, in the ways they consider most appropriate and efficient, into these allegations, including by setting up parliamentary committees of inquiry;

17. Pays tribute to the world press, in particular the US journalists who were the first to disclose the abuses and breaches of human rights related to extraordinary rendition, thus demonstrating the great democratic tradition of the US press; also recognises the efforts and good work undertaken by several NGOs on these matters, in particular Statewatch, Amnesty International and Human Rights Watch;

18. Recognises that some information in this report, including the existence of secret CIA prisons, comes from official or unofficial US sources, demonstrating the vitality and self-policing inherent in the US democracy;

19. Expresses its profound gratitude to all victims who had the courage to share their very traumatic experiences with the Temporary Committee;

20. Calls on all European countries to refrain from taking any action against officials, former officials, journalists or others who, by providing testimony or other information, either to the Temporary Committee or to other investigating bodies, have helped shed light on the system of extraordinary rendition, illegal detention and the transportation of terrorism suspects;

21. Reiterates its call on the Council, as expressed in its resolution of 6 July 2006, to adopt a

[redacted] the acceptance of mere diplomatic assurances from third countries as [redacted] any legal extradition provision, where there are substantial grounds for believing that individuals would be in danger of being subjected to torture or ill-treatment;

Cooperation with EU institutions and international organisations

22. Deplores the failure by the Council and its Presidency to comply with their obligations to keep Parliament fully informed of the main aspects and basic choices of the common foreign and security policy (CFSP) and of work carried out in the field of police and judicial cooperation in criminal matters pursuant to Articles 21 and 39 of the Treaty on European Union;

23. Stresses, in this context, that it is wholly unacceptable that the Council should first have concealed and then, at Parliament's request, only supplied piecemeal information on the regular discussions held with senior officials of the US Administration, asserting that this was the only available version; furthermore denounces the fact that the Council also referred to the request by the government of a third country that the information remain confidential; [redacted] B5

24. Points out that these shortcomings of the Council implicate all Member State governments since they have collective responsibility as members of the Council;

25. Is outraged by the proposal which was to have been made by the then Council Presidency to set-up a joint "framework" with the US on standards for the rendition of terrorism suspects, as confirmed by those who took part in the meeting of the Council's Working Party on Public International Law (COJUR) and the Transatlantic Relations Working Party (COTRA) with senior representatives of the US Department of State held in Brussels on 3 May 2006;

7. 26. Calls for the disclosure of the results of the discussions conducted with the United States, according to Gijs de Vries, on the definitions of "rendition" and "extraordinary rendition";

27. Takes note of the fact that the Secretary-General (and High Representative for the Common Foreign and Security Policy (CFSP)) of the Council of the European Union, Javier Solana, reaffirmed that Member States must ensure that any measures they take to combat terrorism comply with their obligations under international law; expresses its concern about the omissions in the statements made to the Temporary Committee by the Secretary-General, regarding the Council's discussions and knowledge of the methods used by the United States in its campaign against terrorism; deplores the fact that he was unable to supplement the evidence already in the possession of the Temporary Committee; asks him to declare all facts and discussions that are within his knowledge and to promote a European foreign policy and an international anti-terrorism strategy that respect human rights and fundamental freedoms;

28. Questions the real substance of the post of EU Counter-terrorism Coordinator

occupied by Gijs de Vries, since he was unable to give satisfactory answers to the questions raised by the Temporary Committee; is of the opinion that a revision and strengthening of his competences and powers, as well as the increased transparency and monitoring of his activities by Parliament must be undertaken in the near future, so as to enhance the European dimension of the fight against terrorism;

29. Deplores the refusal by the Director of the European Police Office (Europol), Max-Peter Ratzel, to appear before the Temporary Committee, particularly because it has emerged that liaison officers, in particular for the US intelligence services, were seconded to the Office; requests that he provide Parliament with comprehensive information concerning the role of those liaison officers, their tasks, the data to which they had access and the conditions for such access;

30. Thanks Commission Vice-President Franco Frattini for his cooperation with the work of the Temporary Committee and encourages the Commission to step up its work in the context of the continuing efforts to ascertain the truth and find ways of preventing any repetition of the facts analysed by the Temporary Committee;

31. Welcomes, in particular, the commitment shown by Vice-President Frattini to launching a Euro-Atlantic cooperation framework in the fight against international terrorism, with harmonised rules on the protection of human rights and fundamental freedoms;

32. Thanks Eurocontrol, and notably its Director, for its excellent cooperation and for the very useful information which it shared with the Temporary Committee;

33. Appreciates the close cooperation which it has maintained with the Council of Europe, particularly its Parliamentary Assembly and its Secretary-General, and encourages the Committee on Legal Affairs and Human Rights - and its Chairman, Senator Dick Marty - to continue its work; endorses the recommendations made to the Committee of Ministers by the Secretary-General, Terry Davis; stresses the convergence of the findings of the two committees to date;

34. Expresses its deep concern with the refusals of the former and current Secretaries-General of NATO, Lord Robertson and Jaap de Hoop Scheffer, to appear before the Temporary Committee or with that organisation's rejection of its request for access to the decision taken by the North Atlantic Council on 4 October 2001 concerning the implementation of Article 5 of the North Atlantic Treaty following the attacks on the United States on 11 September 2001; reiterates its request to make the document public and at least to provide information on its contents, its past and current implementation, whether it still remains into force and whether CIA flights have operated within its framework;

35. Thanks the special rapporteurs of the United Nations, Manfred Nowak (on torture) and Martin Scheinin (on the promotion and protection of human rights in connection with counter-terrorism measures) for their contributions to the work of the Temporary Committee, while regretting that it was not possible for the High Commissioner for Human Rights, Louise Arbour, to meet it; thanks the European Network of Experts on Human Rights and notably its Co-ordinator, Olivier De Schutter, for their contribution to the works of the Temporary Committee;

Information analysed by the Temporary Committee

Extraordinary rendition and the misuse of airspace and airports

36. Recalls that the programme of extraordinary rendition is an extra-judicial practice which contravenes established international human rights standards and whereby an individual suspected of involvement in terrorism is illegally abducted, arrested and/or transferred into the custody of US officials and/or transported to another country for interrogation which, in the majority of cases, involves *incommunicado* detention and torture; B5

37. Deplores the fact that the families of the victims are kept in complete ignorance of the fate of their relatives;

38. Underlines, notwithstanding an intended confusion created by some US representatives in private and public speeches, that extraordinary rendition is a wholly different practice from one that has been used by some European countries only in very exceptional circumstances, namely the detention or reception into custody in third countries of individuals formally accused of very serious crimes, in order to transfer them to European soil in order to face criminal charges before a court with all the legal guarantees of a judicial system; B5

39. Condemns extraordinary rendition as an illegal instrument used by the United States in the fight against terrorism; condemns, further, the acceptance and concealing of the practice, on several occasions, by the secret services and governmental authorities of certain European countries;

40. Condemns any participation in the interrogation of individuals who are victims of extraordinary rendition, because it represents a deplorable legitimisation of that type of illegal procedure, even where those participating in the interrogation do not bear direct responsibility for the kidnapping, detention, torture or ill-treatment of the victims;

41. Considers that the practice of extraordinary rendition has been shown to be counterproductive in the fight against terrorism and that extraordinary rendition in fact damages and undermines regular police and judicial procedures against terrorism suspects;

42. Stresses that at least 1,245 flights operated by the CIA flew into European airspace or stopped over at European airports between the end of 2001 and the end of 2005, to which should be added an unspecified number of military flights for the same purpose; recalls that, on one hand, there may have been more CIA flights than those confirmed by the investigations carried out by the Temporary Committee, while, on the other hand, not all those flights have been used for extraordinary rendition; B5

43. Regrets that European countries have been relinquishing their control over their airspace and airports by turning a blind eye or admitting flights operated by the CIA which, on some occasions, were being used for extraordinary rendition or the illegal

transportation of detainees, and recalls their positive obligations arising out of European Court of Human Rights case law, as reiterated by the European Commission for Democracy through Law (Venice Commission);

44. Is concerned, in particular, that the blanket overflight and stopover clearances granted to CIA-operated aircraft may have been based, inter alia, on the NATO agreement on the standardisation of procedures (Article 3 of the North Atlantic Treaty, adopted on 4 October 2001);

45. Recalls that Article 1 of the Convention on International Civil Aviation (the Chicago Convention) sets out the principle that contracting States have complete and exclusive sovereignty over the airspace above its territory, and accordingly does not imply any exclusion from the States' full responsibility for the observance of human rights within their territory, including the airspace above it;

46. Emphasises that the CIA has been using civil aviation rules to bypass the legal obligations for state aircraft, including those operated by the military and the police, as provided in the Chicago Convention; recalls that Article 4 of the Chicago Convention provides that: "Each contracting State agrees not to use civil aviation for any purpose inconsistent with the aims of this Convention";

47. Confirms, in view of the additional information received during the second part of the proceedings of the Temporary Committee, that it is unlikely that certain European governments were unaware of the extraordinary rendition activities taking place in their territory;

48. Stresses that the Temporary Committee's working documents Nos 7 and 8[1] provide strong evidence of the extraordinary renditions analysed by the committee, as well as of the companies linked to the CIA, the aircraft used by the CIA and the European countries in which CIA aircraft made stopovers;

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49. Deplores the fact that the representatives of the current and former Italian Governments who are or were responsible for the Italian secret services declined the invitation to appear before the Temporary Committee;

50. Condemns the extraordinary rendition by the CIA of the Egyptian cleric Abu Omar, who had been granted asylum in Italy and who was abducted in Milan on 17 February 2003, transferred from Milan to the NATO military base of Aviano by car, and then flown, via the NATO military base of Ramstein in Germany, to Egypt, where he has been held *incommunicado* and tortured ever since;

51. Condemns the active role played by a carabinieri marshal and certain officials of the Italian military security and intelligence services (SISMI) in the abduction of Abu Omar, as shown by the judicial investigation and the evidence collated by Milan's Public Prosecutor Armando Spataro;

52. Concludes, and deplores the fact, that General Nicolò Pollari, former Director of the

[1] Reference numbers: PE 380.593v04-00 and PE 380.984v02-00.

SISMI, concealed the truth while appearing before the Temporary Committee on 6 March 2006, when he stated that Italian agents had played no part in any CIA kidnapping and that the Italian intelligence services were not aware of the plan to kidnap Abu Omar;

53. Considers it very likely, in view of the involvement of its secret services, that the Italian Government at the time was aware of the extraordinary rendition of Abu Omar from within its territory;

54. Thanks Public Prosecutor Spataro for his testimony to the Temporary Committee, applauds the efficient and independent investigations he carried out in order to shed light on the extraordinary rendition of Abu Omar and fully endorses his conclusions and the decision to bring to judgment 26 US nationals, CIA agents, seven senior officials of the SISMI, an ROS carabinieri and the assistant editor of the Libero daily newspaper; welcomes the opening of the proceedings at the Milan Court;

55. Regrets that the abduction of Abu Omar jeopardised Public Prosecutor Spataro's investigation into the terrorist network to which Abu Omar was connected; recalls that had Abu Omar not been illegally seized and transported to another country, he would have faced a regular and fair trial in Italy;

56. Takes note that the testimony provided by General Pollari is inconsistent with a number of documents found on SISMI premises and confiscated by Milan prosecutors; considers that such documents show that the SISMI was regularly informed by the CIA about the detention of Abu Omar in Egypt;

57. Deeply regrets the systematic misleading, among others, of Milan prosecutors by the SISMI board with the aim of jeopardising the investigation into the extraordinary rendition of Abu Omar; is extremely concerned about the fact that the SISMI board appeared to be working to a parallel agenda , and about the lack of appropriate internal and governmental controls; requests the Italian Government to remedy this situation urgently by establishing enhanced parliamentary and governmental controls;

58. Condemns the fact that Italian journalists investigating the extraordinary rendition of Abu Omar were illegally pursued, that their telephone conversations were tapped and their computers were confiscated; stresses that testimonies from those journalists have been of the utmost benefit to the work of the Temporary Committee;

59. Criticises the length of time it took for the Italian Government to decide to remove from office and replace General Pollari;

60. Regrets that a document on US-Italian cooperation in the fight against terrorism, which would have assisted the investigation into the extraordinary rendition of Abu Omar, was classified by the former Italian Government and that the current government has confirmed the classified status of this document;

61. Urges the Italian Minister of Justice to process, as soon as possible, the requests for extradition of the 26 US nationals referred to, for the purpose of standing trial in Italy;

62. Condemns the extraordinary rendition of Italian citizen Abou Elkassim Britel, who was arrested in Pakistan in March 2002 by the Pakistani police and interrogated by US and Pakistani officials, and subsequently rendered to the Moroccan authorities and

imprisoned in the detention facility 'Temara', where he remains detained; emphasises that the criminal investigations in Italy against Abou Elkassim Britel were closed without any charges being brought;

63. Regrets that, according to the documentation provided to the Temporary Committee by Abou Elkassim Britel's lawyer, the Italian Ministry of Internal Affairs was at the time in 'constant cooperation' with foreign secret services concerning the case of Abou Elkassim Britel following his arrest in Pakistan;

64. Urges the Italian Government to take concrete steps in order to obtain the immediate release of Abou Elkassim Britel and Abu Omar so that proceedings against the latter can be prosecuted in the Court of Milan;

65. Deeply regrets that Italian territory was used by the CIA to make a stopover during the flight that was used to carry out the extraordinary rendition of Maher Arar, who gave testimony to the Temporary Committee, from the United States to Syria, via Rome; B5

66. Notes the 46 stopovers made by CIA-operated aircraft at Italian airports and expresses serious concern about the purpose of those flights which came from or were bound for countries linked with extraordinary rendition circuits and the transfer of detainees; deplores the stopovers at Italian airports of aircraft which have been shown to have been used by the CIA on other occasions for the extraordinary rendition of , Bisher Al-Rawi, Jamil El-Banna, Abou Elkassim Britel, Khaled El-Masri, Binyam Mohammed, Abu Omar and Maher Arar and for the expulsion of Ahmed Agiza and Mohammed El Zari;

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67. Deplores the manner in which the UK Government, as represented by its Minister for Europe, cooperated with the Temporary Committee; is extremely surprised at the letter of the Minister sent to Parliament's President,

68. Thanks the All-Party Parliamentary Group on Extraordinary Renditions (APPG), comprising members of the House of Commons and the House of Lords, for its work and for providing the Temporary Committee delegation to London with a number of highly valuable documents;

69. Condemns the extraordinary rendition of Bisher Al-Rawi, an Iraqi citizen and resident of the United Kingdom, and Jamil El-Banna, a Jordanian citizen and resident of the United Kingdom, who were arrested by Gambian authorities in Gambia in November 2002, turned over to US agents, and flown to Afghanistan and then to Guantánamo, where they remain detained without trial or any form of judicial assistance; B5

70. Points out that the telegrams from the UK security service MI5 to an unspecified foreign government which were released to the Chairman of the APPG, Andrew Tyrie, suggest that the abduction of Bisher Al-Rawi and Jamil El-Banna was facilitated by partly erroneous information supplied by the UK security service;

71. Criticises the unwillingness of the UK Government to provide consular assistance to Bisher Al-Rawi and Jamil El-Banna on the grounds that they are not UK citizens;

72. Condemns the multiple extraordinary rendition of Binyam Mohammed, Ethiopian citizen and resident of the United Kingdom; points out that Binyam Mohammed has

been held in at least two secret detention facilities, in addition to military prisons;

73. Is deeply disturbed by the testimony of Binyam Mohammed's lawyer, who gave an account of the most horrific torture endured by his client to the official delegation of the Temporary Committee to the United Kingdom;

74. Emphasises that the former UK Secretary of State for Foreign and Commonwealth Affairs, Jack Straw, conceded in December 2005 that UK intelligence officials met Binyam Mohammed when he was arrested in Pakistan; points out in this respect that some of the questions put by the Moroccan officials to Binyam Mohammed appear to have been inspired by information supplied by the UK;

75. Condemns the extraordinary rendition of UK citizen Martin Mubanga, who met the official delegation of the Temporary Committee to the United Kingdom, and who was arrested in Zambia in March 2002 and subsequently flown to Guantánamo; regrets the fact that Martin Mubanga was interrogated by British officials at Guantánamo, where he was detained and tortured for four years without trial or any form of judicial assistance and then released without charge;

76. Thanks Craig Murray, former UK Ambassador to Uzbekistan, for his very valuable testimony to the Temporary Committee on the exchange of intelligence obtained under torture and for providing a copy of the legal opinion of Michael Wood, former legal advisor to the UK Foreign and Commonwealth Office;

77. Is outraged by Michael Wood's legal opinion, according to which 'receiving or possessing' information extracted under torture, in so far as there is no direct participation in the torture, is not per se prohibited by the UN Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment; expresses its outrage at any attempt to obtain information by means of torture, regardless of who is involved;

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78. Expresses serious concern about the 170 stopovers made by CIA-operated aircraft at UK airports, which on many occasions came from or were bound for countries linked with extraordinary rendition circuits and the transfer of detainees; deplores the stopovers at UK airports of aircraft which have been shown to have been used by the CIA, on other occasions, for the extraordinary rendition of Bisher Al-Rawi, Jamil El-Banna, Abou Elkassim Britel, Khaled El-Masri, Binyam Mohammed, Abu Omar and Maher Arar and for the expulsion of Ahmed Agiza and Mohammed El Zari;

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GERMANY

79. Acknowledges the good cooperation on the part of the German Government by providing restricted documents to the Chairman and the rapporteur of the Temporary Committee; regrets, on the other hand, that no representative of the German Government was able to appear before the Temporary Committee;

80. Welcomes the excellent work of the German Parliament inquiry committee and expresses its full support for the continuation of that committee's work;

81. Thanks Munich Public Prosecutor Martin Hofmann for his testimony to the Temporary Committee and applauds all ongoing judicial inquiries in Germany;

82. Deplores the fact that German authorities at least had knowledge of the illegal abduction of German citizen Khaled El-Masri, who gave testimony to the Temporary Committee, and urges the German Parliament inquiry committee to examine further and clarify the role of German agents in this case;

83. Condemns the extraordinary rendition of Turkish citizen and resident of Germany Murat Kurnaz, who gave testimony to the Temporary Committee and who was arrested in Pakistan in November 2001, transferred to the US units across the border in Afghanistan by the Pakistani police on no legal basis and with no judicial assistance, and finally flown to Guantánamo at the end of January 2002, from where he was released on 24 August 2006 without charge, having been tortured in all the locations where he had been held;

84 Points out that, according to confidential institutional information, the German Government did not accept the US offer, made in 2002, to release Murat Kurnaz from Guantánamo; notes that on many occasions since 2002, Murat Kurnaz's lawyer was told by the German Government that it was impossible to open negotiations with the US Government on his release because Murat Kurnaz was a Turkish citizen; notes that all investigations concluded, as early as the end of October 2002, that Murat Kurnaz posed no terrorist threat;

85. Regrets the fact that Murat Kurnaz was interrogated twice, in 2002 and in 2004, by German officials at Guantánamo, where he was detained subject to neither formal charge nor trial and without judicial assistance; regrets the fact that German officials denied him any assistance and were only interested in questioning him;

86. Fully supports the investigation launched by the public prosecutor in Potsdam, transferred to the Public Prosecutor in Tübingen/Karlsruhe on 25 October 2006, into unknown perpetrators in order to establish whether Murat Kurnaz was ill-treated in Afghanistan by German soldiers belonging to the Kommando Spezialkräfte (KSK), the German army's special operational forces, before being sent to Guantánamo;

87. Notes that during his interrogations Murat Kurnaz was confronted with details from his personal life; notes that this gives rise to the suspicion that even before he left the country Murat Kurnaz was the subject of surveillance of a closeness which can normally only be provided by domestic intelligence services;

88. Appreciates the German Government's initiative in January 2006 which led to the release of Murat Kurnaz;

89. Condemns the extraordinary rendition of the German citizen Mohammed Zammar, arrested without formal charge on 8 December 2001 at Casablanca airport in Morocco and detained and tortured in Morocco and Syria;

90. Notes that, according to a confidential institutional source, on 26 November 2001 the German Federal Criminal Police Office provided details of Mohammed Zammar's

whereabouts to the US Federal Bureau of Investigation (FBI), and that this facilitated Mohammed Zammar's arrest;

91. Points out that, subsequently to a meeting between the officials of the German Federal Chancellery and Syrian intelligence officials in July 2002, German prosecutors dropped charges against several Syrian citizens in Germany while the Syrian authorities allowed German officials to meet Mohammed Zammar in the Syrian prison Far' Falastin, as also confirmed by a confidential institutional source; regrets that Mohammed Zammar was interrogated by German agents in that prison;

92. Calls on the German Bundestag's First Committee of Inquiry, in the context of the forthcoming expansion of its remit, to investigate the case which recently came to light involving the illegal rendition of the Egyptian national Abdel-Halim Khafagy, who had long been resident in Germany; Abdel-Halim Khafagy was probably arrested in Bosnia and Herzegovina in September 2001 on suspicion of being a terrorist and abducted to a prison on the US 'Eagle Base' military base in Tuzla, where he was severely mistreated and detained under inhumane conditions;

93. Is deeply concerned at information contained in an unclassified document made available to the Temporary Committee which shows that the illegal rendition of at least six Algerians from Tuzla via Incirlik to Guantánamo was planned at the US European Command (USEUCOM) military base near Stuttgart; calls on the German Bundestag to investigate without delay whether those alleged renditions involved breaches of the Forces Status Agreement or other agreements or treaties concluded with US military forces on German territory, whether further illegal renditions were planned by USEUCOM and whether German liaison officers were involved in any way; B5

94. Expresses serious concern about the 336 stopovers made by CIA-operated aircraft at German airports that on many occasions came from or were bound for countries linked with extraordinary rendition circuits and the transfer of detainees; deplores the stopovers in Germany of aircraft which have been shown to have been used by the CIA, on other occasions, for the extraordinary renditions of Bisher Al-Rawi, Jamil El-Banna, Abou Elkassim Britel, Khaled El-Masri, Binyam Mohammed, Abu Omar and Maher Arar and for the expulsionof Ahmed Agiza and Mohammed El Zari; is particularly concerned that one of the flights referred to was destined for Guantánamo; strongly encourages the German authorities further to investigate that flight;

95. Notes the allegations concerning the temporary detention and mistreatment of suspected terrorists at the US military prison in Mannheim-Blumenau, welcomes the investigations opened by the Federal Public Prosecutor's Office and hopes that the German Bundestag and/or the competent committee of inquiry will investigate this case more closely; ?

SWEDEN

96. Takes note of the position of the Swedish Government expressed in the letter transmitted to the Temporary Committee by its Foreign Minister Carl Bildt; regrets that no representative of the government was able to appear before the Temporary Committee in order to hold an exchange of views on its position;

97. Condemns the fact that Sweden's expulsion in December 2001 of Mohammed El-Zari and Ahmed Agiza, Egyptian nationals who were seeking asylum in Sweden, was based solely on diplomatic assurances from the Egyptian Government, which did not provide effective safeguards against torture; also acknowledges that the Swedish government hindered them from exercising their rights in accordance with the European convention, by not informing their lawyers until before they had arrived in Cairo; deplores the fact that the Swedish authorities accepted an US offer to place at their disposal an aircraft which benefited from special overflight authorisation in order to transport the two men to Egypt;

B5

98. Deplores the fact that the Swedish security police lost control over the enforcement of the expulsion of Ahmed Agiza and Mohammed El-Zari to Egypt, outside the rule of law, by remaining passive during the degrading treatment of the men by US agents at Bromma airport;

99. Underlines that the decision of the expulsion was taken at the highest executive level, from which no appeal was possible;

100. Fully endorses the UN Human Rights Committee's decision of 6 November 2006 in which it found that Sweden had breached the absolute ban on torture; similarly endorses a separate ruling by the UN Committee against Torture of 20 May 2005, which concluded that Sweden had violated the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and stated that "procurement of diplomatic assurances (from Egypt), which, moreover, provided no mechanism for their enforcement, did not suffice to protect against this manifest risk";

101. Thanks the Swedish Chief Parliamentary Ombudsman, Mats Melin, for his testimony to the Temporary Committee and applauds his investigation which concluded that the Swedish security service and airport police "were remarkably submissive to the American officials" and "lost control of the enforcement", resulting in the ill-treatment of Ahmed Agiza and Mohammed El-Zari, including physical abuse and other humiliation, at the airport immediately before they were transported to Cairo;

AUSTRIA

102. Notes the written explanations given on behalf of the Austrian Government but regrets that the Austrian Government did not consider it appropriate to appear before the Temporary Committee in order to hold an exchange of views about its position;

103. Notes that the persons referred to in the following paragraphs, Masaad Omer Behari and Gamal Menshawi, are individuals who did not and still do not have Austrian citizenship, whose freedom of movement was unrestricted; notes that the two men left Austria voluntarily and without undergoing checks by the Austrian authorities, and that they were arrested by foreign agencies, outside Austrian territory and outside the area of influence of the Austrian authorities, with no Austrian involvement; notes that, accordingly, these are clearly not cases of rendition of persons to foreign authorities;

104. Condemns the fact that Masaad Omer Behari, a Sudanese citizen and resident of Austria since 1989 who gave testimony to the Temporary Committee, was abducted at Amman airport on 12 January 2003 on his way back to Vienna from Sudan;

105. Deplores the fact that Masaad Omer Behari was later illegally secretly detained in a

prison close to Amman run by the Jordan General Intelligence Department, without trial orlegal assistance, and that he was tortured and ill-treated there until 8 April 2003, when he was released without charge; recalls that a judicial procedure was started by the Austrian authorities against Masaad Omer Behari in September 2001, which was subsequently closed in August 2002, without charge;

106. Deplores the fact that, according to Masaad Omer Behari's statement to the Temporary Committee, there may have been cooperation between the US, Austrian and Jordanian authorities in respect of his case;

107. Condemns the abduction of Egyptian citizen and resident of Austria, Gamal Menshawi, who was arrested on his way to Mecca at Amman airport in February 2003, and later brought to Egypt where he was secretly detained until 2005 without trial or legal rights; recalls that no allegations have ever been made against Gamal Menshawi in Austria;

108. Regrets that, having considered the above paragraphs, neither a special nor a parliamentary inquiry was carried out in Austria into the possible involvement of the Austrian authorities in the two cases referred to; urges the Austrian Parliament to start appropriate inquiries as soon as possible;

SPAIN

109. Welcomes the declaration of good cooperation with the Temporary Committee of the Spanish Government, in particular, the testimony given to the Temporary Committee by its Minister for Foreign Affairs; regrets, nevertheless, that the Spanish Government ultimately did not authorise the Director of the Spanish Intelligence Services to appear before the Temporary Committee, several months after having been requested to do so;

110. Thanks the Chief Prosecutor Javier Zaragoza and Prosecutor Vicente González Mota of the *Audiencia Nacional* for their testimony to the Temporary Committee and applauds their investigations into the use of Spanish airports for the transit of CIA aircraft within the context of the programme of extraordinary rendition; encourages the prosecutors to investigate further the stopovers of the aircraft involved in the extraordinary rendition of Khaled El-Masri;

111. Applauds the investigative journalism of Diario de Mallorca, which played an important role in revealing the transit of CIA aircrafts through the Balearic Island airports and the identification of their crews;

112. Recalls the words of Chief Prosecutor Zaragoza that "there was no obstacle, objection or trouble from the Spanish Government side in the investigations by the *Audiencia Nacional*";

113. Calls on the Spanish authorities to take all necessary steps to allow Spanish citizen Mustafa Setmariam Nasarwho, abducted in Syria in October 2005 and rendered to US agents, to face a fair trial before competent judicial authorities;

114. Expresses serious concern about the 68 stopovers made by CIA-operated aircraft at Spanish airports that on many occasions came from or were bound for countries linked with extraordinary rendition circuits and the transfer of detainees; deplores the

stopovers in Spain of aircraft which have been shown to have been used by the CIA in other countries for the extraordinary rendition of Ahmed Agiza, Mohammed El-Zari, Bisher Al-Rawi, Jamil El-Banna, Abou Elkassim Britel, Khaled El-Masri, Binyam Mohammed, Abu Omar and Maher Arar, according to the legal investigations under way in Spain and Italy; is particularly concerned that, of the above flights, three originated from or were destined for Guantánamo; strongly encourages the Spanish Prosecutors further to investigate those flights;

PORTUGAL

115. Welcomes the meeting in Lisbon with the Portuguese Minister of Foreign Affairs and the fact that the Portuguese Government supplied documents and explanations; regrets that the Portuguese authorities were unable or reluctant to answer all the questions raised by the Temporary Committee delegation in Portugal;

116. Asks the Portuguese authorities to investigate the case of Abdurahman Khadr, allegedly carried on board the Gulfstream IV N85VM from Guantánamo to Tuzla in Bosnia and Herzegovina on 6 November 2003, with a stopover in Santa Maria on the Azores Islands on 7 November 2003; calls on the Portuguese authorities to examine this case and those of other possible victims transported via Portugal with a view to determining whether there should be compensation for violations of human rights;

117. Welcomes the establishment of the inter-ministerial working group on 26 September 2006 and the entry into force, on 13 October 2006, of a regulation stipulating that lists of the names of crew members and passengers on private flights must be submitted to the Portuguese frontier authorities;

118. Deplores the fact that the former Minister of Defence, Paulo Portas, and the former Minister of the Interior, António Figueiredo Lopes, declined invitations to meet the delegation ofthe Temporary Committee;

119. Notes that some of the 91 stopovers made in Portugal enabled the CIA and US military bodies to carry out the extraordinary rendition of Bisher Al-Rawi, Jamil El-Banna, Khaled El-Masri, Binyam Mohammed and Abu Omar and for the expulsion of Ahmed Agiza and Mohammed El Zari; is particularly concerned that of those flights, at least three originated from or were destined for Guantánamo; notes that the aircraft involved in the rendition of Maher Arar and Abou Elkassim Britel made stopovers in Portugal on their return flights;

120. Expresses deep concern at an additional list that the Temporary Committee has obtained, the authenticity of which the Portuguese Government has not denied, which indicates that, in addition to the 91 stopovers made, aircraft from a number of countries, travelling to or from Guantánamo, made 17 stopovers (including three contained in Eurocontrol lists) at the Portuguese airports of Lajes and Santa Maria between 11 January 2002 and 24 June 2006;

IRELAND

121. Welcomes the testimony given to the Temporary Committee by the Irish Minister for Foreign Affairs on behalf of the Irish Government as well as his unequivocal criticism

of the process of extraordinary rendition; notes the fact, however, that he failed to answer all the questions in relation to the concerns that Irish airports may have been used by CIA aircraft travelling to or from extraordinary rendition missions (as in the case of Abu Omar);

122. Thanks the Irish Human Rights Commission (IHRC) for its testimony to the Temporary Committee and endorses its view which considers that acceptance by the Irish government of diplomatic assurances do not fulfil Ireland's human rights obligations, which oblige the government actively to seek to prevent any actions that could in any way facilitate torture or ill-treatment in Ireland or abroad; regrets the decision of the Irish Government not to follow the IHRC's advice on this matter to date; notes that there is continuing dialogue between the IHRC and the Irish Government;

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123. Expresses serious concern about the 147 stopovers made by CIA-operated aircraft at Irish airports that on many occasions came from or were bound for countries linked with extraordinary rendition circuits and the transfer of detainees; deplores the stopovers in Ireland of aircraft which have been shown to have been used by the CIA, on other occasions, for the extraordinary rendition of Bisher Al-Rawi, Jamil El-Banna, Abou Elkassim Britel, Khaled El-Masri, Binyam Mohammed, Abu Omar and Maher Arar and for the expulsion of Ahmed Agiza and Mohammed El Zari;

124. Notes the absence of Irish parliamentary scrutiny of either Irish or foreign intelligence services and the potential that this creates for abuse;

125. Considers, that, in the absence of a system of random searches, a ban should be imposed on all CIA-operated aircraft landing in Ireland;

126. Urges the Irish Government, in view of the findings of the Temporary Committee, to agree to launch a parliamentary inquiry into the use of Irish territory as part of the CIA rendition circuit;

GREECE

127. Expresses serious concern about the 64 stopovers made by CIA-operated aircraft at Greek airports that on many occasions came from or were bound for countries linked with extraordinary rendition circuits and the transfer of detainees; deplores the stopovers in Greece of aircraft which have been shown to have been used by the CIA, on other occasions, for the extraordinary rendition of Ahmed Agiza, Mohammed El-Zari, Bisher Al-Rawi, Jamil El-Banna, Abou Elkassim Britel, Khaled El-Masri, Binyam Mohammed and Maher Arar;

CYPRUS

128. Expresses serious concern about the 57 stopovers made by CIA-operated aircraft at Cypriot airports that on many occasions came from or were bound for countries linked with extraordinary rendition circuits and the transfer of detainees; deplores the stopovers in Cyprus of aircraft which have been shown to have been used by the CIA, on other occasions, for the extraordinary rendition of Ahmed Agiza, Mohammed El-Zari, Bisher Al-Rawi, Jamil El-Banna, Abou Elkassim Britel, Khaled El-Masri, Binyam Mohammed and Abu Omar;

DENMARK

129. Welcomes the cooperation received from the Danish authorities, while regretting that no representative of the government considered it appropriate to appear before the Temporary Committee;

BELGIUM

130. Calls on the Belgian Government to disclose the results of all investigations that have taken place and deplores the fact that Belgium did not conduct a thorough investigation concerning the use of Belgian airports and the Belgian airspace by aircraft clearly involved in the extraordinary rendition programme or the transport of detainees;

131. Notes the statements of the President of the Belgian Senate Anne-Marie Lizin and refers to the conclusions of the report of the Belgian Senate which deplore the lack of cooperation by the Belgian intelligent services and the Belgian authorities;

TURKEY

132. Expresses its serious concern about the failure of the Turkish authorities to extend diplomatic protection to their national Murat Kurnaz and about the absence of any step to secure his release from the prison at Guantánamo;

133. Regrets that, on the contrary, the same authorities used the illegal detention of their national to interrogate him at Guantánamo;

134. Deplores the silence of the Turkish authorities concerning the use of their territory for the stopover of an aircraft which had taken to Guantánamo the six nationals of or residents in Bosnia and Herzogovina, of Algerian origin, who were illegally arrested in Bosnia and Herzegovina;

FORMER YUGOSLAV REPUBLIC OF MACEDONIA

135. Emphasises that a delegation of the Temporary Committee was received in Skopje in April 2006 by the President of the Republic, members of the government and several officials and thanks them for the welcome given to the delegation; notes, however, a lack of thorough investigation into the Khaled El-Masri case by the authorities of the Former Yugoslav Republic of Macedonia;

136. Condemns the extraordinary rendition of the German citizen Khaled El-Masri, abducted at the border-crossing Tabanovce in the Former Yugoslav Republic of Macedonia on 31 December 2003, illegally held in Skopje from 31 December 2003 to 23 January 2004 and then transported to Afghanistan on 23-24 January 2004, where he was held until May 2004 and subjected to degrading and inhuman treatment;

137. Urges the Council and its High Representative for the CFSP to shed full light on the fact that the EU police mission (PROXIMA) was incorporated into the Ministry of Interior of the Former Yugoslav Republic of Macedonia and was involved in the work of the Macedonian Security and Counter-Espionage Service (DBK) at the time when Khaled El-Masri was handed over to the CIA; would like to know if it is true that the Council questioned the EU staff involved in the PROXIMA mission so as to evaluate the level of information in their possession regarding the case of Khaled el Masri; if appropriate, asks the Council to provide Parliament with a full account of the investigation;

138. Fully endorses the preliminary findings of Munich Public Prosecutor Martin Hofmann that there is no evidence on the basis of which to refute Khaled El-Masri's version of events;

139. Deeply regrets the fact that the authorities of the Former Yugoslav Republic of Macedonia failed to follow up the recommendations made by the Temporary Committee in its interim report of 6 July 2006;

140. Points out again that the Former Yugoslav Republic of Macedonia authorities are expected to carry out investigations; urges the newly elected national parliament of the Former Yugoslav Republic of Macedonia to set up a committee of inquiry as soon as possible to deal with the case of Khaled El-Masri and to cooperate fully with the ongoing inquiry of the German Parliament;

BOSNIA AND HERZEGOVINA [redacted] B5

141. Welcomes the fact that the Government of Bosnia and Herzegovina is the only European government that does not deny its participation in the extraordinary rendition of four citizens of and two residents in Bosnia and Herzegovina, all of Algerian origin, and stresses that the Government of Bosnia and Herzegovina is the only European government to have accepted formal responsibility for its illegal actions; regrets, however, that the steps undertaken by the Government of Bosnia and Herzegovina have not yet resulted in the release of the six men from Guantánamo;

142. Condemns the extraordinary rendition of those six men, who were abducted in Sarajevo on 17 January 2002, turned over to US soldiers and then flown to Guantánamo, where they remain detained without trial or legal guarantees;

143. Takes note of the testimony given to the Temporary Committee by Wolfgang Petritsch, former High Representative of the international community in Bosnia and Herzegovina, and by Michèle Picard, former President of the Human Rights Chamber of Bosnia and Herzegovina, which stated that representatives of the international community in Bosnia and Herzegovina were given adequate notice of the imminent handing-over of the men referred to the US forces before events unfolded; condemns in this respect the Member States for their lack of action;

144. Regrets the fact that the international community as represented in Bosnia and Herzegovina turned a blind eye when the decisions of the Supreme Court and the Human Rights Chamber of Bosnia and Herzegovina ordering the release of the men from custody were not implemented;

145. Points out that, according to the information that the Temporary Committee received from the lawyers of the six men, the authorities of Bosnia and Herzegovina were subject to unprecedented pressure from the US Government, which threatened to close its embassy, withdraw all staff and cease diplomatic relations with Bosnia and Herzegovina unless the Government of Bosnia and Herzegovina immediately arrested the six men on terrorism charges;

146. Notes that Wolfgang Petritsch confirmed that the United States put considerable pressure on the authorities of Bosnia and Herzegovina and the international community not to interfere in the renditions and that the commander of the international NATO-led Stabilisation Force in particular rejected any questioning of his activities since he acted

in his capacity as US military officer;

OTHER EUROPEAN COUNTRIES

147. Is concerned about the stopovers made by CIA-operated aircraft in other European countries' airports and expresses serious concern about the purpose of those flights which came from or were bound for countries linked with extraordinary rendition circuits and the transfer of detainees; encourages the authorities of those European countries to launch adequate investigations into this matter;

Secret detention facilities

148. Welcomes the investigations carried out into the existence of secret detention facilities in Europe by Human Rights Watch, the Washington Post and American Broadcasting Company News (ABC News);

149. Recalls that some journalists at the Washington Post and ABC News, as they confirmed to the Temporary Committee, were put under pressure not to name the eastern European countries, namely Poland and Romania, where there were said to have been secret detention facilities;

150. Emphasises that the concept of "secret detention facility" includes not only prisons, but also all places where somebody is held *incommunicado*, such as private apartments, police stations or hotel rooms, as in the case of Khaled El-Masri in Skopje;

151. Is deeply concerned that, in some cases, temporary secret detention facilities in European countries may have been located at US military bases;

152. Calls for the appropriate implementation of bilateral agreements, Status of Forces Agreements and military bases [illegible] Member States and third countries) to ensure the monitoring of respect for human rights and, where appropriate, for a review and renegotiation of those agreements to this effect; stresses that, according to the Venice Commission, the legal framework of foreign military bases on the territory of Council of Europe's Member States must enable them to exercise sufficient powers to fulfil their human rights obligations;

153. Points out in this regard the allegations concerning the US Coleman Barracks in Mannheim, Germany, and calls on both the judiciary and the German Bundestag's inquiry Committee to investigate this case further;

154. Regrets that there may have been a lack of control over US military bases by host European countries; recalls, however, that the ECHR provides that all State parties are bound to exercise jurisdiction over their whole territory, including foreign military bases;

155. Recalls that the ECHR also provides that every case of detention must be lawful and must be the result of proceedings prescribed by law, whether national or international;

156. Recalls that imposing or executing or allowing directly or indirectly secret and illegal

detentions, which are instruments resulting in people's 'disappearance', per se constitute serious violations of human rights and that the active or passive involvement in such secret and illegal detentions by a European country renders that county responsible under the ECHR;

ROMANIA

157. Welcomes the excellent hospitality and good cooperation extended by the Romanian authorities to the Temporary Committee, including meetings with members of the Romanian Government, as well as the establishment of an ad hoc inquiry committee of the Romanian Senate;

158. Notes, however, the reluctance on the part of the Romanian authorities to investigate thoroughly the existence of secret detention facilities on its territory;

159. Regrets that the report issued by the Romanian inquiry committee was entirely secret except for its conclusions, included in Chapter 7, categorically denying the possibility that secret detention facilities could be hosted on Romanian soil; regrets that the Romanian inquiry committee heard no testimony from journalists, NGOs, or officials working in airports, and has not yet provided the Temporary Committee with the report contrary to its commitment to do so; regrets that taking these elements into consideration, the conclusions drawn in the Romanian inquiry committee's report appear premature and superficial; takes note, however, of the intention expressed by the Chairwoman of the inquiry committee to the Temporary Committee delegation to consider the conclusions provisional;

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160. Regrets the lack of control of the Gulfstream aircraft with Registration Number N478GS that suffered an accident on 6 December 2004 when landing in Bucharest; recalls that the aircraft took off from Bagram Air Base in Afghanistan, and that its seven passengers disappeared following the accident; appreciates, however, the good cooperation of the Romanian authorities in handing over the report on the accident to the Temporary Committee;

161. Is deeply concerned to see that Romanian authorities did not initiate an official investigation process, as any democratic country should have done, into the case of a passenger on the aircraft Gulfstream N478GS , who was found carrying a Beretta 9 mm Parabellum pistol with ammunition;

162. Expresses serious concern about the 21 stopovers made by CIA-operated aircraft at Romanian airports, which on many occasions came from or were bound for countries linked with extraordinary rendition circuits and the transfer of detainees; deplores the stopovers in Romania of aircraft which have been shown to have been used by the CIA, on other occasions, for the extraordinary rendition of Bisher Al-Rawi, Jamil El-Banna, Abou Elkassim Britel, Khaled El-Masri, Binyam Mohammed and Abu Omar and for the expulsion of Ahmed Agiza and Mohammed El Zari; is particularly concerned that, of the flights referred to, two originated from or were destined for Guantánamo; strongly encourages the Romanian authorities further to investigate those flights;

163. Is extremely concerned that the Romanian authorities may have lacked control over US activities in the military base at Kogalniceanu airport;

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164. Cannot exclude, based only on the statements made by Romanian authorities to the

Temporary Committee delegation to Romania, the possibility that US secret services operated in Romania on a clandestine basis and that no definitive evidence has been provided to contradict any of the allegations concerning the running of a secret detention facility on Romanian soil;

POLAND

165. Deplores the glaring lack of cooperation by the Polish Government with the Temporary Committee, in particular when receiving the Temporary Committee delegation at an inappropriate level; deeply regrets that all those representatives of the Polish Government and Parliament who were invited to do so, declined to meet the Temporary Committee;

166. Believes that this attitude reflected an overall rejection on the part of the Polish Government of the Temporary Committee and its objective to examine allegations and establish facts;

167. Regrets that no special inquiry committee has been established and that the Polish Parliament has not conducted an independent investigation;

168. Recalls that on 21 December 2005, the Special Services Committee held a private meeting with the Minister Coordinator of Special Services and the heads of both intelligence services; emphasises that the meeting was conducted speedily and in secret, in the absence of any hearing or testimony and subject to no scrutiny; stresses that such an investigation cannot be defined as independent and regrets that the committee released no documentation, save for a single final statement in this regard;

169. Expresses serious concern about the 11 stopovers made by CIA-operated aircraft at Polish airports that on many occasions came from or were bound for countries linked with extraordinary rendition circuits and the transfer of detainees; deplores the stopovers in Poland of aircraft which have been shown to have been used by the CIA, on other occasions, for the extraordinary rendition of Bisher Al-Rawi, Jamil El-Banna, Abou Elkassim Britel, Khaled El-Masri and Binyam Mohammed and for the expulsion of Ahmed Agiza and Mohammed El Zar;

170. Regrets that following the hearings carried out by the Temporary Committee delegation in Poland, there was confusion and contradictory statements were made about the flight logs for those CIA flights, which were first said not to have been retained and then said to have probably been archived at the airport and finally claimed to have been sent by the Polish Government to the Council of Europe; acknowledges that in November 2006, the Szymany Airport's management provided the Temporary Committee with partial information on flight logs;

171. Thanks the former manager of the Szymany airport, for the valuable testimony given before the Temporary Committee; notes the fact that during 2006 he or she was questioned in the framework of a late enquiry concerning the CIA flights, immediately after his or her testimony was made public;

172. Takes note that, according to different sources, several high-value detainees who had been held secretly in Afghanistan in 2003 were transferred out of the country in September and October 2003; underlines with concern that a Boeing 737 with Registration Number N313P, used by the CIA for ascertained renditions, flew from

Kabul to Szymany airport on 22 September 2003 and was then directed to Guantánamo;

173. Recalls that, concerning the landing of the aircraft referred to at Szymany airport, seven staff on board were joined by five passengers and that no customs control was carried out on those passengers;

174. Takes note of the declarations made by Szymany airport employees, and notably by its former manager, according to which:

- in 2002, two Gulfstream jets, and in 2003, four Gulfstream jets with civilian registration numbers were parked at the edge of the airport and did not enter customs clearance;
- orders were given directly by the regional border guards about the arrivals of the aircraft referred to, emphasising that the airport authorities should not approach the aircraft and that military staff and services alone were to handle those aircraft and only to complete the technical arrangements after the landing;
- according to a former senior official of the airport, no Polish civilian or military staff were permitted to approach the aircraft;
- excessive landing fees were paid in cash - usually between EUR 2 000 and EUR 4 000;
- one or two vehicles waited for the arrival of the aircraft;
- the vehicles had military registration numbers starting with "H", which are associated with the intelligence training base in nearby Stare Kiejkuty;
- in one case, a medical emergency vehicle belonging either to the police academy or the military base was involved;
- one airport staff member reported following the vehicles on one occasion and seeing them heading towards the intelligence training centre at Stare Kiejkuty;

175. Acknowledges that shortly after, and in accordance with, President George W. Bush's statements on 6 September 2006, a list of the 14 detainees who had been transferred from a secret detention facility to Guantánamo was published; notes that 7 of the 14 detainees had been referred to in a report by ABC News, which was published nine months previously on 5 December 2005 but was withdrawn shortly thereafter from ABC's webpage, listing the names of twelve top Al Qaeda suspects held in Poland;

176. Encourages the Polish Parliament to establish a proper inquiry committee, independent of the Government and capable of carrying out serious and thorough investigations;

177. Regrets that Polish human rights NGOs and investigative journalists have faced a lack of cooperation from the government and refusals to divulge information;

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178. Considers that in the light of the above circumstantial evidences, it is not possible to acknowledge that secret detention centres were based in Poland;

179. Notes with concern that the official reply of 10 March 2006 from Under-Secretary of State Witold Waszykowski to Terry Davis indicates the existence of secret cooperation

agreements, initialled by the two countries' secret services themselves, which exclude the activities of foreign secret services from the jurisdiction of Polish judicial bodies;

KOSOVO (UNDER UN SECURITY COUNCIL RESOLUTION 1244)

180. Expresses deep concern over the fact that the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) obtained access to NATO-run detention facilities in Kosovo only in July 2006;

181. Regrets the refusal of NATO to provide evidence on the allegations of illegal detention of terrorist suspects in the prison run by the NATO-led peacekeeping force in Kosovo (KFOR) at Camp Bondsteel, the only detention facility in Europe where CPT inspectors were not allowed unlimited access until very recently;

182. Points out in this respect that the testimony given to the Temporary Committee by the former Kosovo Ombudsman, Marek Antoni Nowicki, confirmed that from July 1999, inmates were frequently detained at Camp Bondsteel, subject only to a decision by the Commander of KFOR and subject to no judicial decision or any form of other external control; recalls that from 2000 to 2001, a number of people were detained also following administrative decisions of the Special Representative of the UN Secretary-General and that, according to official data available, 23 people were imprisoned at Camp Bondsteel for a short period of time by the KFOR Commander in connection with violent events in Kosovo in spring 2004;

Other relevant information collected by the Temporary Committee

183. Points out that the Temporary Committee came across information - including the direct testimony of Murat Kurnaz - about the interrogation of Guantánamo detainees carried out by agents of Member State governments; emphasises that those interrogations were aimed at collecting information from individuals illegally detained, which is clearly in contradiction with the public condemnation of Guantánamo, as expressed at both EU and Member State level on several occasions;

184. Encourages the Member States involved to launch adequate investigations into this matter;

Recommendations

Political recommendations

185. Considers it necessary that those European countries that have started inquiries and investigations at governmental, parliamentary and/or judicial level on matters within the remit of the Temporary Committee should conduct their work as speedily as possible

and make public the results of the investigations;

186. Urges European countries in relation to which serious allegations have been made regarding active or passive cooperation with extraordinary rendition and that have not undertaken governmental, parliamentary and/or judicial investigations to commence such proceedings as soon as possible; recalls that, according to the case law of the European Court of Human Rights, there is a positive obligation on Member States to investigate allegations of and sanction human rights violations in breach of the ECHR;

187. Calls for the closure of Guantánamo and for European countries immediately to seek the return of their citizens and residents who are being held illegally by US authorities;

188. Considers that all European countries that have not done so should initiate independent investigations into all stopovers made by civilian aircraft carried out by the CIA, at least since 2001, including those cases already analysed by the Temporary Committee;

189. Expects to be kept fully informed on all developments concerning all the above-mentioned procedures; B5

190. Calls on European countries to compensate the innocent victims of extraordinary rendition and to ensure that they have access to effective and speedy compensation, including access to rehabilitation programmes, guarantees that there will be no repetition of what happened as well as appropriate financial compensation;

191. Asks the Commission to undertake an evaluation of all anti-terrorist legislation, in the Member States and of both formal and informal arrangements between Member State and third-country intelligence services, from a human rights perspective, to review legislation where international or European human rights bodies considers that it could lead to breach of human rights and to present proposals for actions in order to avoid any repetition of the matters under the remit of the Temporary Committee;

192. Considers it necessary to review by limiting and restrictively defining the exceptions that flow from the notion of 'State secret', also in the framework of the impending review of Regulation 1049/01[1], as well as the adoption of common principles by the EU institutions as regards the treatment of confidential information, to avoid abuses and deviations that are more and more unacceptable in modern democratic States and that contradict human rights obligations; deems it necessary to establish specific mechanisms to allow for access to secret information by parliaments and judges, as well as for the release of the information after a certain period of time; B5

193. Notes the recent creation of a High-Level Working Group composed of representatives of the Commission, the Council and US governmental representatives of the Justice Ministry and the Homeland Security, which constitutes the political framework for EU-US dialogue on security matters, including differences in the approach to terrorism as well as the concerns raised by the Temporary Committee; deems it necessary to associate in this High-Level Working Group the European Parliament and the US B5

[1] Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 ding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

Congress, as well as to publish its agendas, minutes, documents examined and decisions taken, in order to ensure and increase its democratic legitimacy and transparency;

194. Encourages European countries when they conduct military operations in third countries to:

– ensure that any detention centre established by their military forces is subject to civilian and judicial supervision and that *incommunicado* detention is not permitted;

– take active steps to prevent any other authority from operating detention centres which are not subject to political and judicial oversight or where *incommunicado* detention is permitted;

Legal recommendations

195. Considers that the powers of Parliament's temporary inquiry committees should be reinforced and the inter-institutional decision governing the exercise of Parliament's right of inquiry be amended accordingly;

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196. Considers that Parliament should be adequately involved when the Community or the Union adopt measures affecting civil rights and liberties;

197. Calls for the establishment of an adequate and structured system of cooperation between Parliament and competent bodies of the United Nations and the Council of Europe when dealing with matters related to internal security of the European Union;

198. Calls for enhanced cooperation with national parliaments in order to share all information related to the fight against international terrorism;

199. Underlines the importance of a common definition of 'terrorism'; believes that the United Nations is the most suitable organisation to define the concept;

SECRET SERVICES

200. Fully endorses the conclusions of the Secretary-General of the Council of Europe, Terry Davis, about the lack of oversight and judicial control mechanisms in respect of security services, as expressed in the "Follow-up to the Secretary General's reports under Article 52 ECHR" and expects his recommendations to be duly taken into consideration; calls on Member States to provide adequate and effective parliamentary monitoring (by establishing oversight committees with appropriate powers to access documents and budgetary information) and legal supervision over their secret and intelligence services and the formal and informal networks of which they are part;

201. Considers it necessary to enhance the Conference of the Oversight Committees on the Intelligence bodies of the Member States, in which Parliament should be fully involved;

202. [redacted] ensure a better monitoring and supervision also of their activities, as well as to sanction illegal acts or activities, notably in violation of human rights;

203. Considers the reinforcement of cooperation between the secret and security services of Member States to be highly desirable, either on a multilateral basis, preferably within an EU framework, or on a bilateral basis, provided that a legal framework for it is created ensuring full democratic parliamentary and judicial control and human rights are respected and protected at all times;

204. Urges the Council and the Member States to establish as a matter of priority a system for the democratic monitoring and control over the joint and coordinated intelligence activities at EU level; proposes an important role for Parliament in this monitoring and control system;

AIR TRAFFIC

205. Urges the Member States to ensure that Article 3 of the Chicago Convention, which excludes state aircraft from the scope of the Convention, is properly implemented in order that all military and/or police aircraft fly over or land on another State's territory only if they have prior authorisation;

206. [redacted] that human rights will be respected and monitored;

207. Considers it necessary to enforce effectively, both at EU and national level, the Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft so that the exercise of jurisdiction is used to ensure the observance of any obligation under a multilateral international agreement, in particular concerning the protection of human rights, and that, when appropriate, inspections on board should be undertaken;

208. Calls on the Commission to adopt adequate legislative proposals on transport safety, as provided for in Article 71 EC Treaty, taking into account the recommendations included in this resolution;

209. Recalls the Community competence in the field of transport, and notably transport security; asks the Commission, therefore, to take immediate action to ensure that the recommendations made by the Secretary-General of the Council of Europe as well as by Parliament are implemented;

210. Calls on the Commission to consider adopting rules on the use, monitoring and management of European airspace, on the use of EU airports and on the monitoring of non-commercial aviation;

INTERNATIONAL CONVENTIONS AND AGREEMENTS

211. Urges the Member States that have not yet done so to complete as soon as possible ratification of the 2003 EU-US Extradition Agreement, while taking adequate steps to avoid wrongly interpreting Article 12 of the Agreement, thereby ensuring that its scope does not extend beyond formal extradition and does not legitimise extraordinary

renditions;

212. Calls on European countries to support the rapid adoption by the UN General Assembly of the International Convention for the Protection of All Persons Against Enforced Disappearance, adopted on 29 June 2006 by the UN Human Rights Council;

213. Believes that, in providing for the adequate interpretation and enforcement of the UN Convention Against Torture, all European countries should ensure that their definition of torture is in accordance with Article 1 of the Convention and that, moreover, the obligations relating to the prohibition of torture are also fulfilled with respect to other acts of cruel, inhuman, degrading treatment referred to in Article 16 of the Convention; considers that all European countries should ensure that Article 3 of the Convention is properly enforced, in particular in relation to the activities of their secret services;

214. States that, given that the protection against *refoulement* is higher under the ECHR than under the Convention against Torture, European countries should ensure in any event the protection afforded by the ECHR; recalls, in this context, that the principle of *non-refoulement* is also recognised by the Court of Justice of the European Communities;

215. Calls on all European countries to sign and ratify the Optional Protocol to the Convention Against Torture and establish independent national mechanisms to monitor places of detention; emphasises the need to ensure that all such procedures used by the different international conventions on human rights are compatible;

216. Takes the view that the CPT should be granted access without delay or obstruction to any place of detention within the European countries, including foreign military bases, and provided with all relevant information concerning such detention, and that, to this end, any bilateral agreements that restrict the access of the CPT should be revised;

217. Urges all European countries to comply with the provisions of the Rome Statute of the International Criminal Court;

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218. Believes that the European Union should encourage all third countries to become party to the Optional Protocol to the Convention against Torture and to the Convention on Enforced Disappearances;

219. Asks European countries to establish clear rules that provide for the possibility of State immunity being waived where illegal actions violate human rights;

Administrative recommendations (at EU level)

220. Takes the view that all internal services within the Council (inter alia, the Policy Unit and the Joint Situation Centre) and the Commission (the Crisis Management and Conflict Prevention Unit in the Directorate-General for External Relations and relevant services in the Directorate-General for Justice, Freedom and Security), should be strengthened in the framework of the implementation of the EU Security Strategy and the counter-terrorism strategy in close cooperation with all Member States, and that their cooperation with each other, as well as with Member States, be clearly regulated

and data protection be ensured; considers that Parliament should be involved fully in this regard by granting it oversight powers similar to those of national parliamentary oversight committees, and that the Court of Justice be granted competence in this area; underlines that the competence of the EU in the field of combating terrorism should be significantly strengthened;

EU relations with third countries

221. Urges the European Union to stress in its contacts with third countries that the appropriate legal framework for governing the international fight against terrorism is criminal law and international human rights law;

222. Stresses the necessity of political dialogue with the US, as well as with other strategic partners of the European Union, on security matters in order to combat terrorism effectively and by legal means;

223. Calls on the European Union to recall that the full application of the 'democratic clause' is fundamental in its relations with third countries, especially those with which it has concluded agreements; calls on Egypt, Jordan, Syria and Morocco to provide clarity on their role in the extraordinary renditions programme;

224. Strongly believes that it is necessary to promote within the UN framework codes of conduct for all security and military services based on respect for human rights, humanitarian law and democratic political control, similar to the 1994 Code of Conduct on Politico-Military Aspects of Security of the Organisation for Security and Cooperation in Europe;

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Final conclusions

225. Stresses, in view of the powers it was provided with and of the time which it had at its disposal, and the secret nature of the investigated actions, that the Temporary Committee was not put in a position fully to investigate all the cases of abuses and violations falling within its remit and that its conclusions are therefore not exhaustive;

226. Recalls the principles and values on which the European Union is based, as provided in Article 6 of the Treaty on European Union, and calls on the EU institutions to meet their responsibilities in relation to Article 7 of the Treaty on European Union and all other relevant provisions of the Treaties, and to take all appropriate measures in the light of the conclusions of the work of the Temporary Committee, the facts revealed in the course of the Temporary Committee's investigation and any other facts that may emerge in the future; expects the Council to start hearings and commission an independent investigation without delay, as foreseen in Article 7, and, where necessary, to impose sanctions on Member States in case of a serious and persistent breaches of Article 6,

including where a violation of human rights has been declared by an international body but no measure has been taken to redress the violation;

227. Believes that the principle of loyal cooperation enshrined in the Treaties -which requires Member States and the EU institutions to take measures to ensure the fulfilment of their obligations under the Treaties, such as the respect of human rights, or resulting from action taken by the EU institutions, such as ascertaining the truth about alleged CIA flights and prisons, and to facilitate the achievement of EU tasks and objectives – has not been respected;

228. Recalls that in light of European Court of Human Rights case law, a signatory State bears responsibility for the material breach of the provisions of the ECHR, and therefore also of Article 6 of the Treaty on the European Union, not only if its direct responsibility can be established beyond reasonable doubt, but also by failing to comply with its positive obligation to conduct an independent and impartial investigation into reasonable allegations of such violations;

229. Notes the reports by reputable media operators that extraordinary rendition, illegal detention, and systematic torture involving many people is continuing, and considering the declaration by the current US Government that the use of extraordinary rendition and secret places of detention will be continued; therefore calls for an EU-US counter-terrorism summit to seek an end to such inhumane and illegal practices, and to insist that cooperation with regard to counter-terrorism is consistent with international human rights and anti-torture treaty obligations;

230. Instructs its Committee on Civil Liberties, Justice and Home Affairs, where necessary in cooperation with the Committee on Foreign Affairs, notably its Sub-Committee on Human Rights, to follow up politically the proceedings of the Temporary Committee and to monitor the developments, and in particular, in the event that no appropriate action has been taken by the Council and/or the Commission, to determine whether there is a clear risk of a serious breach of the principles and values on which the European Union is based, and to recommend to it any resolution, taking as a basis Articles 6 and 7 of the Treaty on European Union, which may prove necessary in this context;

231. Calls on its Secretary-General to publish, at least in compliance with Regulation 1049/2001, all the documents received, produced and examined, as well as the records of the proceedings of the Temporary Committee on the Internet as well as in any other appropriate manner and calls on the Secretary-General to ensure that the developments in fields falling within the remit of the Temporary Committee after its disbandment are monitored;

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232. Instructs its President to forward this resolution to the Council, the Commission, the governments and parliaments of the Member States, of the candidate Member States and the associated countries, and to the Council of Europe, NATO, the United Nations and the Government and two Houses of Congress of the United States, and to request

them to keep Parliament informed of any development that may take place in the fields falling in the remit of the Temporary Committee.

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Parliamentary **Assembly**
Assemblée parlementaire

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UNDER EMBARGO until 13h00 French time on Friday 8 June 2007

7 June 2007

Committee on Legal Affairs and Human Rights

Secret detentions and illegal transfers of detainees involving Council of Europe member states: second report

Explanatory memorandum*
Rapporteur: Mr Dick Marty, Switzerland, ALDE

Summary

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PAGES MISSING

UNCLASSIFIED

* The Rapporteur, the secretariat and the translators had to work in extremely difficult conditions because of the lack of time due to the delays in receiving certain information. This explains why there may be some linguistic mistakes and imprecision. The Rapporteur wishes to apologise for this.

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Introductory remarks – an overview

1. What was previously just a set of allegations is now proven: large numbers of people have been abducted from various locations across the world and transferred to countries where they have been persecuted and where it is known that torture is common practice. Others have been held in arbitrary detention, without any precise charges levelled against them and without any judicial oversight – denied the possibility of defending themselves. Still others have simply disappeared for indefinite periods and have been held in secret prisons, including in member states of the Council of Europe, the existence and operations of which have been concealed ever since.

2. Some individuals were kept in secret detention centres for periods of several years, where they were subjected to degrading treatment and so-called "enhanced interrogation techniques" (essentially a euphemism for a kind of torture), in the name of gathering information, however unsound, which the United States claims has protected our common security. Elsewhere, others have been transferred thousands of miles into prisons whose locations they may never know, interrogated ceaselessly, physically and psychologically abused, before being released because they were plainly not the people being sought. After the suffering they went through, they were released without a word of apology or any compensation – with one remarkable exception owing to the ethical and responsible approach of the Canadian authorities – and also have to put up with the opprobrium of doubts surrounding their innocence and, right here in Europe, racist harassment fuelled by certain media outlets. These are the terrible consequences of what in some quarters is called the "war on terror."

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3. While the strategy in question was devised and put in place by the current United States administration to deal with the threat of global terrorism, it has only been made possible by the collaboration at various institutional levels of America's many partner countries. As was already shown in my report of 12 June 2006 (PACE Doc 10957), these partners have included several Council of Europe member states. Only exceptionally have any of them acknowledged their responsibility – as in the case of Bosnia and Herzegovina, for instance – while the majority have done nothing to seek out the truth. Indeed many governments have done everything to disguise the true nature and extent of their activities and are persistent in their unco-operative attitude. Moreover, only very few countries have responded favourably to the proposals made by the Secretary General of the Council of Europe at the end of the procedure initiated under Article 52 of the European Convention of Human Rights ("ECHR") (see document SG(2006)01).

4. The rendition, abduction and detention of terrorist suspects have always taken place outside the territory of the United States, where such actions would no doubt have been ruled unlawful and unconstitutional. Obviously, these actions are also unacceptable under the laws of European countries, who nonetheless tolerated them or colluded actively in carrying them out. This export of illegal activities overseas is all the more shocking in that it shows fundamental contempt for the countries on whose territories it was decided to commit the relevant acts. The fact that the measures only apply to non-American citizens is just as disturbing: it reflects a kind of "legal apartheid" and an exaggerated sense of superiority. Once again, the blame does not lie solely with the Americans but also, above all, with European political leaders who have knowingly acquiesced in this state of affairs.

5. Some European governments have obstructed the search for the truth and are continuing to do so by invoking the concept of "state secrets". Secrecy is invoked so as not to provide explanations to parliamentary bodies or to prevent judicial authorities from establishing the facts and prosecuting those guilty of offences. This criticism applies to Germany and Italy, in particular. It is striking to note that state secrets are invoked on grounds almost identical to those advanced by the authorities in the Russian Federation in its crackdown on scientists, journalists and lawyers, many of whom have been prosecuted and sentenced for alleged acts of espionage. The same approach led the authorities of "the former Yugoslav Republic of Macedonia" to hide the truth and give an obviously false account of the actions of its own national agencies and the CIA in carrying out the secret detention and rendition of Khaled El-Masri.

6. Invoking state secrets in such a way that they apply even years after the event is unacceptable in a democratic state based on the rule of law. It is frankly all the more shocking when the very body invoking such secrets attempts to define their concept and scope, as a means of shirking responsibility. The invocation of state secrets should not be permitted when it is used to conceal human rights violations and it should, in any case, be subject to rigorous oversight. Here again, Canada seems to demonstrate the right approach, as will be seen later in this report.

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7. There is now enough evidence to state that secret detention facilities run by the CIA did exist in Europe from 2003 to 2005, in particular in Poland and Romania. These two countries were already named in connection with secret detentions by Human Rights Watch in November 2005. At the explicit request of the American government, the Washington Post simply referred generically to "eastern European democracies", although it was aware of the countries actually concerned. It should be noted that ABC did also name Poland and Romania in an item on its website, but their names were removed very quickly in circumstances which were explained in our previous report. We have also had clear and detailed confirmation from our own sources, in both the American intelligence services and the countries concerned, that the two countries did host secret detention centres under a special CIA programme established by the American administration in the aftermath of 11 September 2001 to "kill, capture and detain" terrorist suspects deemed to be of "high value". Our findings are further corroborated by flight data of which Poland, in particular, claims to be unaware and which we have been able to verify using various other documentary sources.

8. The secret detention facilities in Europe were run directly and exclusively by the CIA. To our knowledge, the local staff had no meaningful contact with the prisoners and performed purely logistical duties such as securing the outer perimeter. The local authorities were not supposed to be aware of the exact number or the identities of the prisoners who passed through the facilities – this was information they did not "need to know." While it is likely that very few people in the countries concerned, including in the governments themselves, knew of the existence of the centres, we have sufficient grounds to declare that the highest state authorities were aware of the CIA's illegal activities on their territories.

9. We are not an investigating authority: we have neither the powers nor the resources. It is not therefore our aim to pass judgments, still less to hand down sentences. However, our task is clear: to assess, as far as possible, allegations of serious violations of human rights committed on the territory of Council of Europe member states, which therefore involve violations of the European Convention on Human Rights. We believe we have shown that the CIA committed a whole series of illegal acts in Europe by abducting individuals, detaining them in secret locations and subjecting them to interrogation techniques tantamount to torture.

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10. In most cases, the acts took place with the requisite permissions, protections or active assistance of government agencies. We believe that the framework for such assistance was developed around NATO authorisations agreed on 4 October 2001, some of which are public and some of which remain secret. According to several concurring sources, these authorisations served as a platform for bilateral agreements, which – of course – also remain secret.

11. In our view, the countries implicated in these programmes have failed in their duty to establish the truth: the evidence of the existence of violations of fundamental human rights is concrete, reliable and corroborative. At the very least, it is such as to require the authorities concerned at last to order proper independent and thorough inquiries and stop obstructing the efforts under way in judicial and parliamentary bodies to establish the truth. International organisations, in particular the Council of Europe, the European Union and NATO, must give serious consideration to ways of avoiding similar abuses in future and ensuring compliance with the formal and binding commitments which states have entered into in terms of the protection of human rights and human dignity.

12. Without investigative powers or the necessary resources, our investigations were based solely on astute use of existing materials – for instance, the analysis of thousands of international flight records – and a network of sources established in numerous countries. With very modest means, we had to do real "intelligence" work. We were able to establish contacts with people who had worked or still worked for the relevant authorities, in particular intelligence agencies. We have never based our conclusions on single statements and we have only used information that is confirmed by other, totally independent sources. Where possible we have cross-checked our information both in the European countries concerned and on the other side of the Atlantic or through objective documents or data. Clearly, our individual sources were only willing to talk to us on the condition of absolute anonymity. At the start of our investigations, the Committee on Legal Affairs and Human Rights authorised us to guarantee our contacts strict confidentiality where necessary. This willingness to grant confidentiality to potential "whistleblowers" was also communicated to Mr Franco Frattini, Vice-President of the European Commission with responsibility for the area of freedom, security and justice, so that he could also notify the relevant ministers in EU countries. Guarantees of confidentiality undoubtedly contributed to a climate of trust and made it possible for many sources to agree to talk to us. The individuals concerned are not prepared at present to testify in public, but some of them may be in the future if the circumstances were to change.

13. The Polish authorities recently criticised us for not travelling to their country to visit the facility suspected of having housed a detention centre. However, we see no point in visiting the site: we are not forensic science experts and we have no doubts about the capability of those who would have removed any traces of the prisoners' presence. Moreover, a meeting at the site would only have been worthwhile if the Polish authorities had first replied to the questions we put to them on numerous occasions and to which we are still awaiting replies.

14. We are fully aware of the seriousness of the terrorist threat and the danger it poses to our societies. However, we believe that the end does not justify the means in this area either. The fight against terrorism must not serve as an excuse for systematic recourse to illegal acts, massive violation of fundamental human rights and contempt for the rule of law. I hold this view not only because methods of this nature conflict with the constitutional order of all civilised countries and are ethically unacceptable, but also because they are not effective from the perspective of a genuine long-term response to terrorism.

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15. We have said it before and others have said it much more forcefully, but we must repeat it here: having recourse to abuse and illegal acts actually amounts to a resounding failure of our system and plays right into the hands of the criminals who seek to destroy our societies through terror. Moreover, in the process, we give these criminals a degree of legitimacy – that of fighting an unfair system – and also generate sympathy for their cause, which cannot but serve as an encouragement to them and their supporters.

16. The fact is that there is no real international strategy against terrorism, and Europe seems to have been tragically passive in this regard. The refusal to establish and recognise a functioning international judicial and prosecution system is also a major weakness in our efforts to combat international terrorism. We also agree with the view expressed by Amnesty International in its recent annual report: governments are taking advantage of the fear generated by the terrorist threat to impose arbitrary restrictions on fundamental freedoms. At the same time, they are paying no attention to developments in other areas that claim many more lives, or they display a disconcerting degree of passivity. We need only cast our minds to human trafficking or the arms trade: how is it possible, for example, that aeroplanes full of weapons continue to land regularly in Darfur, where a human tragedy with tens of thousands of victims is unfolding?

17. In our view, it is also necessary to draw attention to an aspect we believe to be very dangerous: the legitimate fight against terrorism must not serve as a pretext for provoking racist and Islamophobic reactions among the public. The Council of Europe has rightly recognised the fundamental importance of intercultural and interfaith dialogue. The member states and observers really should carry these efforts forward and maintain the utmost of vigilance on the issue. Any excesses in this respect could have disastrous consequences in terms of an expanded future terrorist threat.

18. In the course of our investigations and through various specific circumstances, we have become aware of certain special mechanisms, many of them covert, employed by intelligence services in their counter-terrorist activities. It is not for us to judge these methods, although in this area, too, great liberties appear to be taken with lawfulness. Many of these methods give rise to chain reactions of blackmail and lies between different agencies and institutions in individual states, as well as between states. Therein may lie at least a partial explanation for certain governments' fierce opposition to revealing the truth. We cannot go into the details of this phenomenon without putting human lives at risk. Let me reiterate that we are fully convinced of the strategic importance of the work of intelligence services in combating terrorism. However, we believe equally strongly that the relevant agencies need to be subject to codes of conduct, accompanied by robust and thorough supervision.

19. With the mandate assigned to us, we believe that the Assembly has reached the limits of its possibilities. The resources at our disposal to address the issues presented to us are totally inadequate for the task. The Council of Europe should give serious consideration to equipping itself with more effective and more binding instruments for dealing with such grave instances of massive and systematic violations of human rights. This is more necessary now than ever before, since it is clear that we are facing a worrying process of the erosion of fundamental freedoms and rights.

20. We must condemn the attitude of the many countries that did not deem it necessary to reply to the questionnaire we sent them through their national delegations. Similarly, NATO has never replied to our correspondence.

21. In presenting this report, the Rapporteur expresses his gratitude to the staff of the Committee's secretariat for their outstanding commitment and dedication. Very special thanks and acknowledgment go to the young staff member who was specifically assigned to this investigation: he has displayed absolutely amazing analytical skills and tenacity.

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I. The "dynamics of truth"

i. How President Bush's disclosure of the Central Intelligence Agency (CIA) secret detention programme has accelerated the "dynamics of truth"

22. When President Bush decided on 6 September 2006 to reveal the existence of the covert programme implemented by the CIA to arrest, detain and interrogate overseas high-value terrorist suspects [1], he simply glossed over the most delicate aspects, such as the implementation means chosen and (not) obtaining the prior support from the United States Congress for his Administration's "war against terrorism".

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23. President Bush's disclosure was carefully worded so as to provide very little factual insight that was genuinely new or unknown. It was instead couched in imperative terms that portrayed the President as a strong Commander-in-Chief trying to prevent threats to the United States by methods - such as the CIA's interrogation techniques - which were *"tough safe, and lawful, and necessary"*.

24. The end was portrayed as paramount – *"we're getting vital information necessary to do our jobs, and that's to protect the American people and our allies"*; the means of getting there inconsequential – *"I cannot describe the specific methods used – I think you understand why"*.

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25. Just under six weeks later, the US Congress responded to President Bush's clarion call[2] by passing the Military Commissions Act 2006 into law. As President Bush had expressly requested, the legislation draws distinctions between United States citizens and non-citizens, strips away the time-honoured right of detainees to challenge the basis for their detention (*habeas corpus*), and insulates US service personnel from prosecution for violations of Common Article 3 of the four Geneva Conventions. The process that lay ahead for captured terrorist suspects was thereby mapped out, whilst the Administration tried to cover the tracks that had led them there.

26. The "limited disclosures" of 6 September 2006, afforded a fresh focus to the mandate of my inquiry. One thing was now certain, personally acknowledged by the President of the United States: the existence of secret detention centres, which I had already confirmed in my June 2006 report. We are, however, faced with unresolved allegations that Council of Europe member States have colluded with the United States in serious human rights violations such as enforced disappearances, incommunicado (secret) detentions, and torture or cruel, inhuman and degrading treatment. President Bush's assertion that Europeans too had benefited from the programme[3] - which has not been substantiated by any evidence – must be put into its proper perspective if it were shown that we had forsaken our democratic values and the rule of law in order to share in those benefits.

27. In my view the protection of fundamental human rights is every bit as important as the preservation of national security cited by President Bush; indeed I hold these two objectives to be complementary, mutually reinforcing and in no way contradictory.

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[1] The White House, Office of the Press Secretary, "Remarks by the President on the Global War on Terror" (*War against terrorism is a struggle for freedom and liberty, Bush says*), speech delivered in the East Room of the White House, 06.09.2006; hereinafter "Remarks by President Bush, 06.09.2006".

[2] *Ibidem*. The transcript shows that President Bush struck a chord with his White House audience, which included relatives of victims of the 9/11 attacks: *"Congress is in session just for a few more weeks, and passing this legislation ought to be the top priority. (Applause.) For the sake of our security, Congress needs to act, and update our laws to meet the threats of this new era. And I know they will."*

[3] *Ibid. "Information from the terrorists questioned in this program helped unravel plots and terrorist cells in Europe and other places. It's helped our allies to protect their people from deadly wrongdoers."*

28. If we are to understand clearly the relationship between human rights and national security imperatives for the future, then we cannot content ourselves with partial truths about how the policies in question have been developed and implemented in the past. It is therefore our duty to get right to the bottom of the CIA's secret detention programme in all its systemic components. The programme must not simply pass into history as a policy that seemed to breach our supposedly inviolable human rights, but about which we never learned the truth and for which we never exercised political and legal accountability. We have a right and the duty to know the truth and to analyse critically the means and methods being used in our name towards the stated goal of enhancing our common security. It is therefore indispensable to clarify the precise operational and legal basis of the CIA's covert programme, and in particular to establish the extent to which Council of Europe member states were involved.

29. Building upon the June 2006 interim report[4], I have now concentrated on placing the CIA programme properly within the "global spider's web" – the image I used to describe the system of secret detentions and detainee transfers spun out around the world by the US Government and its allies. In this context, our interest has been concentrated on the role played by the member States of the Council of Europe that acted as "hosts" for CIA secret detentions.

30. As this report will make clear, the HVD programme has depended on extraordinary authorisations – unprecedented in nature and scope – at both national and international levels. The secret of its very existence was successfully guarded for several years, and until today, very little detail has been published about the terms used to refer to it, the way the system has operated, the underlying authorisations and arrangements that have sustained it, or even the reasons as to why it has so successfully been covered up.

31. Questions such as where the detention sites have been located and what conditions the detainees have been kept in were declared last year by President Bush to be too sensitive for him to answer officially, on the grounds that "*doing so would provide our enemies with information they could use to take retribution*".[5]

32. Indeed, even when the revelations of secret detentions in "several democracies in Eastern Europe" first emerged in November 2005,[6] the publication responsible for breaking the story, *The Washington Post*, made a decision not to publish the names of the states which had hosted CIA "black sites", although it was aware of this information. *The Post*'s decision followed a meeting at the White House and an explicit appeal from the US Government to refrain from naming the countries involved.[7] *The Post*'s Staff Writer Dana Priest, who wrote the article in question, explained the rationale behind the newspaper's decision in the following terms:

> "*Political embarrassment was not a consideration; it really turned on the safety and co-operation questions. We did not publish the names of the countries involved because those countries were co-operating on other efforts that were not controversial, some of which the Post knew about from independent sources and which we considered to be valuable. Knowing those efforts to be vital to our international programmes, we thought that those efforts might stop if the countries' names were published, and that this would not be good.*"[8]

[4] See Dick Marty, Committee on Legal Affairs and Human Rights, Council of Europe Parliamentary Assembly, "Alleged secret detentions and unlawful inter-state transfers of detainees involving CoE member States", Doc. 10957, 12.06.2006, available at http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc06/EDOC10957.htm (hereinafter "Marty Report 2006, Council of Europe Doc. 10957").

[5] Remarks by President Bush, 06.09.2006, *supra* note 3.

[6] See Dana Priest, "CIA Holds Terror Suspects in Secret Prisons – Debate is Growing within Agency about Legality and Morality of Overseas System set up after 9/11", *The Washington Post*, 02.11.2005.

[7] See Howard Kurtz, "Bush Presses Editors on Security", *The Washington Post*, 26.12.2005, available at http://www.washingtonpost.com/wp-dyn/content/article/2005/12/25/AR2005122500665_pf.html. For further commentary, see also Marty Report 2006, section 1.3, at p. 9.

[8] Dana Priest, speaking at the seminar entitled "Secrecy and Government: America Faces the Future", hosted by the Center on Law and Security, NYU School of Law, New York, 12.04.2007.

33. While one might understand this decision, I have chosen to adopt a different position from that of *The Washington Post* on this issue, whilst maintaining a strict policy of confidentiality with regard to my individual sources. It should also be borne in mind that the very earnest American NGO Human Rights Watch had explicitly cited Poland and Romania among the countries in which there had been secret detention centres. Moreover, it is difficult to accept that the reasons given at the time by the *Washington Post* are still valid today.

ii. The responsibility to provide a truthful account and the importance of confidential sources

34. Especially in light of its unparalleled pedigree for protecting and promoting human rights on our continent, the Council of Europe holds a unique responsibility in providing a truthful account. It has been said that the paradigm of US detainee treatment in the course of the "war on terrorism" has been to carry out its most odious acts extra-territorially – including in Europe – because it knows that such acts would not be permissible at home under the laws and Constitution of the United States. This is a paradigm of political expediency. But how not to see in it a form of contempt towards other countries, notably Cuba (Guantanamo!) and Europe: what is not good enough for the United States is for others!

35. In direct response, the paradigm of this report is one based on principles and values. We assert that in order to retain the moral authority necessary to defeat the global terrorist threat, we must ensure that every detainee in our custody – notwithstanding the acts of which he is accused, or whether he is held in Europe or elsewhere – is accorded the same fundamental human rights we would expect to be accorded ourselves and which, moreover, we uphold for even the worst criminals. Not even war authorises conduct of any sort; for example, the Geneva Conventions, the cornerstone of international humanitarian law laying down the limits to the barbarity of war, also prohibit secret detention centres.

36. From the outset of my mandate as Rapporteur on this issue, I have argued that transparency and accountability would in fact prove to be healthy for all the member States of the Council of Europe, not least for the countries which have hosted CIA "black sites".

37. The perpetual cycle of allegations and unsubstantiated rumours since November 2005 has merely served to fuel mutual suspicion and distrust between our Governments and peoples. The uncertainty has disrupted open political debate and provided an unwelcome distraction from the most urgent task of developing more viable democratic strategies to combat the growing terrorist threat in accordance with the rule of law.

38. Thus my decision to name the countries concerned should not be construed as an attempt to single out scapegoats or to drive a wedge between members of the European family. On the contrary, my investigations demonstrate clearly that responsibility is broadly shared on both sides of the Atlantic and on our continent.

39. From the very beginnings of the "war on terror" advocated by the United States, European governments could not ignore its true nature ; all the members and partners of NATO signed up to the same "permissive" – not to say illegal – terms that allowed CIA operations to permeate throughout the European continent and beyond; all knew that CIA practices for the detention, transfer and treatment of terrorist suspects left open considerable scope for abuses and unlawful measures; yet all remained silent and kept the operations, the practices, their agreements and their participation secret.

40. Now it is time for the member States of the Council of Europe to muster a similar collective spirit in acknowledging the truth about the past and regrouping to face the considerable challenges to be faced in the future. The methods used not only proved to be of questionable usefulness, but above all they also gave a semblance of legitimacy to terrorist movements and even gave rise to some feeling of sympathy for them.

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41. As Council of Europe Rapporteur I have talked persistently about my belief in the "dynamics of truth" – that each drop of truth will lead forward to another drop of truth, and that a steady trickle will ultimately develop into an irreversible flow. Seen in this regard, *my* report of June 2006, which mapped out the "global spider's web" and exposed CIA "rendition circuits" for the first time, was but a small contribution to a pool of outstanding investigative work by journalists[9] and non-governmental organisations[10] that continues to grow to the present day.

42. Yet while the momentum was gathering last year, we were perfectly aware that we would still have to overcome formidable obstacles in order to get to the truth about the CIA programme of secret detentions in Europe. State secrecy has been systematically invoked at national level in several instances both to deny us access to classified documents and to thwart action taken by the competent judicial and parliamentary authorities.[11] Moreover, as I demonstrate later in this report,[12] the secrecy and security of information policies adopted by states in the framework of the North Atlantic Treaty Organisation (NATO) are just as impenetrable when applied as barriers to transparency as they have proven since they were selected to act as coverage for CIA clandestine operations.

43. To encourage even a minor departure from strict adherence to these regimes of silence, secrecy and cover-up would require a rare convergence of factors. The first signs of cracks would have to appear in alliances that had hitherto been absolutely watertight. The motivation for insiders on one or both sides of the Atlantic to talk to us would surely derive only from their fear of betrayal – either by their colleagues, their political masters or their transatlantic partners.

44. The catalyst for those involved in the HVD programme to talk candidly to our team appears ultimately to have come from the American side – albeit that a degree of ambiguity about who was "allowed" to say what appears to have worked in our favour. My representative, who was on-the-spot in Washington, DC when President Bush disclosed the existence of the CIA's covert overseas detention and interrogation programme, received an off-the-record briefing.

45. Thereafter, one of the most challenging aspects of our investigation has been our effort to access the structures where the information is held within the different European states. Towards this end our team has undertaken visits and developed sources in both the political and intelligence spheres in various countries, sometimes pursuing multiple contacts over a period of months.

[9] In particular, I wish to recognise the following journalistic contributions, which depended on original investigative work to bring to light original facts and new dimensions to the global system of secret detentions and detainee transfers: Stephen Grey on extraordinary renditions (see "America's Gulag," in *The New Statesman*, 17.05.2004, "US Accused of Torture Flights," in *The Sunday Times*, 14.11.2004, and "Les Etats-Unis investent la délocalisation de la torture," in *Le Monde Diplomatique*, April 2005); Dana Priest on CIA programmes, including secret detentions in Europe ("CIA Holds Terror Suspects in Secret Prisons – Debate is Growing within Agency about Legality and Morality of Overseas System set up after 9/11," in *The Washington Post*, 2.11.2005; and "Foreign Network at Front of CIA's Terror Fight – Joint Facilities in Two Dozen Countries account for bulk of Agency's post-9/11 successes," in *The Washington Post*, 18.11.2005); Jane Mayer on rendition policies, interrogation techniques and torture memos ("Outsourcing Torture: The secret history of America's 'extraordinary rendition' programme," in *The New Yorker*, 14 and 21.02.2005, "A Deadly Interrogation – Can the CIA legally kill a prisoner?" in *The New Yorker*, 14.11.2005; and "The Memo – How an internal effort to ban the abuse and torture of detainees was thwarted," in *The New Yorker*, 27.02.2006) ; Brian Ross and Richard Esposito on enhanced interrogations and the clear-out of European sites ("CIA's Harsh Interrogation Techniques Described – Sources Say Agency's Tactics lead to Questionable Confessions, Sometimes to Death", *ABC News*, 15.11.2005, and "Sources Tell ABC News Top Al-Qaeda Figures held in Secret CIA Prisons: 10 out of 11 Terror Leaders subjected to "Enhanced Interrogation Techniques," *ABC News*, 5.12.2005); Don Van Natta Jr. and Souad Mekhennet on the El-Masri case ("German's Claim of Kidnapping brings Investigation of US Link," in *The New York Times*, 9.01.2005); Mick Hawton on the cover-up regarding secret flights into Poland ("Chasing Shadows," *BBC Radio 4*, 2.01.2007), and *The Chicago Tribune* on undeclared flights in both Poland and Romania (John Crewdson, "Elusive jet may hold clue to secret prisons – Mystery Gulfstream landed in Romania," in *The Chicago Tribune*, 13.09.2006; and Tom Hundley, "Remote Polish airstrip holds clues to secret CIA flights," 06.02.2007).

[10] I am deeply grateful to all our allies in the non-governmental field, whose dedication to the cause and tireless support for my inquiry – much of it behind the scenes – has proven invaluable. For their professional approach throughout the last two years and for their reporting, research and representations too extensive to enumerate individually here, I wish to thank in particular: the American Civil Liberties Union, Amnesty International, the Brennan Centre for Justice at NYU School of Law, the Centre for Human Rights and Global Justice at NYU School of Law, the Centre for Constitutional Rights, Human Rights First, Human Rights Watch, the International Commission of Jurists, REPRIEVE, Statewatch and the Swedish Helsinki Committee for Human Rights. I salute your work and that of the many other NGOs active in the field who have supported me anonymously or whose names I have inadvertently failed to mention.

[11] Pertinent examples of the invocation of state secrecy in at least two different jurisdictions are provided in the section entitled "A case study of Khaled El-Masri," at section VI.I later in this report.

[12] See section entitled "Preserving Secrecy and the NATO Security Policy," at section II.E. later in this report.

46. Consequently, all of the conclusions drawn in this report rely upon multiple sources, which validate and corroborate one another. Indeed, in the course of my inquiry, our team has spoken – and in many cases conducted interviews – with over 30 one-time members (serving, retired or having carried out contract work) of intelligence services in the United States and Europe.

47. However, by necessity, the majority of these conversations have taken place under conditions of strict confidentiality, in order to enable the individuals concerned to be able to speak freely and without fear of consequence.

48. It is my firm conviction that what I publish here poses no threat to the individual or collective safety of any of my sources, some of whom have taken considerable personal risks to speak to us. Thus I do not identify by name the sources of many specific quotes and other items of information, nor do I attribute them too specifically to the office held by the speaker, such that no reader is able to identify the individuals who spoke in confidence to us and whose anonymity, at least for the moment, must be preserved.

49. These rules on confidentiality, imposed upon us because of the lack of collaboration from the states concerned, cannot and should not prevent me from naming individual office-holders who occupied key positions of power at the relevant times and who thus answer for the decisions they took on behalf of their states.

50. In the sections that follow, I have therefore drawn upon multiple sources in the US and European intelligence communities in an attempt to lay bare the anatomy of this controversial programme. In so doing, I believe that I have been able to provide the most in-depth account to date of the conceptual development of the HVD programme, the NATO framework so vital to the programme's operations, details of the bilateral arrangements for its operations, and important strands of evidence that belie the repeated denials of high-ranking officials – including several Presidents and Prime Ministers – about what took place and what they knew. Certainly we are far from knowing the whole truth. The information we have gathered is, however, sufficiently concrete – and worrying – to encourage states at last to do all they can to get to the bottom of what took place in their countries and within certain of their institutions.

iii. The concept: the development of the "High-Value Detainee" (HVD) Programme operated by the Central Intelligence Agency (CIA)

51. For the sake of clarity reference should be made to the CIA's covert programme using the correct terminology: among well-informed quarters, the programme is known as the "High-Value Detainee" programme, or simply the "HVD Programme".

52. The HVD programme has formed a very specific, narrow and unique strand of the United States' counter-terrorist operations in the period since 11 September 2001. Indeed, one reason why it has been so successfully covered up is that one can easily lose sight of this programme among the sizeable and still growing tally of people detained in the course of the "war on terror".

53. There have been scores of sites in which thousands of prisoners have been held for varying periods of time either by one or more agencies of the US Government, or on its behalf by foreign allies.

54. Among the most highly-populated and well-known of these detention sites – and indeed, hosts to CIA detainees at one time or another – have been the various internment "Camps" on the US Naval Base at Guantanamo Bay, the Bagram Airfield in Kabul, Afghanistan and the Abu Ghraib facility in Baghdad, Iraq. The public has been able to get some sort of picture of these sites, not from transparent information provided by the competent authorities but rather from leaks, statements from former inmates and secretly filmed images of detainee abuse.

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55. Even in this context, the HVD programme is different. One senior source in the CIA Counterterrorism Centre told us: "If a guy is captured on the battlefield and sent to [Guantanamo], that's got nothing to do with it. But I think there is a tendency in the media, in Europe and in America, to blend together what the FBI is doing, what the military is doing and what the CIA is doing – to attribute it all to the same programme. And frankly, you can't do that. The HVD programme is a very structured, very rigorous programme."

56. In my understanding, the narrative of the HVD programme has played out largely over a five-year period, from September 2001 to September 2006. CIA insiders told us that there was widespread surprise that it operated and remained secret quite as long as it did. From 2004 onwards, the President was being strongly advised to place a time limit on the programme because it was regarded as having been somewhat improvisational in its nature and therefore could not be sustained: "every period in history has its bookends".

57. The conception of the HVD programme can be traced to the days immediately after 11 September 2001, when senior CIA officials (including CIA Director George Tenet) worked with the political principals of the Bush Administration (including President Bush himself) to conceive, debate and formulate strategies to "give some extra potency" to America's "frontline officials" in combating and countering the global terrorist threat.

58. On 17 September 2001 President Bush signed a classified Presidential Finding[13] as a means of granting the CIA important new competences relating to its covert actions: new choices it could make and new ways it could respond if confronted with Al-Qaeda targets in the field. On the day this document was signed – the Sunday after the 11 September attacks – senior members of the CIA's Counter-Terrorism Center (CTC) and selected foreign counterparts were made familiar with its contents in a meeting in Washington, DC.[14]

59. Our team has spoken with several American officials who have seen the text of the Presidential Finding and participated in the operations that put it into action. Two particularly striking observations have emerged from these discussions. First, by putting *"a lot of stock in Special Activities"*[15] the Finding *"redefined the role of the Agency"*, even in the eyes of some of its own, more conservative senior officials. Second, the *"really broad, not specific"* scope of the covert actions authorised in the Finding meant that the CIA was instantly granted enough room for manoeuvre to design a secret detentions programme overseas[16].

[13] The US Government finally conceded the existence of this classified Presidential Finding in response to a Freedom of Information Act (FoIA) litigation brought by the American Civil Liberties Union (ACLU) in 2006. Nonetheless, the precise scope and contents of the Finding remain unknown and, according to Congressional staffers, even senior members of the relevant House and Senate Select Committees have not been allowed to access it. See ACLU Press Release, "CIA Finally Acknowledges Existence of Presidential Order on Detention Facilities Abroad", 14.11.2006, available at http://www.aclu.org/safefree/torture/27382prs20061114.html, see also US Senator Patrick Leahy, "Comments of Senator Patrick Leahy (D-Vt.), incoming Chairman, Senate Judiciary Committee, on Department of Justice's Response to Request for Documents relating to Bush Administration's Interrogation Policies", 2.01.2007, available at http://leahy.senate.gov/press/200701/010207.html.

[14] The former Chief of CIA Clandestine Operations in Europe, Tyler Drumheller, recounts the meeting of 17.09.2001 in his memoirs: *"Cofer [Black, then Chief of the CTC] presented a new Presidential authorization that broadened our options for dealing with terrorist targets – one of the few times such a thing had happened since the CIA was officially banned from carrying out assassinations in 1976. It was clear that the Administration saw this as a war that would largely be fought by intelligence assets. This required a new way of operating"*. See Tyler Drumheller, *On the Brink: An Insider's Account of How the White House Compromised American Intelligence*, Carroll & Graf, New York, 2006 (hereinafter "Tyler Drumheller, *On the Brink*"), at p. 35.

[15] The Special Activities Division is akin to a paramilitary wing of the CIA; the kinds of "activities" referred to here include renditions and, in exceptional circumstances, assassinations of suspected Al-Qaeda members.

[16] I am certain that the HVD programme has its general origins in the 17.09.2001 Finding. Because our sources were unanimous on the question of the latitude this document afforded to the CIA. However we were also told separately of the existence of further classified documents (thought to have been signed in 2002) that actually use the term "black sites" in relation to *specific* facilities.

60. One senior former CTC official said the broad scope and enhanced paramilitary powers for the CIA were negotiated into the terms of the Finding with *"revenge for the 9/11 attacks"* in mind. Another former CTC official with direct responsibility for geographical areas in which Al Qaeda was operating told us: "This Administration needed some public successes, so they put a lot more pressure on us to find these people, and they decided to hold these people themselves. I think those are the two major changes post-9/11."

61. Thus, there had emerged a category of terrorist suspects whom the CIA considered of high value and to whose capture, detention, transfer and interrogation it would ultimately dedicate an entire covert programme. The men in this category had mostly been picked out already as "High-Value Targets", or HVTs,[17] and once in the custody of the CIA they would become "High-Value Detainees", or HVDs.[18]

62. The profile of the HVTs was that of orchestrators, planners, leading operatives and providers of logistics for some of the most devastating terrorist plots attributed to Al-Qaeda and to its associates. In our discussions, current and former CIA officials have been keen to emphasise, even in hindsight, that their targets span only a very limited range. One asserted: "if you look down the list of the people we've picked up since 9/11, the Agency has maintained a very high level of pertinence in terms of our targets." Another confirmed: "we didn't want the insurgents; we wanted the leadership."

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63. CIA dossiers compiled on these men were comprehensive and constantly being updated. As my representative was told by Michael Scheuer, former Chief of the Bin Laden Unit: "the one problem we never had was lack of information."[19] Intelligence on the HVTs was replete with references to their involvement in the 9/11 attacks and the evolution of its feeder cells, or in other major events in the global escalation of terrorism, such as the dual attack on US Embassies in East Africa, the assault on the US Navy ship USS Cole, or the Bali nightclub bombings.

64. Just as the CIA rendition programme - instigated in the 1990s and escalated in the post-9/11 years - maintained its "safety net" of having obtained legal approval for every operation it launched,[20] the CIA's post-9/11 HVD programme was designed and vetted in consultation with various lawyers in the Justice Department, the CIA and in the Presidential Administration. All three of these sets of lawyers, as our sources confirmed, have approved so-called "Kill, Capture or Detain" orders, or "K-C-D orders", for high-value targets with whom the CIA came into contact.

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65. The template for the High-Value Detainee programme was not drawn out of the KCD's Detain (or "D") category, since this was said to be a more general responsibility (shared with the military and local counterparts) for those persons picked up in the course of counter-terrorist activities about whose intelligence value the CIA unit on the ground was less certain:

> *"D was like our default option: Detain. Like if we pick up some guy in a raid where we also got one of the HVTs, like [Ramzi] bin Al-Shibh, and maybe we've got nothing on this guy, but obviously we're still gonna hold him."*

[17] Public citations of the acronym "HVT" have become more common in the course of the "war on terror". It is commonly used, for example, among members of the US Armed Forces, particularly those who have been deployed to track down prominent Baathists and insurgents in Iraq, such as Uday and Qu'say Hussein, or Abu Musab al-Zarqawi. See Defense Technical Information Center, "Loss of High-Value Targets" available at http://www.dtic.mil/doctrine/jel/doddict/data/h/02467.html.

[18] The acronym "HVD" has also now been adopted in public citations used by the Office of the Director of National Intelligence (DNI) and the Department of Defense (DoD). See, for example, Office of the Director of National Intelligence (DNI), "Summary of the High-Value Terrorist Detainee Program", 06.09.2006, available at http://www.defenselink.mil/pdf/thehighvaluedetaineeprogram2.pdf.

[19] Michael Scheuer, former Chief of the Bin Laden Unit in the CIA's Counterterrorism Center, interview carried out by the Rapporteur's representative in Washington, DC, May 2006. Scheuer told us: "We had built up dossiers on all the important people in Al Qaeda within six months after we started the rendition programme. So it was just a matter of keeping those files updated. The approval of the senior levels of the Government and the lawyers' approval, if you pushed them, could be gotten very quickly because everything was ready."

[20] For my comprehensive account of "The evolution of the rendition programme', including its legal and operational considerations, see The Marty Report 2006, *supra* note 8.

66. According to our sources, the tailor-made HVD programme actually grew out of the KCD's Capture (or "C") category, which comprised targets whom the CIA set out expressly to capture, sometimes offering multi-million dollar US Government rewards for decisive tip-offs. The design of a special HVD programme helped to address a key "what next?" question, as one well-placed source explained:

> *"We knew that we would have some successes when we went out to get these guys, with the resources we were throwing at it and the support of our friends in the Pakistani Services[27]. So the real question was "what are we gonna do with them when we got them?"*

67. The CIA ruled out the prospect of having its HVTs handed over to or shared with the US military or the FBI, let alone foreign services – "these high-value targets are not moved between agencies or nations" – believing that the security and integrity of the resultant interrogations, in particular, could not be guaranteed. On the same grounds Guantanamo Bay "offered nothing" akin to the secrecy and isolation that the CIA demanded: "Guantanamo was a real mess. The interrogators there were FBI and military... [who] thought they knew what they were looking for, but they didn't know who they were talking to. The United States had a laboratory at Guantanamo, for the first time, to understand the insurgent arm of Al Qaeda... [but] we screwed it up!"

68. Hence the concept of "black sites", a handful of facilities of limited size and capacity in different parts of the world, where the CIA exclusively would be the jailer.

iv. The evolution of specific "black sites" in the HVD programme

69. A significant breakthrough, which became the trigger for the operations of the HVD programme, was the CIA's capture of Abu Zubaydah in March 2002. Mr Zubaydah's peculiar importance from the US Government's perspective has been well documented – not least in President Bush's speech of 6 September 2006 – in which he was mentioned 12 times, including to acknowledge that an "*alternative set of procedures*"[28] was introduced specifically for his interrogation. In the ensuing period of approximately two-and-a-half years, information garnered from HVD interrogations using these procedures is said to have proved crucial in combating Al-Qaeda's worldwide terrorist operations.[29]

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70. There are two more specific locations to be considered as "black sites" and about which we have received information sufficiently serious to demand further investigation; we are however not in a position to carry out adequate analysis in order to reach definitive conclusions in this report. First we have received concurring confirmations that United States agencies have used the island territory of Diego Garcia, which is the international legal responsibility of the United Kingdom, in the "processing" of high-value detainees. It is true that the UK Government has readily accepted "assurances"[34] from US authorities to the contrary, without ever independently or transparently inquiring into the allegations itself, or accounting to the public in a sufficiently thorough manner. Second we have been told that Thailand hosted the first CIA "black site," and that Abu Zubaydah was held there after his capture in 2002. CIA sources indicated to us that Thailand was used because of the ready availability of the network of local knowledge and bilateral relationships that dated back to the Vietnam War.[35] In line

[27] The phrase used here is understood to be a reference to the Inter Services Intelligence Agency, or ISI, which is Pakistan's military intelligence branch and is renowned for its close co-operation with the CIA.

[28] This phrase is understood to be a reference to the regime of CIA "enhanced interrogation techniques", which were subsequently used to interrogate several other HVDs. For a description of these techniques and the (operational and legal) implications of resorting to them, please see section V. and VIII. later in this report.

[29] As President Bush has presented it, when all the leads yielded from these interrogations are taken together ("corroborated by intelligence ... that helped us to connect the dots"), then the cumulative product has "played a role in the capture or questioning of nearly every senior Al-Qaeda member or associate detained by the US and its allies since this programme began". See also Office of the Director of National Intelligence (DNI), "Summary of the High-Value Terrorist Detainee Program", 06.09.2006, available at http://www.defenselink.mil/pdf/thehighvalueterrorists.pdf.

[34] See, for example, United Kingdom Parliament, Publications and Records: "Written Answers for 21.06.2004", in *House of Commons Hansard*, point 13, column 1222W, Questions to the Rt Hon. Jack Straw, UK Foreign Secretary, available at http://www.publications.parliament.uk/pa/cm200304/cmhansrd/vo040621/text/40621w13.htm#40621w13.html_wqn3. Mr. Straw said: "The United States authorities have repeatedly assured us that no detainees have at any time passed in transit through Diego Garcia or its territorial waters or have disembarked there and that the allegations to that effect are totally without foundation. The Government are satisfied that their assurances are correct."

[35] One CIA source told us: "In Thailand, it was a case of 'you stick with what you know'," however, since the allegations pertaining to Thailand were not the direct focus of our inquiry, we did not elaborate further on these references in our discussions. The specific location of the "black site" in Thailand has been publicly alleged to be a facility in Udon Thani, near to the Udon Royal Thai Air Force Base in the north-east of the country. This base does have long-standing connections to

with the approach of most US partner countries, the Thai Government has denied these allegations outright.[36]

71. The HVD programme has, to a certain extent, grown out of an assertion of *independence* on the part of the CIA in the exercise of "exclusive custody" over its high-value detainees for as long as it continues to question them. However, as my findings in the following sections demonstrate, the CIA's clandestine operations in Europe – including its transfers and secret detentions of HVDs - were sustained and kept secret only through their operational *dependence* on alliances and partnerships in what is more traditionally the military sphere.

II. Secret detentions in Council of Europe member states

i. The framework

a. Securing CIA clandestine operations overseas on the platform of the North Atlantic Treaty Organisation (NATO)

72. By enacting an extraordinary authorisation for CIA covert action through a Presidential Finding within national law, the Bush Administration furnished the Agency with the first half of the operational framework it required to spearhead the United States' "global war on terror."[37] To recap, the key elements of this authorisation were permissions that were as broad as possible, and protections (from interference and oversight) that were as robust as possible.

73. The second half of the equation was then to identify the means by which to integrate the key elements of US national policy into an international, intergovernmental approach.

74. According to our sources, the CIA simply could not embark upon sensitive covert action to dismantle terrorist networks and kill, capture or detain their members overseas without the express knowledge and approval of key US allies – particularly European allies: "we wouldn't have even dreamed of it."[38] On the contrary, the CIA depended on the US Government to secure equally broad permissions and equally robust protections from its foreign allies and their respective intelligence agencies as the ones that had been granted at home.

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American defence and intelligence activities overseas: during the Vietnam War it served as both a deployment base for the US Air Force and the Asian headquarters of the CIA-linked aviation enterprise, Air America.

[36] See, for example, *The Bangkok Post*, "Thaksin denies Thailand had 'CIA secret prison'," 5.11.2005, available at http://www.bangkokpost.com/breaking_news/breaknonews.php?id=53604.

[37] At this point I shall leave aside my discomfort with the phrase "war on terror" as a characterisation of the broad spectrum of counterterrorist policies pursued by the United States in recent years – it was the phrase accepted in all quarters in the immediate post-9/11 period. In this regard I agree with Anderson and Massimino, the authors of an excellent policy study recently released in the US: "The very idea of a 'global war on terror' is today seen as the policy of a particular presidential administration in a way that it was not immediately following September 11"; see Kenneth Anderson and Elisa Massimino, "The Cost of Confusion: Resolving Ambiguities in Detainee Treatment", part of the series entitled *Bridging the Foreign Policy Divide*, The Stanley Foundation, March 2007; hereinafter "Anderson and Massimino, "Resolving Ambiguities in Detainee Treatment". My conclusion that President Bush put the CIA at the forefront of his "war machinery" is corroborated by numerous CIA insiders; see, for example, Tyler Drumheller, *On the Brink*, *supra* note 16, at p. 35: "It was clear that the administration saw this as a war that would largely be fought by intelligence assets". See also, Michael Scheuer, interview with the Rapporteur's representative, *supra* note 21: "The Agency felt the brunt of the executive branch's desire to show the American people victories."

[38] Our sources have continually emphasised to us how keenly the United States has sought to observe the "sovereignty" of its allies, particularly those in Europe. From an intelligence perspective, the notion of "unilateral actions on European turf" has been characterised to us as "counter-productive" and "a surefire way of destroying the trust". More importantly, from a political perspective, the art of "coalition-building" is just as important for covert action as for large-scale military operations. It affords the US Government the opportunity, as one official described it to us, "to cover our backs by saying 'hey, we're not the only ones'". In this regard, it is relevant to consider the policy statements made by members of the Bush administration to defend its detention and rendition practices after the fact: see, in particular, Secretary Condoleezza Rice, US Secretary of State, "Remarks Upon Her Departure for Europe", Andrews Air Force Base, 5 December 2005: "The intelligence so gathered has stopped terrorist attacks and saved innocent lives – in Europe as well as in the United States and other countries. The United States has fully respected the sovereignty of other countries that co-operate in these matters."

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75. The need for unprecedented permissions, according to our sources, arose directly from the CIA's resolve to lay greater emphasis on the **paramilitary activities** of its Counterterrorism Center in the pursuit of high-value targets, or HVTs. The US Government therefore had to seek means of forging **intergovernmental partnerships with well-developed military components**, rather than simply relying upon the existing liaison networks through which CIA agents had been working for decades.

76. One former senior CIA official told us that administration officials approached multilateral negotiations "like they wanted to raise [the CIA]'s status up to a kind of super military-civilian Agency". Specifically the US Government set out to achieve permissions "from as many allied countries as possible" that would allow CIA agents to collaborate directly with foreign military officials, operate "on a no-questions-asked basis" at military installations, and travel free from inspection in military or civilian vehicles and aircraft.

77. In relation to the last point, as I discussed in my report last year,[28] the lines between civilian and military classifications in the aviation world were about to become incredibly blurred. Conventional legal understandings of civilian and state flights[29] were about to be fundamentally challenged, or at least the latitude in those definitions exploited to its maximum potential.

78. The US Government's post-9/11 detainee transfer operations would frequently make use of practices that were previously considered "anomalies,"[30] such as: civilian aircraft landing on state duty at military airfields; military cargo planes registered under civilian operators; and civilian agents and contractors travelling on military travel orders. The CIA's expanding and evolving "rendition" programme, which would ultimately also be used for the transportation of High-Value Detainees, required cover that would encompass all of these anomalies and more.

79. In terms of protections, the US Government insisted on the most stringent levels of **physical security for its personnel**, as well as **secrecy and security of information** during the operations the CIA would carry out in other countries.

80. Reflecting on what our sources have described in this regard, I consider that the stated US policy has, in fact, on the pretext of guaranteeing security, intentionally created a framework enabling it to evade all accountability. We have been told that the US Government sought a means of "insulating" the CIA's activities (and those of its partner intelligence agencies) from conventional democratic controls in the foreign countries it operated in, not to mention from what it saw as any "unsavoury disputes over jurisdictional issues."

[28] For my discussion of means of transporting detainees between points on the "global spider's web", see The Marty Report 2006, *supra* note 9, at sections 2.2 to 2.4, pages 15 to 18.

[29] For an authoritative analysis of the applicable general principles of aviation law, see the Opinion on the International Legal Obligations of CoE Member States in respect of Secret Detention Facilities and Inter-state Transport of Prisoners, adopted by the Venice Commission at its 66th Plenary Session, 17.03.2006; Opinion No. 363/2005, CDL-AD(2006)009, available at http://www.venice.coe.int/docs/2006/CDL-AD(2006)009-e.asp (hereinafter "Venice Commission Opinion, 17.03.2006"); at §§ 86-104

[30] An aviation expert whom we consulted confidentially used the phrase "anomalies" to describe the practices I refer to here. There are numerous examples of each of these "anomalies" in the comprehensive database of aircraft movements I have compiled since the outset of my inquiry (database held confidentially by the Rapporteur). In this regard I am especially grateful to Eurocontrol, the European Organisation for the Safety of Air Navigation, for having provided me with extensive records in various formats in response to my requests for information. I have been able to supplement and verify Eurocontrol records with information from multiple sources, including from the US Federal Aviation Authority (FAA) and state institutions in different CoE member States, such as transport ministries, aviation authorities, airport operators and state airlines. Hereinafter my database of aircraft movements is referred to simply as "The Marty Database".

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81. Yet in my view, checks and balances through national parliamentary and judicial oversight, as well as accepted international laws governing territorial sovereignty, are the very foundations upon which our systems of democratic accountability are built. In times of crisis, such as the immediate aftermath of the 9/11 attacks, these foundations must be strengthened by demonstrations of collective resolve, not weakened by acts of unilateral brinkmanship.

82. It is now clear to me that as they went to their international allies with their proposals, the United States insisted – non-officially but explicitly – upon a clear set of unilateral prerogatives: only American officials would choose exactly who they wanted to work with; only US policies would define exactly the terms of the relationship; and only US interpretations of the applicable law (including whether or not it applied) would be held to bind its actions overseas.

83. Based upon my investigations, confirmed by multiple sources in the governmental and intelligence sectors of several countries, I consider that I can assert that the means to cater to the CIA's key operational needs on a multilateral level were developed under the framework of the North Atlantic Treaty Organisation (NATO).

b. Invocation of Article V of the North Atlantic Treaty

84. It should be recalled that the United States turned to the international community at an unprecedented moment in history. As a prominent US Congressman remarked recently, "In the wake of the horrific attack on the United States on September 11th [2001], we were moved by the extraordinary support and the outpouring of sympathy from across the globe."[32] These sentiments manifested themselves in a unique and almost universally shared conviction that the United States should be granted strong support for its international counter-terrorist efforts, including for the use of military force.

85. This conviction was most pronounced within the NATO Alliance. On 12 September 2001, NATO thereby invoked the principle of collective defence according to Article 5 of the North Atlantic Treaty,[33] and this for the first time in its 52-year existence. Initially, the invocation was considered provisional because it began with a conditional clause:

> *"If it is determined that this attack was directed from abroad against the United States, it shall be regarded as an action covered by Article 5 of the Washington Treaty."*[34]

86. During the weeks that followed, several of the most senior officials in the Bush Administration delivered "a series of classified briefings for the NATO members presenting evidence that Al Qaeda had planned and executed the attacks"[35] and outlining their intended response. There is evidence in the following excerpt from an account by a then NATO Assistant Secretary-General that some of the United States' "unilateral prerogatives" described by our sources were articulated in quite explicit terms during these briefings:

> *"I was present in the [North Atlantic] Council two weeks after NATO invoked Article 5 when then US Deputy Secretary of Defence Paul Wolfowitz set out his post-9/11 doctrine to the effect that the mission determines the coalition. This was, in my opinion, a fundamental*

[32] Representative William Delahunt (D-Ma), Chairman of the International Organizations, Human Rights and Oversight Sub-Committee of the House Foreign Affairs Committee, opening remarks on the subject "Extraordinary Rendition in US Counterterrorism Policy: The Impact on Transatlantic Relations", 17.04.2007. Mr Delahunt also said: "I shall never forget the headline from the French newspaper *Le Monde* that proclaimed, 'Today, we are all Americans.' Sadly, that support has eroded dramatically... World opinion has turned against the United States in recent years [and]... this reality, this trend of opinion against the United States has profound negative consequences for our national interests."

[33] Article 5 of the North Atlantic Treaty provides as follows: *"The Parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all and consequently they agree that, if such an armed attack occurs, each of them, in exercise of the right of individual or collective self-defence recognised by Article 51 of the Charter of the United Nations, will assist the Party or Parties so attacked by taking forthwith, individually and in concert with the other Parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area. Any such armed attack and all measures taken as a result thereof shall immediately be reported to the Security Council. Such measures shall be terminated when the Security Council has taken the measures necessary to restore and maintain international peace and security."*

[34] See NATO Press Release (2001) 124, "Statement by the North Atlantic Council", 12.09.2001.

[35] See Nora Bensahel, *Counterterror Coalitions: Co-operation with Europe, NATO and the European Union*, The Rand Corporation, USA, 2003 (hereinafter "Bensahel, *Counterterror Coalitions*"); at pp. 6-7. According to Bensahel, the US policy-makers who briefed NATO included Deputy Secretary of State Richard Armitage, Deputy Secretary of Defence, Paul Wolfowitz and State Department Co-ordinator for Counterterrorism, Frank Taylor.

misjudgement about the nature of the Alliance that devalued the importance of strategic solidarity."[36]

87. The US Administration's briefings had their desired effect of lifting the conditional clause in the North Atlantic Council's original statement. On 2 October 2001, the NATO Allies declared their unanimous assessment that the 9/11 attacks had been directed against the United States from abroad and that Article 5 was therefore activated.[37]

88. Collective measures in the context of a military intervention in Afghanistan were widely anticipated – indeed, as one study noted, "many NATO members hoped that invoking Article 5 would lead the United States to conduct any military response against Al Qaeda under the NATO flag, or at least co-ordinate its actions with the integrated military structure and political institutions."[38]

89. However, the expected mobilisation of NATO forces for a multilateral action in Afghanistan never materialised. In fact, NATO support in the conventional military sense was neither an automatic consequence in the invocation of Article 5[39] nor, as our sources have confirmed, what the US Government was looking for.[40] It is precisely upon this unexpected dynamic that my finding regarding the development of CIA clandestine operations under the NATO framework hinges.

90. There was a **critical, almost paradoxical policy choice** in the US Government's stance towards the NATO alliance in early October 2001. The invocation of Article 5 could have been developed[41] as a basis upon which to conduct a military campaign of a conventional nature, deploying Army, Navy and Air Force troops in a joint NATO operation. Instead it became **a platform from which the United States obtained the essential permissions and protections it required to launch CIA covert action in the "war on terror".**

c. NATO authorisations for US operations in the "war on terror"

91. The key date in terms of the NATO framework is **4 October 2001**, when the NATO Allies met in a session of the North Atlantic Council to consider a set of concrete proposals from the United States. In a press statement after the session,[42] NATO Secretary-General Lord Robertson announced that the Allies had "agreed today – at the request of the United States – to take eight measures, individually and collectively, to expand the options available in the campaign against terrorism."[43] The eight specific measures agreed to[44] were as follows:

[36] See Edgar Buckley, former NATO Assistant Secretary-General for Defence Planning and Operations (from 1999 to 2003), "Invoking Article 5", in *NATO Review*, Summer 2006, available at http://www.nato.int/docu/review/2006/issue2/english/art2.html (hereinafter "Buckley, "Invoking Article 5"").

[37] See NATO Press Release of 02.10.2001, "Statement by NATO Secretary-General Lord Robertson".

[38] See Bensahel, *Counterterror Coalitions*, *supra* note 37, at p. 7.

[39] Article 5 refers to "such action as [each Party] deems necessary" and does not limit this action to the use of military force. It should be noted that France and Germany emphasised the fact that the obligation to assist under Article 5 did not automatically incur a duty to take part in US-led military action. In this regard, see Tom Lansford, *All for One: Terrorism, NATO and the United States*, Ashgate, UK, 2003, at p. 88; and Martin Reichard, *The EU-NATO Relationship: A Legal and Political Perspective*, 2006, at p. 190.

[40] See also Philip Gordon, "NATO After 11 September", in *Survival*, Vol. 43, No. 4, Winter 2001 – 2002, at p. 92. A senior US official stated: "I think it's safe to say that we won't be asking SACEUR [the NATO Supreme Allied Commander for Europe] to put together a task plan for Afghanistan." Further, see Nicholas Florenza, "Alliance Solidarity", *Armed Forces Journal International*, December 2001, at p. 22. A military official asked rhetorically: "If you were the US, would you want 18 other nations watering down your military planning". Both cited in Bensahel, *Counterterror Coalitions*, *supra* note 37, at pp. 7 and 18.

[41] For a perspective on how the invocation of Article 5 did not unfold entirely as NATO had expected, see, for example, Buckley, "Invoking Article 5", *supra* note 36: "In the intervening years, I have heard frequent criticism of the decision to invoke Article 5. I have, for example, heard people say that we were unwise to commit ourselves to a course of action which was not fully implemented and which turned out to be unwanted by the United States... I share the frustration of those who believe that the United States could have done more to engage the Alliance in its efforts against the Taliban and Al Qaeda."

[42] See NATO, "Statement to the Press by NATO Secretary General, Lord Robertson, on the North Atlantic Council Decision on Implementation of Article 5 of the Washington Treaty following the 11 September Attacks against the United States", Brussels, 04.10.2001, available at http://www.nato.int/docu/speech/2001/s011004b.htm (hereinafter referred to as "Statement to the Press by NATO Secretary General, Lord Robertson, 4.10.2001").

[43] *Ibidem*. Note the similarity in the language of "options" used to describe the intergovernmental NATO authorisation and likewise (ref. Tyler Drumheller, *supra* note 18) the US domestic covert action authority in the Presidential Finding of 17.09.2001: "broadened our options for dealing with terrorist targets."

[44] Some of the descriptions of the measures have been shortened or paraphrased here in order to present them more simply. For the original language in which they were presented to the public, see the Statement to the Press by NATO Secretary General, Lord Robertson, 04.10.2001, *supra* note 44.

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- Enhance intelligence-sharing and co-operation, both bilaterally and in the appropriate NATO bodies, relating to the threats posed by terrorism and the actions to be taken against it
- Assist states subject to increased terrorist threats as a result of their support for the campaign against terrorism
- Provide increased security for US and other allied facilities on NATO territory
- Backfill selected Allied assets in NATO's area of responsibility that are redeployed in support of counterterrorism operations
- Provide blanket overflight clearances for the United States' and other Allies' aircraft for military flights related to operations against terrorism
- Provide access to ports and airfields on NATO territory, including for refuelling, for United States and other Allies for operations against terrorism
- Deploy elements of the NATO Standing Naval Forces to the eastern Mediterranean, if called upon
- Deploy elements of NATO Airborne Early Warning Force to support operations against terrorism, if called upon.

92. The first criterion on which these measures were extraordinary was in the nature of their conception. According to a former senior NATO official, "in contrast to many other international organisations, responsibility for drafting documents and resolutions in NATO lies with the International Staff."[45] Yet as Lord Robertson reiterated in his statement, "these measures were requested by the United States following the determination that the 11 September attack was directed from abroad."[46] Indeed, as our American sources told us, even the exact language in which the actual measures were formulated and agreed upon was conceived, drafted, re-drafted and put forward unilaterally by the United States.

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93. Second and most significant, these measures do not constitute an agreement to undertake collective self-defence.[47] In my analysis these measures more closely comprise the very permissions and protections the United States had sought for itself as it embarked on its own military, paramilitary and intelligence-led counterterrorism operations.[48] Just as President Bush had done on 17 September 2001, the NATO Allies, on 4 October 2001, afforded the CIA a mandate to pursue its "war on terror", without a published text.

94. Council of Europe officials attempted to obtain a copy of the "agreement" of 4 October 2001 from NATO Legal Services on several occasions.[49] In a response dated 5 April 2006,[50] NATO's Legal Advisor, Mr Baldwin De Vidts, submitted that the "agreement" in question was actually more properly characterised as a set of "decisions taken by the North Atlantic Council on that date"; he explained:

> *"It is to be noted that your request does not relate to a formal document signed by the member States but to an informal decision noted in a corresponding decision sheet drawn up by the International Secretariat to reflect the decisions as taken by the Council on that date."*

[45] See Buckley, "Invoking Article 5", *supra* note 36.

[46] See Statement to the Press by NATO Secretary General, Lord Robertson, 04.10.2001, *supra* note 44.

[47] I take the view that only the last two measures could be considered as responses in the category of "classic" collective self-defence. In recognising this point, one observer has argued that a broad approach to military and non-military measures was consistent with the US approach to counterterrorism: see Reichard, *supra* note 41, at p. 188. I would add, however, these measures are somewhat ceremonial in character, both of them begin with a phrase "that the Alliance is ready to deploy", and the first of them states that the purpose of such a deployment would be "to provide a NATO presence and demonstrate resolve." The "classic" self-defence provisions therefore stop short of any genuine commitment to military action. The real practical substance of these measures is to be found in the other clauses.

[48] In its published material, NATO makes clear that the period after the invocation of Article 5 accommodates a range of individual and collective policy choices: "Any collective action by NATO will be decided by the North Atlantic Council. The United States can also carry out independent actions, consistent with its rights and obligations under the UN charter. Allies can provide any form of assistance they deem necessary to respond to the situation." See NATO, *What is Article 5?*, available at http://www.nato.int/terrorism/five.htm.

[49] I refer here to various individual items of correspondence sent to Mr Baldwin De Vidts, NATO Legal Advisor, by both Mr G. Buquicchio, Secretary of the European Commission for Democracy through Law (Venice Commission), and Mr A. Drzemczewski, Head of Secretariat of the PACE Committee on Legal Affairs and Human Rights (AS/Jur). Copies of all correspondence on file with the Rapporteur.

[50] Letter to Mr G. Buquicchio, Secretary of the Venice Commission, from Mr Baldwin De Vidts, NATO Legal Advisor, Reference CJ(2006)0230, dated 05.04.2006. Regrettably this response came three weeks after the issue of the Venice Commission's opinion on the matter, dated 17.03.2006. See the reference to this correspondence in the Opinion on the International Legal Obligations of CoE Member States in respect of Secret Detention Facilities and Inter-state Transport of Prisoners, adopted by the Venice Commission at its 66th Plenary Session, 17.03.2006; Opinion No. 363/2005, CDL-AD(2006)009 (hereinafter "Venice Commission Opinion, 17.03.2006"), at § 4.

95. In the same letter, Mr De Vidts stated that "in principle, such documents are not made public, which is certainly the case if they are classified."[51] In a subsequent follow-up letter sent on my behalf, I indicated to NATO Legal Services, in accordance with my authorisation as AS/Jur Rapporteur, that I would be prepared to treat the document in a confidential manner.[52] However, Mr De Vidts replied in the following terms:

> *"I can only but confirm that the decision sheet of the North Atlantic Council dated 4 October 2001 is a classified document. I have to state that in order to have access to NATO classified information, such person should have an appropriate security clearance."*[53]

96. Notwithstanding this general rule, which I understand to be a reflection of broader issues around transparency within NATO,[54] there was a further noteworthy feature of the 4 October 2001 measures to emerge from our correspondence with NATO Legal Services. Qualifying his earlier point, Mr De Vidts stated:

> *"However, with regard to certain decisions separate communications to the public in general are made. This has also been the case for <u>some of the decisions</u> taken on 4 October 2001 by the North Atlantic Council"* (emphasis added)

97. The clear indication here is that the public record[55] is not a complete reflection of the measures agreed by the NATO Allies and the considerations underpinning them. It is my conclusion, again confirmed by my American sources, that there were **additional components to the NATO authorisation of 4 October 2001 that have remained secret.**

98. In the course of my inquiry, I have made repeated requests for information regarding the full scope of the NATO authorisation, specific elements of its practical application, and whether its provisions remain in force to the present day. Regrettably, NATO itself has been largely unresponsive to my requests.[56]

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[51] Letter to Mr G. Buquicchio, Secretary of the Venice Commission, dated 08.04.2006, *ibidem*.
[52] Letter to Mr De Vidts from Mr Drzemczewski, Head of the Secretariat, PACE Committee on Legal Affairs and Human Rights (AS/Jur), dated 24.03.2006.
[53] Letter in reply to Mr Drzemczewski's letter of 24.03.2006 from Mr De Vidts, NATO Legal Advisor, Reference CJ(2006)0330, dated 13.04.2006. It should be noted that NATO is accustomed to rejecting requests for "NATO information". Even unclassified information remains for the most part inaccessible, based on the following principle: "NATO unclassified information... can only be used *<u>for official purposes</u>*. Only individuals, bodies or organisations that require it for official NATO purposes may have access to it... NATO information marked in this manner is subject to release via agreement from its originators and subject to recognized storage procedures for its protection" – see letter from Wayne Rychak, Director, NATO Office of Security, to Jacob Visscher, General Secretariat of the Council of the European Union 6.02.2002 (emphasis in original); cited in Alasdair Roberts, "Entangling Alliances: NATO's Security of Information Policy and the Entrenchment of State Secrecy", Cornell International Law Journal, 36 2 (November 2003): 329 – 360, at page 9 in the text.
[54] For insight into the NATO secrecy and security of information regime and its negative impact on transparency in general, I have found the work of the Canadian specialist on transparency issues, Professor Alasdair Roberts, very informative. Specific articles can be found at <u>www.aroberts.us/reseach.html</u>.
[55] The only public record of the 4.10.2001 meeting of the North Atlantic Council is the Statement to the Press by NATO Secretary General, Lord Robertson, 4.10.2001, *supra* note 4. Mr De Vidts attached a print-out of this statement from the NATO website to his letter of 13.04.2006.
[56] Regrettably, NATO itself has been largely unresponsive to our repeated requests for information regarding the full scope of the authorisation, elements of its practical application, and whether its provisions remain in force to the present day. We have sent five separate items of correspondence to Mr De Vidts: letters from Mr Drzemczewski, Head of the Secretariat, PACE Committee on Legal Affairs and Human Rights (AS/Jur) dated 24.03.2006 and 26.04.2006; e-mails of 27.09.2006 and 09.11.2006; and fax of 09.11.2006, receipt of which was confirmed in a telephone conversation with Mr De Vidts' office on 05.12.2006. We have thus far received only a single, incomplete reply: letter from Mr De Vidts, dated 13.04.2006; the reply was incomplete because Mr De Vidts said that one of our questions "is under consideration and at our earliest convenience I will contact you about these issues". On 27.03.2007 I wrote to Mr Jaap de Hoop Scheffer, Secretary-General of NATO, requesting clarification on the outstanding questions. I have yet to receive any response to my letter.

99. Nevertheless, my further analysis of the NATO framework has shown that the authorisations of 4 October 2001 were vital in paving the way for the United States to develop its most important partnerships in the context of the "war on terror". In particular, the CIA would exploit both the blanket overflight clearances and the access to airfields to carry out its clandestine operations through the airspace and on the territory of a broad range of foreign states.

100. **The blanket overflight clearances** granted in this regard were especially significant. In the NATO public statement, the clearances were said to apply to *"military flights related to operations against terrorism"* but, even without sight of the classified parts of the authorisation, this characterisation is misleadingly narrow.

101. "Military flights" is a term relating to the *function* of the flight, not the type of aircraft used. In international aviation law, the status of an aircraft is determined by the function it is performing at any given time[57] – and flights performing "military" functions would necessarily fall into the category of "state aircraft."[58]

102. "State aircraft" enjoy precisely the type of immunity from the jurisdiction of other states that the US Government sought to achieve for aircraft operating on behalf of the CIA: *"they cannot be boarded, searched or inspected by foreign authorities, including host State's authorities."*[59] The conventional constraint on "state aircraft" is that they are usually *"not permitted to fly over or land in foreign sovereign territory otherwise than with express authorisation of the State concerned."*[60] However, with "blanket overflight clearances" under the NATO framework this constraint could be conveniently circumvented.[61]

103. Similarly, the provision of **access to airfields** for operations against terrorism secured landing rights at military bases and dual military-civilian airfields for aircraft operating on behalf of the CIA under a NATO "cover".[62]

104. Accordingly there would be two prerequisites for CIA clandestine operations to fulfil in order to remain within the NATO framework. The first would be to ensure that the aircraft used in such operations were, in their function, designated as "military flights" or "state flights". The second would depend on the state whose airspace or territory was at issue having agreed to the terms of the "blanket" NATO authorisations of 4 October 2001.

105. It is therefore all the more pertinent to note that the range of countries who agreed to these authorisations in the context of the US "war on terror" extended well beyond the NATO member states, into a total of as many as 40 countries.[63] One year after the NATO authorisations, the United States Government declared: *"Our Allies have delivered on that [Article 5] obligation with concrete actions, both individually and collectively: all 18 NATO Allies[64] and the 9 NATO 'aspirants'[65] have*

[57] See the Venice Commission Opinion, 17.03.2006, *supra* note 52, at § 91.
[58] The Venice Commission notes that "as a *general rule, 'aircraft are recognised as state aircraft when they are under the control of the State and used exclusively by the State for state intended purposes'*," citing Diederiks-Verschoor, Introduction to air law, Kluwer, p. 30, § 12. "Military flights," as defined by the NATO Allies in the context of this authorisation, cannot be interpreted to be anything other than "for state intended purposes." See the Venice Commission Opinion, 17.03.2006, *ibidem*, at § 91.
[59] See the Venice Commission Opinion, 17.03.2006, *ibidem*, at § 93.
[60] Article 3(c) of the Chicago Convention on International Civil Aviation, 1944, as cited in the Venice Commission Opinion, 17.03.2006, *ibidem*, at § 93.
[61] For another in-depth analysis of the law applicable to civil and state aircraft, including the applicable permissions / immunities and selected references to NATO, see Center for Human Rights and Global Justice, *Enabling Torture: International Law Applicable to State Participation in the Unlawful Activities of Other States*, NYU School of Law, 2006, available at <u>http://www.chrgj.org</u>.
[62] See the reference in Lansford, *supra* note 41, at p. 112: this agreement "allowed for more streamlined planning and the formulation of missions, especially the transfer of assets from one theater to another." Further references to the terminology of "theaters" in the "war on terror" – specifically relating to the transfer of detainees – were used frequently in our discussions with sources concerning secret detentions in Romania.
[63] See Lansford, *supra* note 41, at p. 112: "when the American-led attacks began, some <u>40 nations</u> gave the coalition permission to use their airspace for operations."
[64] At the time of this statement, the United States' 18 NATO Allies were: Belgium, Canada, Czech Republic, Denmark, France, Germany, Greece, Hungary, Iceland, Italy, Luxembourg, Netherlands, Norway, Poland, Portugal, Spain, Turkey and the United Kingdom. All of them except Canada were then and are now also member States of the Council of Europe.
[65] At the time of this statement, the 9 NATO "aspirants" (or candidates for accession) were: Albania, Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, Slovenia and "the former Yugoslav Republic of Macedonia". All of them were then and are now also member States of the Council of Europe.

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provided blanket overflight rights, ports / bases access, refuelling assistance, and increased law-enforcement co-operation."[66]

d. The wider NATO system and the "war on terror"

106. Aside from the specific authorisations detailed above, the wider NATO system comprises further important elements that have been developed as part of the post-9/11 framework for CIA clandestine operations – including the High-Value Detainee Programme. I intend to examine these elements in the following section as they have been applied to specific countries with which the United States has agreed bilateral arrangements in the course of the "war on terror". For now it suffices to acknowledge the general NATO multilateral treaties or policies on which those arrangements are based.

107. First is the system of NATO "SOFAs" (Status of Forces Agreements), which define the legal status of one state's armed forces on the territory of another state. The general rules of such relationships are set out in the multilateral SOFA for all NATO members,[67] the provisions of which also apply to "aspirant" states through their participation in the "Partnership for Peace"[68].

108. A state does not abandon its sovereignty when it signs a SOFA; on the contrary, SOFAs usually reflect different sets of legal rights and responsibilities that accrue for both the sending state and the host state.[69] The majority of SOFAs are agreed on the bilateral level and are sometimes complemented by further, more finite defence agreements that cover foreign forces stationed at particular bases or facilities. Several CoE member states have acknowledged the applicability of SOFA-type agreements to their relationships with the United States in the context of the "war on terror."[70]

109. An additional relevant element of the wider NATO system is its **secrecy and security-of-information regime**. The NATO Security Policy[71] and its supporting Directive on the Security of Information[72] are among the most formidable barriers to disclosure of information that one might ever

[66] See US Department of State, "NATO: Coalition Contributions to the War on Terrorism", Fact Sheet of 31.10.2002, available at http://www.state.gov/p/eur/rls/fs/14627.htm. Indeed, within days of the authorisations, US Secretary of State Colin Powell made special mention of "*all the NATO nations making commitments under the Article 5 invocation to give us overflight rights and other things that have proven so helpful to our efforts.*" See US Department of State, "Colin Powell Holds Media Availability with NATO Secretary General George Robertson, 10.10.2001, available at http://transcripts.cnn.com/TRANSCRIPTS/0110/10/se.16.html.

[67] See NATO Status of Forces Agreement (SOFA) of 19.06.1951, "Agreement between the Parties to the North Atlantic Treaty Regarding the Status of their Forces", available at http://www.nato.int/docu/basictxt/b510619a.htm.

[68] See NATO Partnership for Peace SOFA (PfP-SOFA) of 1995, "Agreement among the State Parties to the North Atlantic Treaty and the other States participating in the Partnership for Peace Regarding the Status of their Forces", available at http://www.nato.int/docu/basictxt/b950619a.htm. It is important to note that, since it came into force in 1995, this PfP-SOFA has entitled signatories to the Partnership for Peace (PfP) that are not yet members of NATO to nevertheless sign so-called "SOFA Supplementals" with NATO member States. Signatories to the PfP are available at http://www.nato.int/pfp/sig-date.htm.

[69] See the Venice Commission Opinion, 17.03.2006, *supra* note 52, at §§ 106 and 107. For a general overview, see also the EU Network of Independent Experts on Fundamental Rights, "The Human Rights Responsibilities of the EU Member States in the context of the CIA activities in Europe," 25.05.2006, available at: http://ec.europa.eu/justice_home/cfr_cdf/doc/avis/2006_3_en.pdf.

[70] In this regard, it should be noted that nine different CoE member States made reference to NATO, SOFAs or defence agreements with the United States in their replies to the Secretary General of the Council of Europe in the context of his enquiry under Article 52 ECHR. For copies of all member States' replies and the SG's report on his findings, SG/Inf(2006)5, see the Special File at http://www.coe.int/T/E/Com/Files/Events/2006-cia/. In particular, Germany, the Netherlands, Poland and Romania made reference to Article 7 of the NATO SOFA as a provision that determines their potential jurisdiction over foreign forces operating on their territories. Article 7 of the multilateral NATO SOFA provides: "The authorities of the receiving State shall have the right to exercise exclusive jurisdiction over members of a force or civilian component and their dependents with respect to offences, including offences related to the security of that State, punishable by its law but not by the law of the sending State."

[71] NATO's comprehensive Security Policy was modified and updated through a Fundamental Review by the NATO Security Committee (NSC), which concluded in early 2002. The policy is now contained in two documents approved by the North Atlantic Council: C-M(2002)49, "Security within the North Atlantic Treaty Organisation (NATO)"; and C-M(2002)50, "Protection Measures for NATO Civil and Military Bodies, deployed NATO Forces and Installations (Assets) against Terrorist Threats". The first of these documents, C-M(2002)49, which entered into force on 17.06.2002, contains the applicable rules on classification, handling and protection of sensitive information, as well as rules on establishment of and access to NATO Security Areas, and rules relating to NATO personnel. C-M(2002)49 was released on 01.03.2006 by the Hungarian National Security Superintendence in response to a freedom of information request by the Hungarian Civil Liberties Union (HCLU); copy on file with the Rapporteur. C-M(2002)49 is hereinafter referred to as "NATO, Security within the North Atlantic Treaty Organisation, 17.06.2002".

[72] NATO Security Committee, "Directive on the Security of Information", Document AC/35-D/2002, Second Revision, issued 04.02.2005. AC/35-D/2002-REV2 was released in October 2006 by the Hungarian National Security Superintendence in response to a freedom of information request by the Hungarian Civil Liberties Union (HCLU); copy on file with the Rapporteur. AC/35-D/2002-REV2 is hereinafter referred to as "NATO Security Committee, Directive on the Security of Information, 04.02.2005".

come across. It is easy to understand why an institution or state agency wishing to carry out clandestine operations would opt to bring them under the protections of the NATO model.

110. In addition to its own rules, NATO insists that strict regimes protecting classified information exist on a national level. The Membership Action Plan of 1999 implored the NATO "aspirants" – specifically, nine countries in Central and Eastern Europe – to introduce "*sufficient safeguards and procedures to ensure the security of the most sensitive information as laid down in the NATO security policy.*"[73] Indeed commentators have rightly raised concern around the stringent rules on state secrecy that several countries have introduced as part of their accession to NATO[74] and, particularly, "*whether NATO's requirements are unduly biased against transparency … [and] tilted toward secrecy to an unwarranted degree.*"[75] It seems natural that such a security of information regime suited the purposes of the CIA.

111. Finally, with regard to the particular scope of my inquiry, it is apt to point out that NATO Allies and Partners have also developed various forms of co-operation in the realms of Air Defence and Air Traffic Management.[76] Inevitably these initiatives have developed new dimensions and complexities in the worlds of civil and military aviation, some of which may not yet be properly regulated and may permit unlawful clandestine operations using aircraft to pass "under the radar." In the course of analysing my database of aircraft movements, I have also noted that NATO has established a co-operation with Eurocontrol, which aims at "*developing civil-military air traffic procedures in the light of the new security environment.*"[77]

ii. Bilateral arrangements

a. Securing agreements with certain countries to host "black sites" for HVDs

112. Despite the importance of the multilateral NATO framework in creating the broad authorisation for US counter-terrorism operations, it is important to emphasise that the key arrangements for CIA clandestine operations in Europe were secured on a bilateral level.

113. According to US sources, such bilateral arrangements (referred to simply as "bilaterals") exist under many different forms in Europe alone. For example, at the lower end of the range, bilaterals can institute ad hoc collaboration on a single operation to capture, detain or transfer a particular target. The well-documented cases of Abu Omar's abduction in Milan[78] and Khaled El-Masri's 23-day ordeal in a hotel in Skopje before being handed over to a rendition team[79] are instances in which the CIA worked with partner intelligence services in Italy[80] and the "former Yugoslav Republic of Macedonia",[81] respectively, in this manner.

[73] See NATO, "Membership Action Plan", Press Release NAC-S(99)66, Brussels, 24.04.1999.

[74] For insight into the NATO secrecy and security of information regime and its negative impact on transparency in general, I have drawn from the work of the Canadian specialist on transparency issues, Professor Alasdair Roberts, who is based at the Maxwell School of Syracuse University in the United States. For specific articles, refer to Professor Roberts' website at www.aroberts.us/research.html.

[75] See Alasdair Roberts, "NATO, Secrecy and the Right to Information", *East European Constitutional Review*, (Fall / Winter 2003) 86, at p. 87.

[76] See NATO Partnership Action Plan against Terrorism, 22.11.2002, available at http://www.nato.int/docu/basictxt/b021122e.htm; at § 16.2.3.

[77] See Report on the Partnership Action Plan against Terrorism, 23.06.2004, available at http://www.nato.int/docu/basictxt/b040623be.htm; at § 7.4.

[78] For a detailed account of the abduction of the Egyptian citizen Hassan Osama Mustafa Nasr (known as Abu Omar) in Milan, see the Marty Report 2006, *supra* note 6, at p. 37, § 182. For an analysis of this case based on extensive contact with insider sources in the CIA, see the recent article by Matthew Cole, "Blowback", *GQ Magazine*, March 2007, available at http://www.matthewacole.com/pdfs/Blowback-GQ.pdf.

[79] For a detailed account of the ordeal experienced by the German citizen Khaled El-Masri in Macedonia and Afghanistan, see the Marty Report 2006, *supra* note 6, at pages 25 to 32, paragraphs 93 to 132. For new details of this case, refer to section VI.i in the present report entitled "A case study of Khaled El-Masri."

[80] Reference to the particular service involved – SISMI – based on material from the prosecution case documents compiled by Armando Spataro.

[81] In "the former Yugoslav Republic of Macedonia", as I described last year, the partner service with which the CIA collaborated to detain and transfer Khaled El-Masri was the UBK – Uprava za Bezbednost i Kontrarazuznavanje, or the Security and Counter-Intelligence Service. See the Marty Report 2006, *supra* note 6, in particular at pp. 29 to 30, §§ 116 to 119.

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114. In the middle of this range, bilateral agreements signed pursuant to the multilateral NATO framework, and in conformity with NATO standards, have often encompassed elements of intelligence co-operation. Alternatively they have granted "civilian" components – a phrase often used loosely for those operating on behalf of the CIA – the same privileges and permissions that would normally be reserved for members of the military forces. Romania's "SOFA supplemental" agreement with the United States on 31 October 2001, analysed later in this section, appears to be a good example of such a middle-range "bilateral". It also demonstrates the potential for partnership and co-operation to intensify over a period of several years.

115. The bilaterals at the top of this range are classified, highly guarded mandates for "deep" forms of co-operation that afford – for example – "infrastructure", "material support" and / or "operational security" to the CIA's covert programmes. This high-end category has been described to us as the intelligence sector equivalent of "host nation" defence agreements – whereby one country is conducting operations it perceives as being vital to its own national security on another country's territory.

116. The classified "host nation" arrangements made to accommodate CIA "black sites" in Council of Europe member states fall into the last of these categories.

117. The CIA brokered "operating agreements" with the Governments of Poland and Romania to hold its High-Value Detainees (HVDs) in secret detention facilities on their respective territories. Poland and Romania agreed to provide the premises in which these facilities were established, the highest degrees of physical security and secrecy, and steadfast guarantees of non-interference.

118. We have not seen the text of any specific agreement that refers to the holding of High-Value Detainees in Poland or Romania; indeed it is practically impossible to lay eyes on the classified documents in question or read the precise agreed language because of the rigours of the security-of-information regime, itself kept secret, by which these materials are protected.

119. However, we have spoken about the High-Value Detainee programme with multiple well-placed sources in the governments and intelligence services of several countries, including the United States, Poland and Romania. Several of these persons occupied positions of direct involvement in and/ or influence over the negotiations that led to these bilateral arrangements being agreed upon. Several of them have knowledge at different levels of the operations of the HVD programme in Europe.

120. These persons spoke to us upon strict assurances of confidentiality, extended to them under the terms of the special authorisation I received from my Committee last year.[52] For this reason, in the interests of protecting my sources and preserving the integrity of my investigations, I will not divulge individual names. Yet I can state unambiguously that their testimonies – insofar as they corroborate and validate one another – count as credible, plausible and authoritative.

121. I am convinced that these individuals who were or still are in highly-placed positions within the system spoke the truth to us. This was not always simply because they valued truth. In most cases they did so because, to paraphrase one high-ranking politician we interviewed, they did not want the truth to come out *on somebody else's terms*.

[52] Reference to the written record of the meeting of the PACE Committee on Legal Affairs and Human Rights (AS/Jur) in Paris on 13.03.2006 (Synopsis No 2006/25), by which the Committee authorised my inquiry to treat information in confidence. Based upon this authorisation, I engaged in an exchange of letters with European Commissioner Franco Frattini. Copies of this correspondence as well as the above-mentioned synopsis are held on file with the Rapporteur. The assurance of absolute confidentiality with which I have provided my sources, scrupulously observed by the team members who attended the interviews, has proven to be an important, if not decisive, asset to progress in our inquiry.

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122. In short, we used our considerable network of contacts in Poland, Romania, the United States and elsewhere, along with our own form of "intelligence work", to ensure that in our discussions with our sources, the "dynamics of truth" were also at play.

b. The United States' choice of European partners

123. It is interesting to note that the United States chose, in the case of Poland and Romania, to form special partnerships with countries that were economically vulnerable, emerging from difficult transitional periods in their history, and dependent on American support for their strategic development.

124. In terms of both political and intelligence considerations, several sources confirmed that much of the Eastern European "bloc" was considered "out of bounds" for the CIA in contemplating sites for its covert HVD programme. A long-serving CIA officer shared the following analysis with us:

> *"In a lot of those countries, there is still a mindset formed during the Cold War that we are not always on their side. There's a certain tendency to be less than open to our advances. You have to remember most of the East European services are KGB services and that doesn't change overnight.*
>
> *I think Poland is the main exception; we have an extraordinary relationship with Poland. My experience is that if the Poles can help us they will. Whether it's intelligence, or economics, or politics or diplomacy – they are our allies. I guess if there is a special relationship outside of the "four eyes"[53] group, then it is the Americans and the Poles."*

125. In Poland's case, a specific strategic incentive tied in with the NATO framework was the United States' staunch support for the establishment in Poland of the lucrative "NATINADS" programme – the NATO Integrated Air Defence System. Poland participated in the US-led military coalitions in both Afghanistan and Iraq, notably contributing significant Special Forces deployments to Operation Enduring Freedom,[54] and later assuming control of one of the "zones" of allied control in Iraq. An ongoing process of realignment and reform of intelligence structures is dedicated primarily to purging the secret services of so-called "communist remnants".

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126. The United States negotiated its agreement with Poland to detain CIA High-Value Detainees on Polish territory in 2002 and early 2003. We have ascertained that the first HVDs were transferred to Poland in the first half of 2003. In accordance with the operational arrangements described below, Poland housed what the CIA's Counterterrorism Centre considered its "most sensitive HVDs," a category which included several of the men whose transfer to Guantanamo Bay was announced by President Bush on 6 September 2006.

127. We received confirmations – each name from more than one source – of eight names of HVDs who were held in Poland between 2003 and 2005[55]. Specifically, our sources in the CIA named Poland as the "black site" where both Abu Zubaydah and Khalid Sheikh Mohamed (KSM) were held and questioned using "enhanced interrogation techniques." The information known about these interrogations has formed the basis of heated debate in the United States and the wider international community, leading, in Zubaydah's case[56], to high-level political and legislative manoeuvres and, in KSM's case, to the admission of some troubling judicial precedents[57].

[53] The "four eyes" group is the CIA officer's reference to the very strong four-way co-operation on intelligence matters between the secret services of the United States, Canada, the United Kingdom and Australia: "It's just a whole different degree of trust between those four."

[54] See Bensahel, *Counterterror Coalitions*, *supra* note 37, at p. 10; Table 2.1, "Summary of European and Canadian Contributions to Operation Enduring Freedom".

[55] In addition to these sources, a single CIA source told us that there were "up to a dozen" HVDs in Poland in 2005, but we were unable to confirm this number. Among the eight names repeated to us from several sources were Ramzi bin al-Shibh, Tawfiq bin Attash and Ahmed Khalfan Ghailani.

[56] The individual circumstances of Abu Zubaydah's interrogations remain largely unknown, but the introduction of "enhanced interrogation techniques" for the CIA's use on him has sparked the debate to which I refer. For an insightful early account of CIA interrogation practices, see Jane Mayer, "A Deadly Interrogation – Can the CIA legally kill a prisoner?" in *The New Yorker*, 14.11.2005, available at http://www.newyorker.com/archive/2005/11/14/051114fa_fact.

[57] Specifically I refer to the admission into evidence of the "Substitution for the Testimony of Khalid Sheikh Mohamed" in the context of the trial of Zacarias Moussaoui; as well as the well-founded reservations that the testimony in question had been procured under torture or other forms of ill-treatment. It is worth mentioning the troubling preamble transmitted to the jury introducing KSM's testimony : "Although you do not have the ability to see the witness' demeanour as he testifies, you must approach these statements with the understanding that they were made under circumstances designed to elicit truthful

128. For reasons of both security and capacity, the CIA determined that the Polish strand of the HVD programme should remain limited in size. Thus a "second European site" was sought to which the CIA could transfer its detainees with "no major logistical overhaul". Romania, used extensively by United States forces during Operation Iraqi Freedom in early 2003, had distinct benefits in this regard: as a member of the CIA's Counterterrorist Centre remarked about the location of the proposed detention facility, "our guys were familiar with the area".

129. Our sources on both sides of the agreement – in Romania and the United States – emphasised the importance of both trust and national interest as factors underpinning their negotiations. Military assistance – reflected since in the Agreement of December 2005[88] – also significantly influenced the decision to provide facilities and resources, as one American source reflected:

> *"The bilateral arrangements were built on two things: personal relationships and material investment. If your men on the ground have a very good personal relationship with the men in the partner service; that means a lot. And it also means a lot if the Romanians are gonna get their runways improved, new barracks built and new military hardware; that means a lot."*

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130. Romania was developed into a site to which more detainees were transferred only as the HVD programme expanded. I understand that the Romanian "black site" was incorporated into the programme in 2003, attained its greatest significance in 2004 and operated until the second half of 2005. The detainees who were held in Romania belonged to a category of HVDs whose intelligence value had been assessed as lower but in respect of whom the Agency still considered it worthwhile pursuing further investigations.

131. Asked to provide names of those held in Romania, a senior official in the CIA's Counterterrorism Centre, who was directly involved in operating the programme, said: "*Look we don't talk about names, okay. We've got a target range that we know less about. We're acting on their intelligence] value when we're less certain.*"

132. Our sources told us that some of the targets in this "lower" HVD category had in fact been identified, and sometimes even apprehended, by a foreign intelligence service before they were made available to the CIA. Upon our strict assurance of anonymity, one CIA case officer was willing to describe limited details of a scenario in which a detainee had been "*offered to us by our liaisons*" and was later transferred to Romania. The detainee was of Afghan nationality.

133. Examples of the profile of those held in Romania were provided to us by two separate American sources. We understand that the profile fits categories such as:

- associates and suspected operatives of key Taliban leaders like Mullah Omar;
- foreign fighters suspected of having performed roles for the Taliban in Afghanistan, including provision of logistics;
- leaders of branches of suspected "support networks" for the insurgencies in Iraq and Afghanistan; or
- suspected leaders of terrorist factions in the Middle East.

statements from the witness." For the full testimony, and other materials related to the Moussaoui trial, see Reporters Committee for Freedom of the Press, "Moussaoui Trial exhibits and documents," available at http://www.rcfp.org/moussaoui/.

[88] For detailed discussion of the Agreement between Romania and the United States of December, dated 5 December 2005, refer to section II.H.b entitled "Application of the NATO framework in Romania."

134. The majority of the detainees brought to Romania were, according to our sources, extracted "*out of [the] theater or country*". This phrase is understood as a reference to detainee transfers originating from Afghanistan and later Iraq.

135. More specifically, the description of an "out-of-theater" detention facility presents the mirror image of the kinds of prisons operated "in-theater," which are customarily referred to by United States Forces as "Theater Internment Facilities" – one notable example being the "Bagram Theater Internment Facility."[89] CIA detainees are known to have been held at facilities such as Bagram both before[90] and after[91] having been subjected to rendition, and to secret detention in other countries.

iii. Responsible political authorities and preservation of secrecy in Poland and Romania

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136. To reveal the means by which bilateral arrangements were put in place for CIA detentions in Poland and Romania, we must trace a trajectory of deepening co-operation with the United States that spans over several years. During the immediate post-9/11 period, when America was identifying its key strategic partnerships for the "war on terror," both Poland and Romania were in the midst of their own processes of "strategic realignment", eager to secure their positions as indispensable members of the NATO Alliance and friends of the United States.

137. In the course of a lengthy discussion with us about the CIA's choice of partner countries in Eastern Europe, one high-ranking Eastern European politician involved in the programme said to us:

> *"Poland and Romania; you don't know why? [It is] because we are the only two countries who are truly pro-Western. But now we are in danger of being seen as an experiment. It is most unfortunate."*

138. When America began developing its strategy for the "war on terror" under the NATO framework, Poland was already a member of the NATO Alliance, while Romania was a NATO "aspirant", or accession candidate. This difference in status proved to be of little consequence, however, as both countries followed remarkably similar paths in terms of harmonising their laws and structures with the NATO framework. The role of the United States was crucial to the reform processes in both countries, particularly in terms of the intelligence services and oversight structures that monitor them.

a. Application of the NATO framework in Poland

139. Poland became a member of NATO on 12 March 1999 and the multilateral NATO SOFA agreement entered into force in Poland in 2000.[92] In the five years directly preceding its NATO accession, Poland had signed several noteworthy agreements with the United States[93] in the realms

[89] For example, official documents refer extensively to the "Bagram Theater Internment Facility" (or "BTIF") as the name given to the detention facility operated by the US Department of Defense at the Bagram Airfield in Afghanistan. See, *inter alia*, Declaration of Colonel Rose M. Miller, Commander of Detention Operations, CJTF-76, in *Rasoulah et al v. Rumsfeld*, before the US District Court for the District of Columbia, 19.11.2005; at § 3.

[90] I have information in my possession relating to at least three different detainees who were held at Bagram before being transferred out to secret detention in another country. I have undertaken to treat this information in confidence, so I shall not refer here to names or precise periods in which they were detained.

[91] I reported last year on the case of Binyam Mohamed al-Habashi, an Ethiopian citizen and former UK resident, who was detained at Bagram between May and September 2004 after having been held in CIA custody in Pakistan, Morocco and the 'Dark Prison' in Kabul, and subjected to two separate renditions. See the Marty Report 2006, *supra note* 6, at section 3.9, pp. 42 to 45.

[92] See Stefan Meller, Minister of Foreign Affairs of the Republic of Poland, Response of the Republic of Poland to Questions addressed by the Secretary-General of the Council of Europe with regard to Article 52 ECHR, dated 17.02.2006 (hereinafter 'Response of Poland to CoE Secretary General under Article 52 ECHR'), available at http://www.coe.int/T/E/Com/Files/Events/2006-cia/Poland.pdf, at p. 6. The Polish authorities pointed out that: "The [NATO SOFA] Agreement, however, does not confer jurisdictional immunity on members of foreign armed forces, but elaborates the rules of determining jurisdiction with regard to prohibited acts on the territory of the host State. In particular, the Agreement grants the sending State the primary right to exercise jurisdiction over a member of its forces or of their civilian component in relation to offences arising out of any act or omission done in the performance of official duty [SOFA, Article 7(3),(ii)]. It should also be underlined that in the light of the NATO SOFA, all members of the armed forces of a foreign State staying on the territory of the Republic of Poland are obliged to respect Polish law."

[93] For a full record of (unclassified) bilateral treaties between the United States and Poland, see US Department of State, *Treaties in Force – A list of Treaties and other International Agreements of the United States in Force on January 1, 2006*, "Poland", at pp. 263-266.

of defence,[94] aviation,[95] extradition[96] and judicial assistance,[97] which paved the way for a very close co-operation both within and outside the NATO Alliance.

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140. Poland told the Council of Europe that, in addition to its obligations under multilateral treaties, it has concluded an unspecified number of "agreements governing special forms of co-operation."[98] Whilst we do not know the precise scope of these agreements, the one example given by the Polish authorities – that of "trans-frontier surveillance" – confirms that in at least some of their thematic coverage they pertain directly to the work of the intelligence services. We have been unable to obtain copies of Poland's "bilaterals" with the United States, which it is safe to assume fall under this bracket, because they are classified.

141. Poland's Classified Information Act, which entered into force in March 1999,[99] is part of a fairly typical apparatus among new NATO members[100] for dealing with sensitive information in accordance with the NATO Security Policy. For example, the Act's restrictive procedures for granting or denying "security clearance"[101] to individuals wishing to access classified information were challenged as unconstitutional by the Polish ombudsman.[102] However these provisions were compulsory for NATO membership and – of no small coincidence – would transpire to be vital to the preservation of secrecy around the operations of the CIA's HVD programme in Poland.

b. Application of the NATO framework in Romania

142. In the case of Romania, the processes of acceding to NATO and developing a bilateral framework with the United States, under which the CIA could operate on Romanian territory, proceeded almost simultaneously.

143. According to our sources, the statement of President Ion Iliescu[103] in response to the attacks of 11 September 2001 was Romania's "critical turning point." In that statement, President Iliescu signalled Romania's intention "to act as a *de facto* member of the NATO alliance," setting a clear tone at a time when fellow former Eastern-bloc countries were likewise scrambling to demonstrate their loyalty to the United States.

[94] See, for example, *Acquisition and Cross-Servicing Agreement*, with annexes, signed at Warsaw, 22.11.1996; entered into force 22.11.1996, TIAS.
[95] See, for example, *Memorandum of Agreement concerning Assistance in developing and modernising Poland's Civil Aviation Structure*, signed at Washington and Warsaw, 5 and 14.01 1998; entered into force 14.01.1998, TIAS.
[96] See *Extradition Treaty between the United States and the Republic of Poland*, signed at Washington, 10.07.1996, entered into force 17.09 1999, TIAS.
[97] See *Treaty on Judicial Assistance with Criminal Matters*, with forms. Done at Washington, 10.07.1996; entered into force 17.09.1999, TIAS
[98] See Response of Poland to CoE Secretary General under Article 52 ECHR, *supra* note 94, at p. 3.
[99] See *Classified Information Act*, Polish Journal of Laws, No. 11, item 95; copy available from the Helsinki Foundation for Human Rights and the Helsinki Committee for Human Rights in Poland.
[100] On this point, see Alasdair Roberts, "NATO, Secracy and the Right to Information", *supra* note 56.
[101] For commentary on the security clearance procedures by a local journalist, see Pawel Wronski, "Przeswiet sie i dowiedz sie. Z tajemnicami do NATO" (Submitting to clearance and getting to know. Our secrets and NATO), in *Gazeta Wyborcza*, No. 7, 9-10.01.1999.
[102] See International Helsinki Federation for Human Rights, *Human Rights in the OSCE Region: Report 2000 (Events of 1999)*, "Annual Report on Poland", available at http://www.ihf-hr.org/documents/doc_summary.php?sec_id=3&d_id=1784, at p. 256.
[103] See Xinhua News Agency, "Romanian President Firmly Condems Terrorism", Bucharest, Romania, 11.09.2001; excerpt available as part of a compilation entitled "NATO Aspirant Countries condemn the terrorist attacks on the USA", at http://stoianov.president.bol.bg/nato_summit/en/condemnation.html. Just over a year later, in a statement during President Bush's visit to Bucharest on 23.11.2002, President Iliescu declared that the United States and Romania had "identical positions on the way to address the great challenges that the international community is facing, including the threat of terrorism."

144. Indeed, Romania could be said to have outdone even many NATO members in the immediacy of its demonstrations of support for the "war on terror." In its session of 19 September 2001, the Romanian Parliament gave its "formal approval" to President Iliescu's stated position and "approved basing and overflight permission for all US and coalition partners"[104] – thus pre-empting the North Atlantic Council's multilateral authorisations of 4 October 2001 by more than two weeks. A source involved in drafting this permission confirmed to us that its scope was deliberately designed to cover aircraft operated by or on behalf of the CIA.

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145. Furthermore the most important domestic implication of the Romanian Parliament's approval for President Iliescu's pro-American stance was that, in the process, it effectively mandated the President, working through his Office of National Security, to sign NATO-type agreements and bilateral operational orders with the United States.

146. In exercise of this mandate, President Iliescu negotiated and signed what the Romanian authorities describe as a "SOFA Supplemental"[105] – the *Agreement between Romania and the United States of America regarding the Status of US Forces in Romania*[106] - on 30 October 2001. Along with the multilateral NATO SOFA, this agreement is said by the Romanian authorities *generally* to "settle the jurisdiction, the legal responsibilities and other aspects regarding the status of one party's armed forces personnel... and of contractors of those armed forces when acting on the other party's territory".[107] In reality, however, they are *specifically* one-way arrangements, legislating for an increased size and scope of US activity on Romanian soil.

147. When examined with hindsight, the 2001 agreement reveals a permissive attitude on the part of the Romanian authorities, broadly towards US military and quasi-military operations on Romanian territory, and in particular towards the actions of American service personnel. The "SOFA Supplemental" created a "special regime of access on national territory",[108] which it extended not only to "members of the military forces"[109] in a conventional sense, but also to "members of the civilian airline companies"[110] and anyone else who is "declared by the American authorities to be part of the US armed forces, and can present a travel order issued by the US military". The breadth of the designation used here represented the perfect opening for the CIA to conduct its clandestine operations in the country.[111]

[104] See US Department of Defence, Fact Sheet of 7.06.2002, "International Contributions to the War against Terrorism", available at http://www.defenselink.mil/news/Jun2002/d20020607contributions.pdf.
[105] "Answers of the Romanian Delegation to the Questionnaire on the Alleged Secret Detention Centres", appended to the letter to me from Gyorgy Frunda, Chairperson of the Romanian Delegation to PACE, 20.01.2006; at p. 1. This agreement is said to be supplementary to the NATO SOFA of 1951, of which Romania only became a party when it joined NATO on 29.03.2004. It should be noted that in 2001, when Romania was not a party to the 1951 Agreement, it at the time relied upon its signature of the PfP SOFA of 1995 as the basis for its supplemental. See the section II.i. earlier in this report on the the wider NATO system and the 'war on terror', and the accompanying references, *supra* notes 42.
[106] See the *Agreement between Romania and the United States of America regarding the Status of US Forces in Romania*, signed at Washington, DC on 30.10.2001; entered into force on 10.06.2002, TIAS (hereinafter referred to as "Romanian SOFA Supplemental"). For a full record of (unclassified) bilateral treaties between the United States and Romania, see US Department of State, *Treaties in Force – A list of Treaties and other International Agreements of the United States in Force on January 1, 2006*, "Romania", at pp. 270 to 272.
[107] "Answers of the Romanian Delegation to the Questionnaire on the Alleged Secret Detention Centres", appended to the letter to me from Gyorgy Frunda, Chairperson of the Romanian Delegation to PACE, 20.01.2006; at p. 1.
[108] This phrase is understood to describe the permission given to "enter, exit and move freely within the territory", with a US military travel order sufficing as identification.
[109] See Romanian SOFA Supplemental, 30.10.2001, *supra* note 106, at Article II(2).
[110] It is unclear whether this reference to "the civilian airline companies" indicates that there is a specific numbered or named list of US-registered companies whose members fall under the "special regime of access" referred to. However, in a comparable scenario, it has in the past been disclosed in documents released by the US Department of Defence under a Freedom of Information Act request that specific US aviation companies (including several of those known to be involved in detainee transfer operations) have been awarded "classified contracts" by certain units of the US armed forces. See Seth Hettena, The Associated Press, "Navy contracted planes used in CIA missions", 24.09.2005, available at http://www.usatoday.com/news/washington/2005-09-24-navy-cia_x.htm
[111] In addition, it is known that the meanings of important "cover" designations often used by the CIA are set forth in the 2001 SOFA Supplemental. These include the terms "civilian component", "dependent" and "United States contractor" – all of which categories were also granted the same permissions and protections as conventional military officers. Unfortunately, I have not as yet been able to obtain the sections of the agreement in which the meanings of those terms are defined.

148. It is my conclusion that under the October 2001 bilateral agreement, along with any additional classified annexes agreed at that time or subsequently, personnel brought into the country under the banner of the United States military **have in practice operated on Romanian territory with complete freedom from scrutiny or interference by their national counterparts** ever since.

149. In this context it is important to consider a more recent "access agreement" between Romania and the United States, signed on 6 December 2005, which deals primarily with the activities of US forces based at a selected number of Romanian military facilities.[112]

150. Under this new agreement, US forces – including their "civilian component" – enjoy extraordinarily free use of certain Romanian airbases and other facilities for "training, transit... refuelling of aircraft, accommodation of personnel, communications, staging and deploying of forces and material ... and for other such purposes as the Parties or their Designated Authorities may agree."[113]

151. In terms of permissions, all US Government aircraft and vehicles are "free from inspection." In addition, an apparently blanket authorisation to "over-fly, conduct aerial refuelling, land and takeoff in the territory of Romania" is granted to both US Government aircraft and "civil aircraft ... operating exclusively under contract to the United States Department of Defense."[114] Indeed, an equally permissive approach is applied to almost every aspect of the agreement, from the "construction activities" undertaken by US forces[115] to the apparently unquestioning acceptance as "valid" of "all professional licences."[116]

152. In terms of protections, Romania's key obligations seem to be to give "due regard to United States' operational and security concerns,"[117] and to "take all reasonable measures within its power to ensure the protection, safety and security of United States forces property."[118]

153. I have viewed the Romanian Access Agreement in sharpest focus, however, when I consider it in the light of testimony received from Romanian and American officials about the bilateral "operating agreements" that prevailed previously. Sources on both sides confirmed to me that the provisions of the December 2005 Access Agreement are best understood as arrangements that have prevailed for several years but have only latterly been formalised.

154. This incremental method of formalising such "bilaterals" has in fact been used by the US in other countries in which its forces have been undertaking important detention operations in the context of the "war on terror." The most conspicuous example is Afghanistan, where last year's Accommodation and Consignment Agreement for Lands and Facilities at Bagram Airfield[119] (signed on 28 September 2006) represents the furthest extension of the US model of permissions and protections that I have yet to encounter.[120] It was described in testimony before a US court as being an agreement that "follows similar such arrangements dating back to at least 2003".[121] Indeed, I am aware of an earlier document referred to as "Note No. 202",[122] which indicates that the initial bilateral arrangements in Afghanistan – in strikingly similar terms to the situation in Romania – were agreed upon essentially by members of the executive[123] without reference to parliamentary oversight mechanisms.

[112] See *Agreement between the United States of America and Romania regarding the activities of United States Forces located on the territory of Romania*, done at Bucharest, 6.12.2005; (hereinafter "Romanian Access Agreement"); copy on file, submitted officially to the Rapporteur in May 2006 after its adoption by the Romanian Parliament. It is worth pointing out that the references to "Implementing Arrangements" in this text afford the Parties a considerable degree of latitude as to how they put the agreement into practice: "The technical details regarding the agreed facilities and areas shall be in accordance with Implementing Arrangements to be concluded for each facility and area" [at Article II(1)]; and "As appropriate, the Parties or their Designated Authorities may enter into Implementing Arrangements to carry out the provisions of this Agreement" [at Article XI].

[113] See Romanian Access Agreement, 6.12.2005, *ibidem*, at Article II(1). It is relevant to note that the "Designated Authorities" in question are the Ministry of National Defence of Romania and the Department of Defense of the United States of America, respectively.

[114] See Romanian Access Agreement, 6.12.2005, *ibidem*, at Article VII. In the final clause, the fact that the exempted civil aircraft have to be under exclusive contract to the Department of Defense (rather than the US Government more generally) is a clear indication of the military nature of the arrangements.

[115] See Romanian Access Agreement, 6.12.2005, *ibidem*, at Article II(4).

[116] See Romanian Access Agreement, 6.12.2005, *ibidem*, at Article IX.

[117] See Romanian Access Agreement, 6.12.2005, *ibidem*, at Article II(3).

[118] See Romanian Access Agreement, 6.12.2005, *ibidem*, at Article VI(1).

[119] See the *Accommodation Consignment Agreement for Lands and Facilities at Bagram Airfield between the Islamic Republic of Afghanistan (represented by HE General Abdul Rahim Wardak, Minister of Defense) and the United States of America*, made and entered into by the Host Nation and the Lessee on 28.09.2006 (hereinafter referred to as the "Bagram Agreement"); copy on file with the Rapporteur.

[120] See, for example, the Bagram Agreement, 28.09.2006, *ibidem*, at § 9: "The Host Nation [Afghanistan] covenants and warrants that the United States shall have exclusive, peaceable, undisturbed and uninterrupted possession of the Premises during the existence of this agreement. The United States shall hold and enjoy the Premises during the period of the agreement without any interruption whatsoever by the Host Nation or its agents." As is clearly stated in § 13, the Bagram Agreement of 2006 "supersedes all previous agreements between the United States and Host Nation for the use of Bagram Airfield" – implicitly meaning that any formal or informal arrangements that had prevailed prior to September 2006 had finally been brought into one coherent written text. A similar situation can surely be said to apply in Romania with the signature of the Access Agreement of December 2005.

155. The Romanian authorities have indicated to us on two occasions that the NATO framework described here has been the basis for the operations of the CIA in Romania. The first reference came in response to my question about whether the Government is "systematically informed of the activities of foreign secret services (in particular the CIA) on national territory."[124] Romania replied[125] by citing the NATO framework's *Agreement on Classified Information* and a bilateral *military* instrument, the *Agreement on the Protection of Military Classified Information*,[126] thus making clear that CIA activities now fall unambiguously under the secrecy regime instituted under the NATO Security Policy. As in several other Eastern European countries who adopted more stringent secrecy policies as part of their NATO accession, Romania's legislation on classified information was expedited through Parliament[127] and criticised by civil society for being unbalanced.[128]

156. The second reference was part of an apparent acceptance, in principle, that United States agencies and personnel have carried out detainee transfer operations in Romania in the context of the NATO framework. The following statement was delivered by the Chairperson of the Romanian Delegation to PACE, Mr Gyorgy Frunda, during the PACE Plenary Debate on my report in June 2006:

> *"Concerning the transfer of prisoners, from the first moment we said that Romania **collaborated with the United States and with other members of NATO. Aircraft landed in Romania and transported persons.** We did not and do not know who the persons are because, do not forget, the aircraft are under the authority of the countries where they are registered. **The countries in which the airports are located do not have legal instruments to see what happens on board.** That is why United States authorities have to answer not only political but juridical questions about whether persons were harassed or wrongly treated on the airplanes."*[129]

[121] See Declaration of Colonel Rose M. Miller, Commander of Detention Operations, CJTF-76, in *Ruzatullah et al v. Rumsfeld*, before the US District Court for the District of Columbia, 19.11.2006; at § 5. Also note Colonel Miller's statements that "each nation separately controls access to its respective compound on the Airfield" and that "the US does not have complete, plenary jurisdiction".

[122] Note No. 202, dated 26.09.2002, is reproduced in a translated document obtained by Amnesty International, which transmits the concurrence of the Afghanistan Ministry of Foreign Affairs with this note to the US Embassy in Kabul; see Document No. 93 of the Ministry of Foreign Affairs (America and Canada Political Affairs Division), dated 28.05.2003.

[123] Note No. 202 was signed by the Minister of Foreign Affairs of the Transitional Islamic State of Afghanistan, Doctor Abdullah, on behalf of the transitional government. No reference is made to any pursuant procedure for approval of this document, nor am I aware of one having taken place. Furthermore, in the final paragraph, "the parties waive any and all claims against each other for damage to or loss or destruction of property owned by either party, or death or injury to any military or civilian personnel of the armed forces of either party, as a result of activities in Afghanistan under this agreement."

[124] See my letter of 19.12.2005 to Chairpersons of National Delegations to PACE, which contained "Questions which members of the Parliamentary Assembly might put to their respective governments in their national parliaments," reproduced as Appendix II to *Information Memorandum II*, 22.01.2006.

[125] "Answers of the Romanian Delegation to the Questionnaire on the Alleged Secret Detention Centres", appended to the letter to me from Gyorgy Frunda, Chairperson of the Romanian Delegation to PACE, 20.01.2006; at p. 1.

[126] See the *Agreement between Romania and the United States of America on the Protection of Military Classified Information*, done in Washington, 21.06.1995, entered into force 2003; cited *ibidem*.

[127] Alasdair Roberts cites a revealing news report about the passage of the Romanian legislation in April 2002: "[On 3 April] a certain Colonel Constantin Raicu [of the Romanian Intelligence Service], who is in charge of the protection of state secrets, came down like a storm on the members of the Senate Juridical Commission, telling them: 'This morning we have received signals from [NATO in] Brussels indicating that if the bill on classified information is not passed before 16 April, they cannot exclude adopting a critical attitude regarding Romania. We agree with any form – the colonel added – but please, pass it as soon as possible, or we will be facing huge problems.' The Senators... grasped the situation very quickly, and they approved the draft bill in the form passed by the Chamber of Deputies." See *Bucharest Ziua*, "NATO used as a Scarecrow to pass Law on Secrets," 08.04.2002, www.ziua.ro, cited in Alasdair Roberts, "NATO, Secrecy and the Right to Information", *supra* note 56, at p. 87.

[128] See International Helsinki Federation for Human Rights, *Human Rights in the OSCE Region: Report 2002 (Events of 2001)*, "Annual Report on Romania", available at http://www.ihf-hr.org/documents/doc_summary.php?sec_id=3&d_id=1782, at p. 257.

[129] Contribution of Mr Gyorgy Frunda, Chairperson of the Delegation of Romania to PACE, at the 17th Sitting of the Plenary of the Parliamentary Assembly during its 2006 Session, Strasbourg, 27.06.2006.

157. Our continuing investigations since June 2006 have allowed us to put this statement into context. Romania is right to state that the NATO framework on the multilateral level did enable detainee transfers through many Council of Europe member states, including larger nations like Germany mentioned in my report last year. Romania, like Poland, went beyond the multilateral framework, however, when it expanded the scope and purpose of the authorisations it granted the United States. According to one of our sources involved in making the key bilateral arrangements, Romania "knew what the United States needed from its allies and in what areas we could assist them." It was therefore perceived to be in the national interest to extend a further level of support: "[having] worked on the secret flights... we worked directly with associates of the CIA on establishing prisons here."

c. Preserving secrecy through military intelligence partnerships

158. In the course of our discussions with intelligence officials in the United States, a senior member of the CIA Counterterrorist Center made the following remarks to our team:

> "Many European countries have multiple security services. And in most countries the Agency deals with all of them: with the police, with the anti-terrorism police, with foreign intelligence, with other units – and of course with military intelligence ... But for the HVD programme we worked strictly in line with 'need-to-know'."

159. There are two essential items of information in this statement, both of which have ultimately proved indispensable to our understanding of how the HVD programme worked in Europe. One item – military intelligence partnerships – goes to the heart of how the CIA formed its relationships; the other – preservation of secrecy – reveals important structural considerations. I shall deal with the structural considerations first.

d. Preserving secrecy and NATO Security Policy

160. Our source's use of the expression "need-to-know" encapsulates one of the means used to keep the HVD programme in Europe secret.[130] Through discussion with several other sources we have established that classified information about the bilateral arrangements between the CIA and its partner services in Poland and Romania was **treated according to a strict security of information regime drawn from the terms of NATO's Security Policy.**

161. Under the terms of the NATO Security Policy,[131] "individuals in NATO nations ... shall only have access to NATO classified information for which they have a need-to-know. No individual is entitled solely by virtue of rank or appointment or PSC [Personnel Security Clearance] to have access to NATO classified information."[132] In the context of the HVD programme, according to a senior CIA official, the CIA classified its operational information into "tiny little pieces," each of which would be assessed separately under the "need-to-know" principle in order to prevent any single foreign official from seeing the "bigger picture" of what was actually happening:

> "The Agency could be bringing UBL [Usama bin Laden] himself from an airplane into a prison in your country, but on every tiny little piece of the classified operational information, if we figure you don't need to know that information then frankly, as an individual, you will never know it."

[130] We initially probed into the means used to keep the HVD programme secret because of a tip-off from an insider source. The source had indicated that the NATO framework "holds the key" to understanding the European dimension of the programme, in terms of both "physical security and security of information."

[131] See NATO, Security within the North Atlantic Treaty Organisation, 17.05.2002, *supra* note 73. The policy is designed to ensure that a "common degree of protection" is applied both to NATO's own information and to information exchanged among NATO members on a bilateral level. Both categories of information are referred to as "NATO classified information" in the context of this policy.

[132] *Ibidem*, in Enclosure "C" – Personnel Security, at the section entitled "Application of the 'Need-to-Know' Principle," p. 2, § 6. In a handbook accompanying an earlier version of the policy, this "fundamental principle" was reiterated to mean that information should be limited in its distribution for *work purposes only*, and not "merely because a person occupies a particular position, however senior." See NATO Security Committee, *A Short Guide to the Handling of Classified Information*, Document AC/35-WP/14.4, Brussels, 22.09.1958

162. The body that generates any piece of classified information retains what is known as "originator control,"[133] an undisputed right to set parameters as to which individuals receive the information, how they are briefed, what they are allowed to do with the information, and whether the information will ever be declassified, or have its classification reduced.[134] It is generally accepted that "the principle of originator control trumps the need-to-know principle;"[135] otherwise put, based on this principle, the CIA was able to exclude from the information loop even those individuals (specifically, some politicians) whom it might have perceived to have a genuine need to know the "bigger picture."

163. Finally, the CIA's choice of its "point men" in Poland and Romania – key individuals in each country who vouched for absolute, unwavering adherence to the rules by their own national services – reflected the same considerations of "loyalty, trustworthiness and reliability"[136] integral to NATO rules on personnel security. When discussing the kinds of people as their liaisons, our CIA sources referred to relationships of "trust developed over decades" and interpretations of national security issues that were "99% in harmony with one another".

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164. By preserving the secrecy of the covert HVD programme on a NATO-compliant basis, the CIA achieved several of its central objectives: it hand-picked the services and the "point men" it would work with in the countries in question; it limited to an absolute minimum the number of Polish and Romanian counterparts who knew about even "tiny little pieces" of these operations in their own countries; and it ruled out any distribution whatsoever of the classified information beyond these small circles, unless expressly approved by the US Government itself.

165. Yet none of these restrictive rules mitigates the fact that Poland and Romania, as host countries, were knowingly complicit in the CIA's secret detention programme. When we sought confirmation from one of our sources in the CIA that these were bilateral (rather than unilateral) arrangements, and that every programme was carried out with the express authorisation of the relevant partner state, we received this emphatic response:

> "One of the great enduring legacies of the Cold War, which has carried into these alliances, is that NATO countries don't run unilateral operations in other NATO countries. It's a tradition that is almost sacrosanct. We [the CIA] just don't go trampling on other people's turf, especially not in Europe."

166. Hence the importance of our source's affirmation that the CIA forms important intelligence partnerships **not just with civilian counterparts but also in the *military sphere*.** As our inquiry progressed, we realised that the CIA's fellow civilian intelligence agencies (domestic and foreign) are not necessarily the most appropriate choices as partners or liaisons on highly secretive operations due to their encumbered civilian oversight mechanisms. Thus, an integral part of our investigative strategy, building on our knowledge of the NATO framework, was to apply equal scrutiny to the **CIA's partnerships with Military Intelligence services.**

[133] *Ibidem*, in Enclosure "B" – Basic Principles and Minimum Standards of Security, at the section entitled "Basic Principles," p. 3, § 9(g).

[134] *Ibidem*. See, *inter alia*, Enclosure "B" – Basic Principles and Minimum Standards of Security, at the section entitled "Basic Principles," p. 2, § 9(b): "classified information shall be disseminated solely on the basis of the principle of need-to-know to individuals who have been briefed on the relevant security procedures... only security cleared individuals shall have access."

[135] See Alasdair Roberts, "NATO, Secrecy and the Right to Information", *supra* note 58, at p. 82.

[136] *Ibidem*, in Enclosure "B" – Basic Principles and Minimum Standards of Security, at the section entitled "Personnel Security," p. 4, § 11; see also the supporting provisions in Enclosure "C" – Personnel Security, pp. 1-4. In the previous version of the NATO policy, C-M(55)15(Final) as released in 1964, anyone receiving a security clearance was assessed to have shown "unquestioned loyalty [and] such character, habits, associates and discretion as to cast no doubt upon their trustworthiness."

III. Secret detention operations in Poland

i. *Partnering with military intelligence in Poland*

167. Since the May 2002 "quasi-reform"[137] of its secret services, Poland has had two civilian intelligence agencies: the Internal Security Agency (*Agencja Bezpieczenstwa Wewnetrznego, or ABW*); and the Foreign Intelligence Agency (*Agencja Wywiadu, or AW*). Neither of these services was considered a viable choice as a CIA partner for the sensitive operations of the HVD programme in Poland, precisely because they are "subject to civil supervision, both by Parliament and Government."[138] Since their creation, the Heads of both the *ABW* and the *AW* have been appointed and tasked by the Prime Minister, and are directly accountable to the Council of Ministers, initially through a Cabinet Committee chaired by the PM (*Kolegium do Spraw Sluzb Specjalnych*) and latterly through the position of Minister-Coordinator for the Special Services.[139] The *ABW* and the *AW* are both also answerable to the Commission for Special Services in the Polish Parliament (*Sejmowa Komisja do Spraw Sluzb Specjalnych*).

168. According to our sources, the CIA determined that the bilateral arrangements for operation of its HVD programme had to **remain absolutely outside of the mechanisms of civilian oversight**. For this reason the CIA's chosen partner intelligence agency in Poland was the **Military Information Services** (*Wojskowe Sluzby Informacyjne, or WSI*), whose officials are part of the Polish Armed Forces and enjoy "military status" in defence agreements under the NATO framework. The *WSI* was able to maintain far higher levels of secrecy than the two civilian agencies due to its recurring ability to emerge "virtually unscathed"[140] from post-Communism reform processes designed at achieving democratic oversight.

169. The *WSI* was formally accountable to the Minister of Defence, but our sources describe it as having operated more as a kind of "cartel" serving the self-interests of particular elite groups. I find it especially interesting that Poles we spoke to regard the processes of military intelligence reform[141] as smokescreens aimed at *obstructing* transparency and *preserving* corrupt access to state resources.[142] There is no doubt that the *WSI* is an agency quite accustomed to covert action that challenges the boundaries of legality and morality.

[137] See Andrzej Zybertowicz, 'An Unresolved Game – The role of the Intelligence Services in the nascent Polish Democracy', conference paper published jointly by the Geneva Centre for the Democratic Control of Armed Forces (DCAF), the Norwegian Parliamentary Intelligence Oversight Committee, and the Human Rights Centre at the Department of Law, Durham University, Oslo, September 2003, copy on file with the Rapporteur (hereinafter "Zybertowicz, The Role of the Polish Intelligence Services"), at p. 2: "when the Polish Parliament passed the new law on secret services... instead of explanation of [the] many scandals and taking legal measures towards those responsible, instead of accountability, the public opinion has been offered a quasi-reform of the services. It deserves this label because, among other things, it did not meet [the] objects of its own designers."

[138] See Response of Poland to CoE Secretary General under Article 52 ECHR, *supra* note 94, at p. 2. The phrase is used in this context to describe the system of oversight for the AW: "Parliament [the *Sejm*] exercising its prerogatives through the Commission for Special Services, also controls the Polish Foreign Intelligence Agency in matters relating to its co-operation with partner secret services of other States."

[139] The position of Minister-Coordinator for the Special Services was created in November 2005 and is presently filled by Minister Zbigniew Wassermann.

[140] See Zybertowicz, The Role of the Polish Intelligence Services, *supra* note 139, at pages 3 and 6-7.

[141] Reform of the military intelligence services in Poland has been a contentious issue since the early 1990s, and a topical one throughout my mandate as Rapporteur. Prior attempts at regulating the *WSI* appear to have been half-hearted, at best. From its creation in August 1991 to December 1995 it operated exclusively under secret military orders; then until July 2003 it came under the nominal control of the Ministry of Defence, but without close legal oversight. Even the Law on the Military Secret Services passed by Parliament on 9.07 2003 contained no external verification procedures. Since late 2005, at the instruction of Prime Minister Jaroslaw Kaczynski, the *WSI* has been gradually dissolved and replaced by a restructured military counter-intelligence unit. Deputy defence minister Antoni Macierewicz, who heads the new unit, published a report on the dissolution in February 2007, but the process appears to have done little to assuage public scepticism or criticism. For analysis of the report and reactions to it, see *inter alia* Joanna Najfeld, "Polish Military Intelligence Involved in Illegal Activities," Network Europe, 23.02.2007, available at http://networkeurope.radio.cz/feature/polish-military-intelligence-involved-in-illegal-activities.

[142] See also Zybertowicz, The Role of the Polish Intelligence Services, *supra* note 139, at pages 6-7. The author lists what he sees as the objects of "self-reform" in the *WSI*, including "to prevent outsiders – including democratically established control and oversight bodies – from obtaining thorough access to the Services", "to present the *WSI* as a useful ally to the NATO authorities", and to retain an "upper hand in economic institutional rearrangements, including key financial flows and major privatisation schemes."

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170. From our interviews with current and former Polish military intelligence officials, we have established that the *WSI*'s role in the HVD programme comprised two levels of co-operation. On the first level, **military intelligence officers provided extraordinary levels of physical security** by setting up temporary or permanent military-style "buffer zones" around the CIA's detainee transfer and interrogation activities. This approach was deployed most notably to protect the CIA's movements to and from, as well as its activities within, the military training base at Stare Kiejkuty. Classified documents, the existence of which was made known to our team, describe how *WSI* agents performed these security roles under the guise of a Polish Army Unit (*Jednostka Wojskowa*) denoted by the code *JW-2669*, which was the formal occupant of the Stare Kiejkuty facility.[143]

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171. On the second level, the *WSI*'s assistance depended to a large extent on its **covert penetration of other state and parastatal institutions through its collaboration with undercover "functionaries" in their ranks**. Our sources have indicated to us that *WSI* collaborators were present within institutions including: the Polish Air Navigation Services Agency (*Polska Agencja Zeglugi Powietrznej*), where they assisted in disguising the existence and exact movements of incoming CIA flights;[144] the Polish Border Guard (*Strazy Granicznej*), where they ensured that normal procedures for incoming foreign passengers were not strictly applied when those CIA flights landed; and the national Customs Office (*Glówny Urzad Celny*), where they resolved irregularities in the non-payment of fees related to CIA operations. Thus the military intelligence partnership brought with it influence throughout a society-wide "undercover community,"[145] none of which was checked by the conventional civilian oversight mechanisms.

172. When asked to give an example of a *WSI* collaborator who occupied an important position in the operation of the CIA's covert programme, several Polish sources named Mr Jerzy Kos, former Chairman of the Board of Mazury-Szczytno Airport Company (*Porty Lotnicze "Mazury Szczytno"*) and Director of Szymany Airport throughout 2003 and 2004.[146] A source in Polish military intelligence said: "anyone who has contact with the Americans is our man. The Director [Kos] is our man". Another senior Polish official familiar with the arrangements explained to us:

> "Polish military intelligence operatives were appointed to these positions. We said to place them anywhere with importance to the way this programme is run. This is how you come to know Mr Kos as the Director at Szymany Airport."

173. Mr Jerzy Kos went on to become a director of the Polish private construction company "*Jedynka Wroclawska SA*" and was taken hostage in Iraq in June 2004 whilst pursuing company projects there. When Mr Kos was brought to safety shortly afterwards in a rare raid by US Special Forces,[147] media outlets reported that the rescue operation attested to Mr Kos' links to the intelligence services.[148] Indeed, my inquiry has been informed that Mr Kos' "connections with [the] Polish secret service" in his business affairs have been "confirmed quite unambiguously"[149] during judicial

[143] One of the few means of verifying – through independent public sources – the fact that *JW-2669* was stationed at Stare Kiejkuty during this period is through photogrammetric studies of activity on Internet servers by users with particular "net-names". In outputs from such studies, *inter alia* of 23.10.2003, the "net-name" *JW-2669* is registered as being assigned to "Jednostka Wojskowa 2669, Stare Kiejkuty".

[144] For more information on the means used to cover up CIA flights into Poland, see section III.iii below, entitled "The anatomy of CIA secret transfers and detentions in Poland."

[145] As in many former communist countries, the secret services in Poland are accustomed to using networks of operatives and informants that span many of the most important institutions of the state, as well as the private sector. These networks comprise what is known as the "undercover community." For a description of this "crucial notion" in Poland, which the author refers to as "the security complex," see Zybertowicz, The Role of the Polish Intelligence Services, *supra* note 139, at pages 4-5.

[146] Between 2002 and 2004, the commercial company headed by Mr Kos shared responsibility for operating Szymany Airport with a military unit stationed on site. The airport had a mixed "civil-military" character, whereby aircraft registered as undertaking "military flights" were dealt with under special procedures.

[147] See, for example, Fox News, "Polish Iraq Hostage Praises US Rescuers", Warsaw, 10.06.2004; available at http://www.foxnews.com/story/0,2933,122359,00.html.

[148] The Italian press, for example, reported that Mr Kos was the "007 of Warsaw" and bore a "subcutaneous microchip" that allowed rescuers to trace the location at which he and his fellow hostages were being held; see *La Repubblica*, "Ostaggi liberati grazie a un microchip sottopelle", 16.06.2004, available at http://www.repubblica.it/2004/f/sezioni/politica/ostliberi2/chipinchiesta/chipinchiesta.html. On 15.06.2004 *AP* quoted Mr Kos himself as having said: "They [the kidnappers] thought I am an American co-operating with the CIA and I tried to explain that I am a Pole, that I was there to build houses."

[149] Letter to my inquiry from Justice Jaroslaw Horoblowski, Judge in the District Court for Wroclaw-Fabryczna (Bankruptcy and Pre-insolvency Proceedings), dated 7.11.2006, copy on file with the Rapporteur. Mr Kos' business affairs given as examples by Justice Horoblowski in this regard are "his role [with] Jedynka Wroclawska in Iraq, his mysterious kidnapping, then [the] strange circumstances of his rescuing, and his being director of the (former military) airport in Szymany." Justice Horoblowski also states that the revelations about secret service connections were made by some former directors of the company.

proceedings[150] relating to the subsequent bankruptcy of *Jedynka Wroclawska*. As a military intelligence operative facilitating the uniquely sensitive covert actions of the CIA in Poland, Mr Kos was one link in a chain of operations that led right to the top of Polish Government.

ii. Responsible political authorities in Poland

174. During several months of investigations, our team has held discussions with various Polish sources, including civilian and military intelligence operatives, representatives of state or municipal authorities, and high-ranking officials who hold first-hand knowledge of the operations of the HVD programme in Poland. Based upon these discussions, which have come to the same conclusions, my inquiry allows me to state that some individual high office-holders knew about and authorised Poland's role in the CIA's operation of secret detention facilities for High-Value Detainees on Polish territory, from 2002 to 2005. The following persons could therefore be held accountable for these activities: the President of the Republic of Poland, Aleksander KWASNIEWSKI, the Chief of the National Security Bureau (also Secretary of National Security Committee), Marek SIWIEC, the Minister of National Defence (Ministerial oversight of Military Intelligence), Jerzy SZMAJDZINSKI, and the Head of Military Intelligence, Marek DUKACZEWSKI.

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175. In my analysis the hierarchy for control of the Polish Military Information Services, or *WSI*, was chronically lacking in formal oversight and independent monitoring. As a result the structure described here from 2002 to 2005 depended to a great extent on close relationships of trust and professional familiarity, both among the Polish principals and between the Poles and their American counterparts. Several of our sources characterised the bonds between these four individuals as being a combination of loyal personal allegiance ("we all serve one another") and strong common notions of national duty ("... but first we serve the Republic of Poland").

176. There was complete consensus on the part of our key senior sources that President Kwasniewski was the foremost national authority on the HVD programme. One military intelligence source told us: "Listen, Poland agreed from the top down... From the President – yes... to provide the CIA all it needed." Asked whether the Prime Minister and his Cabinet were briefed on the HVD programme, our source said: "Even the *ABW* [Internal Security Agency] and *AW* [Foreign Intelligence Agency] do not have access to all of our classified materials. Forget the Prime Minister, it operated directly under the President."

177. Our investigations have revealed that the state office from which much of the strength of this Polish accountability structure derived was the **National Security Bureau** (*Biuro Bezpieczenstwa Narodowego, or BBN*), located in the Chancellery of President Kwasniewski. Our sources confirmed to us that the bilateral operational arrangements for the HVD programme in Poland were "negotiated on the part of the President's office by the National Security Bureau [BBN]."

178. Marek Dukaczewski, an outstanding military intelligence officer ultimately promoted to the rank of General, served the BBN in the Chancellery of his close friend Aleksander Kwasniewski for the first five years of the latter's Presidency, from 1996 to 2001. Mr Dukaczewski worked directly alongside Marek Siwiec during this period, whilst Mr Siwiec was a Secretary of State in the Presidential Chancellery and then became Chief of the BBN. Jerzy Szmajdzinski was appointed Minister of National Defence for Mr Kwasniewski's second term, in October 2001. Shortly afterwards, Mr Dukaczewski was nominated Head of the Military Information Services, the *WSI*, starting in December 2001.

[150] In addition to the statements in court, trade unionists wrote an open letter stating that Mr Kos' posting to Iraq may also have entailed some intelligence functions. See letter on behalf of Jedynka Wroclawska SA to Wroclaw Prosecutor Leszek Karpus, dated 26.04.2006, copy on file with the Rapporteur.

179. Besides this accountability structure, which remained in place from the immediate aftermath of the 11 September 2001 attacks throughout Poland's involvement in the CIA's covert HVD programme, probably no other Polish official had knowledge of it. Indeed, the "highest level of classification" at national and intergovernmental levels, understood to match NATO's "Cosmic Top Secret" category,[151] still attaches to the information pertaining to operations in Poland. Our unravelling of such secrecy to expose Polish participation in unlawful detention and transfer operations is perhaps the greatest testament to the "dynamics of truth" in motion. However an alternative interpretation, which provided my inquiry with motivation in the face of systematic cover-up, came in one of our most memorable moments of testimony from a top-level Polish source. He stated simply:

> "*Listen, there are no secrets in war. There is no intelligence in war. You cannot keep something secret in a time of conflict.*"

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iii. The anatomy of CIA secret transfers and detentions in Poland

180. Notwithstanding the approach of the Polish authorities towards this inquiry,[152] our team was able to uncover new documentary evidence from two separate Polish sources showing actual landings in Poland by aircraft associated with the CIA.

181. These sources corroborate one another and provide the first verifiable records of a number of landings of "rendition planes" significant enough to prove that CIA detainees were being transferred into Poland. I can now confirm that at least ten flights by at least four different aircraft serviced the CIA's secret detention programme in Poland between 2002 and 2005. At least six of them arrived directly from Kabul, Afghanistan during precisely the period in which our sources have told us that High-Value Detainees (HVDs) were being transferred to Poland. Each of these flights landed at the same airport I named in my 2006 report as a detainee drop-off point: Szymany.

182. The most significant of these flights, including the aircraft identifier number, the airport of departure (ADEP), as well as the time and date of arrival into Szymany, are the following:

i. N63MU from DUBAI, arrived in SZYMANY at 14h56 on 5 December 2002
ii. N379P from RABAT, arrived in SZYMANY at 02h23 on 8 February 2003
iii. N379P from KABUL, arrived in SZYMANY at 16h00 on 7 March 2003
iv. N379P from KABUL, arrived in SZYMANY at 18h03 on 25 March 2003
v. N379P from KABUL, arrived in SZYMANY at 01h00 on 5 June 2003
vi. N379P from KABUL, arrived in SZYMANY at 02h58 on 30 July 2003
vii. N313P from KABUL, arrived in SZYMANY at 21h00 on 22 September 2003
viii. N63MU from KABUL, arrived in SZYMANY at an unrecorded time on 28 July 2005

[151] See NATO, Security within the North Atlantic Treaty Organisation, 17.08.2002, *supra* note 73; in Enclosure "B" – Basic Principles and Minimum Standards of Security, at p. 5, § 18(e) In NATO terms, the category of security classification attached to the bilateral operations of the HVD Programme is known as "COSMIC TOP SECRET (CTS)", a category for which "unauthorised disclosure would result in exceptionally grave damage" to NATO and / or to participating member States.

[152] The approach of the Polish authorities towards my inquiry is dealt with in further detail below. The official position of the Polish Government remains unchanged since it was announced on 10 December 2005: "The Polish Government strongly denies the speculation occasionally appearing in the media as to the existence of secret prisons on the territory of the Republic of Poland, supposedly used for the detention of foreigners suspected of terrorism. There are no such prisons in Poland and there are no prisoners detained in contravention of the laws and international conventions to which Poland is a party." Most recently it was reproduced in submissions before the United Nations Committee Against Torture (CAT) in Geneva; see *Written replies by the Government of Poland to the list of issues (CAT/C/POL/Q/4/Rev.1) to be taken up in connection with the consideration of the fourth periodic report of Poland (CAT/C/67/Add.6)*, UN Document CAT/C/POL/Q/4/Rev.1/Add.1, 30 March 2007, available at http://www.ohchr.org/english/bodies/cat/cats38.htm response to Question 12, at page 23, § 72.

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183. My first observation regarding the dates of these flights is that several of them conform closely to the dates on which particular "High-Value Detainees" (HVDs) were transferred to CIA "black sites," particularly in outward movements from Kabul, Afghanistan. The most conspicuous example pertains to the so-called "mastermind" of the 9/11 attacks, Khalid Sheikh Mohamed (KSM), who was captured in Rawalpindi, Pakistan on 1 March 2003[153]. Our insider sources have told that KSM was transferred to a secret CIA facility "within days" of his arrest; and from analysis of materials supporting the 9/11 Commission Report[154], we know that the process of interrogating him commenced shortly afterwards[155], and continued throughout 2003. It is noteworthy that the well-known rendition plane N379P undertook a clandestine flight from Kabul to Szymany on 7 March 2003, less than one week after KSM's arrest. Whilst it is not possible at this stage to state the fact definitively, it is likely that the transfer of KSM and several other HVDs into Poland throughout 2003 took place on the flights uncovered in this report.

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184. The full extent of my proof, however, goes beyond merely the number of confirmed flights into Szymany and their concordance with suspected dates of HVD transfers. Through our careful analysis of hundreds of pages of raw aeronautical "data strings,"[156] we can now demonstrate that in the majority of cases these CIA flights were **deliberately disguised so that their actual movements would not be tracked or recorded** – either "live" or after the fact – by the supranational air safety agency Eurocontrol. The system of cover-up entailed several different steps involving both American and Polish collaborators.

185. The aviation services provider customarily used by the CIA,[157] **Jeppesen International Trip Planning**,[158] filed multiple "dummy" flight plans for many of these flights. The "dummy" plans filed by Jeppesen – specifically, for the N379P aircraft – often featured an airport of departure (ADEP) and / or an airport of destination (ADES) that the aircraft never actually intended to visit. If Poland was mentioned at all in these plans, it was usually only by mention of Warsaw as an alternate, or back-up airport, on a route involving Prague or Budapest, for example. Thus the eventual flight paths for N379P registered in Eurocontrol's records were inaccurate and often incoherent, bearing little relation to the actual routes flown and almost never mentioning the name of the Polish airport where the aircraft actually landed – Szymany.

[153] On the capture of KSM, see *inter alia* B. Raman, "How significant is Khalid Sheikh's arrest?" on Rediff.com, 3.03.2003, available at http://in.rediff.com/news/2003/mar/03raman.htm; and BBC News Online, "Bush hails 'Al-Qaeda killer' arrest," 4.03.2003, available at http://news.bbc.co.uk/2/hi/south_asia/2817441.stm.

[154] The full report and records of the National Commission on Terrorist Attacks upon the United States (the "9/11 Commission") are available online at http://www.9-11commission.gov/. In particular, Chapters 5 and 7 of the Commission Report are said to "rely heavily on information obtained from captured Al-Qaeda members," specifically ten detainees, including Khalid Sheikh Mohamed, "whose custody has been confirmed officially by the US Government." See the inset on "Detainee Interrogation Reports," in Chapter 5, at page 148. For specific dates on which KSM and other "high-value detainees" were interrogated, see, in particular, "Notes to Chapter 5", in Notes to the 9/11 Commission Report, at pages 483 to 499.

[155] Interrogations of KSM are dated as early as 12.04.2003, just over a month after his capture, see "Notes to Chapter 5", 9/11 Commission Report, *ibidem*. Further interrogations are dated at frequent intervals throughout 2003 and 2004.

[156] "Data strings" are exchanges of messages or digital data (mostly in the form of coded text and numbers) between different entities around the world on a network known as the AFTN (Aeronautical Fixed Telecommunication Network). "Data strings" record all communications filed in relation to each particular aircraft as its flights are planned in advance, and as it flies between different international locations. The flings come from diverse entities, including aviation service providers, ANS (Air Navigation Services) authorities, airport authorities and government agencies. I have obtained complete sets of "data strings" for about twenty flight circuits, which I selectively requested from the AFTN system. The selected circuits include each of the circuits featuring undeclared flights of CIA aircraft into Szymany, as well as circuits featuring landings in Romania and a large number of rendition operations pertaining to individual detainees whose cases I dealt with in my report of 2006. Our team has conducted an in-depth analysis of all these "data strings," together with information in the Marty database and in consultation with aviation experts.

[157] Jeppesen International Trip Planning is the travel service of Jeppesen Dataplan, an aviation services provider based in San Jose, California and a subsidiary of Boeing, the world's largest aerospace company. On 30 May 2007, the ACLU announced a lawsuit against Jeppesen Dataplan for its involvement in the renditions of three individuals: Ahmed Agiza, Binyam Mohamed and El-Kassim Britel. See American Civil Liberties Union, "ACLU Sues Boeing Subsidiary for Participation in CIA Torture and Kidnapping," 30 May 2007, available at http://www.aclu.org/safefree/torture/29320prs20070530.html. For the first revelations about Jeppesen's involvement in CIA detainee transfers, including the rendition of Khaled El-Masri, see Jane Meyer, "Outsourcing: The CIA's Travel Agent", in *The New Yorker*, 30.10.2006, available at http://www.newyorker.com/archive/2006/10/30/061030fa_talk_mayer. The Managing Director of Jeppesen is quoted in the article as having said: *"We do all the extraordinary rendition flights – you know, the torture flights. Let's face it, some of these flights do end up that way."*

[158] Communications, notably flight plans, filed by Jeppesen International Trip Planning are identified in the AFTN system by the use of the company's "originator address," which is KSFOXLDI

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186. The **Polish Air Navigation Services Agency** (*Polska Agencja Zeglugi Powietrznej*), commonly known as PANSA, also played a crucial role in this systematic cover-up. PANSA's Air Traffic Control in Warsaw[159] navigated all of these flights through Polish airspace, exercising control over the aircraft through each of its flight phases[160] right up to the last phase, when control was handed over to the authority supervising the airfield at Szymany,[161] immediately before the aircraft's landing. PANSA navigated the aircraft in the majority of these cases without a legitimate and complete flight plan having been filed for the route flown.

187. Moreover, in certain instances PANSA took on the **responsibility of filing the onward flight plan for the next leg of the circuit after Szymany**. We know that PANSA filed such flight plans in instances where Szymany had been omitted completely from the original Jeppesen flight plans, and where the aircraft was required to fly onwards from Szymany to a destination outside Poland. Similarly in at least one instance where the aircraft flew onwards from Szymany to Warsaw – and thus did not require initially to leave Polish airspace – PANSA simply navigated the onward flight without a flight plan.

188. It is also noteworthy that Jeppesen appears to have followed PANSA's contributions to these operations very closely, acting upon responses from the flight management system to PANSA's communications within minutes of their being received. Furthermore, both Jeppesen and PANSA have co-ordinated their actions with the in-flight communications from the aircraft's Pilot-In-Command.[162]

189. Accordingly, several circuits we have analysed show the following "sequencing" of flight navigation responsibilities for a typical circuit of N379P involving a landing at Szymany, which demonstrate a calculated cover-up of the aircraft's movements:

- Jeppesen files flight plans for every element of the circuit up to and including N379P's return to Europe from Kabul; typically Jeppesen's flight plan(s) from Kabul onwards reflect fictitious routes, featuring false airports of destination and departure that are registered in the Eurocontrol flight management system;
- N379P's Pilot-In-Command then flies from Kabul into Polish airspace, at which point the Polish authorities (PANSA) take over to navigate the aircraft to a landing at Szymany Airport without a corresponding flight plan, but in conjunction with Polish military authorities in Warsaw and on the ground;
- PANSA also handles onward flight planning for N379P's departure from Szymany, either by navigating the aircraft to a stopover in Warsaw or by filing a flight plan for its next international destination, such as Prague or Larnaca;
- Jeppesen resumes its planning role once N379P has left Szymany, filing flight plans for the remaining elements of the circuit, starting from either Warsaw or the first international airport after Szymany, continuing until the aircraft's return to its base in the United States.

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[159] The entire national airspace of Poland comprises one single Flight Information Region (FIR), denoted by the four-letter code EPWW. Poland therefore has only one Area Control Centre (ACC). All air traffic into Poland is controlled by the Polish Air Navigation Services Agency, PANSA, from its Air Traffic Management Centre at Warsaw Airport. For an excellent overview of Polish Air Traffic Control, see PANSA, "Air Traffic Control", available at http://www.polska.pansa.pl/kontrola_eng.htm.

[160] We have identified the relevant "data strings" communications about these flights being sent from the AFTN address "EPWAZPDX", which denotes the "Approach Control Centre – Air Traffic Service Reporting Office at Warsaw Airport", in addition to the phase of general "Region Control" for all of Poland, the phase of "Approach control" for Szymany Airport, during which the movements of all civil or military aircraft are controlled within a specified range of the airport, is dealt with from Warsaw. Szymany Airport does not meet the criteria (i.e. passenger airports that maintain fixed flight connections) to have its own Approach Control unit so it relies on the unit at Warsaw Airport.

[161] We have identified the relevant "data strings" communications about these flights being sent to the AFTN address "EPSYYDYX", which denotes the "Authority Supervising the Aerodrome at Szymany Airport". Several airport officials who were present at Szymany Airport when these flights arrived in 2003 have told us that their notification came from military sources in Warsaw and that all arrangements for the landings were handled using special military units on the ground. Polish Air Traffic Control explains these procedures in the following terms: "Military operations carried out in the military aerodrome zones are controlled by a military unit that directly co-operates with the Approach Control." From our Polish insider sources, we know that the Director of Military Operations, working with PANSA Approach Control in Warsaw, as well as key officials in the Border Guards who notified Szymany of the landings, and military officers who took over from civilian officials at Szymany to deal with them on the ground, were working on behalf of Polish military intelligence in collaboration with the CIA.

[162] We have been able to establish through our investigations that the men registered as Pilot-in-Command (PIC) for the undeclared flights into Szymany are established CIA pilots. We have records of many full names and have been able similarly to obtain for their employment as pilots in multiple detainee transfer operations involving other countries. We have also confirmed their appearance on flight manifests with known anti-radiation teams" by referring to documents provided to us confidentially from an ongoing judicial inquiry in a Council of Europe member State.

190. The analysis of "data strings" has also enabled me to confirm further intricate details of the "anatomy" of these CIA clandestine operations. For example, each of these flights was operated under a "special status" or STS designation.[163] The aircraft were thereby exempted from adhering to the normal rules of air traffic flow management (ATFM), and did not, for example, have to wait at airports for approved departure slots. Since such exemptions are only granted when "specifically authorised by the relevant national authority,"[164] they provide further evidence of Polish complicity in the operations. The clearest proof of Poland's knowledge and authorisation of such landings is demonstrated by the following two-line message, contained in several "data strings" for flights of N379P in 2003:

> **"STS/ATFM EXEMPT APPROVED**
> *POLAND LANDING APPROVED"*

191. "Data strings" have also enabled us to trace the official overflight and landing permits obtained from various other countries for these flights; the times and "waypoints" at which the aircraft entered or departed the national airspace of each country; and the actual routes flown between Szymany and other points on the "global spider's web". I have used all of this information to create the graphic representations of "Disguised CIA flights into Szymany Airport, Poland,"[165] which accompany this report as an appendix.

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192. In concluding this section it is only fitting that I should note here, with considerable regret, that the cover-up of CIA flights into Szymany seems to have carried over into the approach adopted by the Polish authorities towards my inquiry on the specific question of national aviation records. In over eighteen months of correspondence, Poland has failed to furnish my inquiry with any data from its own records confirming CIA-connected flights into its airspace or airports. The excuses from the Polish authorities for having failed to do so unfortunately do not seem to be credible.

193. In my report of 2006, I commented that the absence of flight records from Poland was "unusual,"[166] to say the least. Mr Karol Karski, Chairperson of the Polish Delegation to PACE, suggested that I "did not use the information received from Poland honestly"[167] and stated, in his subsequent correspondence, that he hoped to "answer [my] request exhaustively" having "addressed one more time the relevant Polish authorities and asked for proper information". He then repeated a familiar undertaking:

> "I would like to assure you that I will transmit to you the complete data as soon as I will be provided with it."[168]

[163] The status of the flight goes to the all-important question as to whether the function it is performing is considered to be "state," "civilian" or "military." These undeclared flights into Szymany, which we understand to have been operated as "military flights", eased their passage into Poland by securing exemptions as "special status", or STS, flights. STS designators are very strictly limited, because once granted they allow deviations from planned routes and other important exemptions. See Eurocontrol, User Relations and Development Bureau, *IFPS Users Manual*, Edition No. 11.2, 30.03.2007 (hereinafter "Eurocontrol IFPS Users Manual"); available at http://www.cfmu.eurocontrol.int; at Section 50, "Special Status Flights (STS)", p. 50-1

[164] The particular STS indicator used by flights into Szymany was "AFTMEXEMPTAPPROVED". According to Eurocontrol: "*This exemption designator shall only be used with the proper authority. Any wrongful use of this designator to avoid flow restriction shall be regarded by the relevant states as a serious breach of procedure and shall be dealt with accordingly.*" See Eurocontrol IFPS Users Manual, *ibidem*, at Section 54, "STS/ATFMEXEMPTAPPROVED Indicator", p. 54-1.

[165] See Appendix No 1 to the present report, entitled "Disguised CIA flights into Szymany Airport, Poland."

[166] See Marty Report 2006, Council of Europe Doc. 10957, *supra* note 6, at section 2.6.2, "The case of Poland", §§ 63 to 75, pages 20 to 21.

[167] Contribution of Mr Karol Karski, Chairperson of the Delegation of Poland to PACE, at the 17th Sitting of the Plenary of the Parliamentary Assembly during its 2006 Session, Strasbourg, 27.06.2006.

[168] Letter to me from Mr Karol Karski, Chairperson of the Polish Delegation to PACE, 28.12.2006.

194. After several further months passed,[169] Mr Karski ultimately responded with the following three items of information:[170]

- "the Polish Government has definitively closed the investigation into alleged secret CIA prisons and in this connection, once again explicitly denies all speculations appearing in the media";
- "the European Parliament's Temporary [TDIP] Committee... has all the information available to the Polish side, concerning the aircraft listed in [your] letter"; and
- "the registers of flight movements over the territory of Poland in 2001 to 2005 are in Eurocontrol databases."

195. This response of the Polish authorities is patently unsatisfactory. The third item of information is belied by the findings I have presented above, along with the accompanying graphic and data in the annex. Meanwhile the second statement suggests that the Polish Government is attempting to deceive both the CoE and the European Parliament by playing the institutions off against one another.[171]

196. On the whole, Mr Karski's response casts the Polish authorities in a negative light, whichever one of two possible conclusions I might choose to draw: Is the Polish Government unable to lay its hands on official data from Polish sources, which our team successfully uncovered and which at least one airport official is publicly known[172] to possess? Or have the Polish authorities willfully withheld valuable information from my inquiry? I strongly hope that the Polish authorities now take the situation in hand and retrace fully the unfolding of this situation and establish respective responsibilities.

a. Transfer of HVDs into CIA detention in Poland

197. Our enquiry regarding Poland included talks with Polish airport employees, civil servants, security guards, Border Guards and military intelligence officials who hold first-hand knowledge of one or more of the undeclared flights into Szymany. Their testimonies are crucial in establishing what happened in the time after these CIA-associated aircraft landed at Szymany. The following account is a compilation of testimonies from our confidential sources about these events.

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b. Arrivals and "drop-offs" at Szymany Airport

- Each of these landings was preceded, usually less than 12 hours in advance, by a telephone call to Szymany Airport from the Warsaw HQ of the Border Guards (*Strazy Granicznej*), or a military intelligence official, informing the Director Mr Jerzy Kos of an arriving "American aircraft"
- The airport manager, who assumed the flights were coming from the United States, was instructed to adhere to "strict protocols" to prepare for the flights, including: clearing the runways of all other aircraft and vehicles; and making sure that all Polish staff were brought in to the terminal building from the vicinity of the runway, including local security officials and airport employees
- The perimeter and grounds of the airport were secured by military officers and Border Guards, the latter of whom were registered on a roll-call document that lists names of those present on more than five dates between 2002 and 2005
- American officials from the nearby Stare Kiejkuty intelligence training base assumed "control" on the dates in question, arriving in several passenger vans in advance of the landing; "everything Americans," said one Polish source present for several landings, "even the drivers [of the vans] were Americans."
- A "landing team" comprising American officials waited at the edge of the runway, in two or three vans with their engines often running; the aircraft touched down in Szymany and taxied to a halt at

[169] On 14.03.2007, I sent a reminder letter to Mr Karski on this issue, concluding: "*I respectfully urge you to re-emphasise to the Polish authorities the importance of sending me a swift and comprehensive reply to my letter, along with the requested data.*"

[170] Letter to me from Mr Karol Karski, Chairperson of the Polish Delegation to PACE, 28.03.2007.

[171] When I read that "*all the information on the Polish side*" had been given to the EP's TDIP Committee, I recalled the resolution adopted on 12.02.2007 by the very same Committee, in which it regrets that "*contradictory statements were made about the flight plans for those CIA flights, which were first said not to have been retained, then said probably to have been archived at the airport, and finally claimed to have been sent by the Polish Government to the Council of Europe.*" See European Parliament Resolution on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners (A6-0020/2007 – Rapporteur: Giovanni Claudio Fava), 12.02.2007, at § 172. It is scarcely credible for the Polish Government to practice such evasion towards me and my fellow Parliamentarians.

[172] See Tom Hundley, "Remote Polish airstrip holds clues to secret CIA flights," *Chicago Tribune*, 6.02.2007, available at http://www.chicagotribune.com/news/nationworldchi-0702060187feb06,1,1958708.story The article says: "Jaroslaw Jurczenko, the airport's director, denied that flight records had ever been lost for the mysterious landings and provided the *Tribune* with documentation for seven of the flights in question."

the far end of the runway, several hundred metres (and out of visible range) from the four-storey terminal control tower

- The vans drove out to the far end of the runway and parked at close proximity to the aircraft; officials from within the vans were said to have boarded the aircraft "every time", although it is not clear whether any then stayed on board
- All the officers charged with "processing" the passengers on these aircraft were Americans; no Polish eye-witness has yet come forward to state whether or not any detainees disembarked the aircraft upon any of these landings – indeed, it may be that no Polish eye-witness to such an event exists
- However, asked where the HVDs actually entered Poland, one of our sources in Polish military intelligence confirmed that "it was on the runway of Szczytno-Szymany"; another said "they come on planes and they entered at this airport"
- Documentation, in Polish, attests to persons having been "picked up" [verbal translation] at Szczytno-Szymany in conjunction with at least two aircraft landings in 2003; the documentation also refers to the dispatch of vehicles to the airport from the military unit stationed at the Stare Kiejkuty facility
- Having spent only a short time next to the aircraft after each landing, the vans then drove back past the side of the terminal building, without stopping, before leaving airport premises through the front security gate; the vans put their "headlights up to full level" and airport officials say they "turned our eyes away"
- The vans then drove less than two kilometres along a simple tarmac road, lined by thick pine forest on both sides, through an area which was entirely out of bounds to private or commercial vehicles during these procedures, having been cordoned off for "military operations"; at the end of the tarmac road, the vans travelled north-east beyond Szczytno for approximately 15 to 20 minutes before joining an unpaved access road next to a lake;[173]
- at the end of this access road they reached an entrance of the Stare Kiejkuty intelligence training base, where multiple sources have confirmed to me that the CIA held High-Value Detainees (HVDs) in Poland.

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c. Secret detention operations at Stare Kiejkuty

198. The stringent limitations on information about what happened to detainees "dropped-off" at Szymany are perhaps the best example of the "need-to-know" principle of secrecy in practice. Polish officials were not involved in the interrogations or transfers of HVDs, nor did they have personal contact. In explaining his understanding of HVD treatment or conditions in detention, one Polish source said:

> "I have no understanding of detainee treatment. We were not "treating" the detainees. Those were the responsibilities of the Americans."

199. We were told that senior Polish military intelligence officials who visited Stare Kiejkuty were ordered to "limit rotation and operational demands on Polish officers to make the HVD programme work." Beyond this fleeting insight, however, neither Polish nor American sources who discussed the HVD programme with us would agree to speak about the exact "operational details" of secret detentions at Stare Kiejkuty, nor would they confirm how long it was operated for, which other facilities were used as part of the same programme in Poland, nor how and when exactly the detainees left the country.

[173] A member of our team re-traced the route from Szymany Airport to the Stare Kiejkuty intelligence training base.

200. The legacy of the HVD programme in Poland is palpable in the self-perceptions of those Polish officials who participated in its operations. The members of military intelligence with whom we spoke seemed, on one level, to be in denial as to whether secret detentions in violation of Poland's human rights obligations had taken place in their country; yet, on another level, they showed signs of resentment mainly that their American allies had betrayed their bond of trust by leaking details of the programme. These contradictory sentiments, often difficult to gauge accurately, are aptly captured by the following statement:

> *"The [Stare Kiejkuty] base was America's choice; our job was their security. If any American is here, it is America's responsibility, but he also becomes Poland's responsibility too. So it is my responsibility."*

IV. Secret detention operations in Romania

I. Partnering with military intelligence in Romania

201. In Romania, after the December 1989 Revolution and the dismantling of the repressive *Securitate* in 1990, the reforms of the intelligence services were focussed, understandably, on preventing the politicisation and abuse of internal state security structures. Similarly, much of the subsequent discussion around democratic oversight in the country has looked at ways of controlling "institutional actors and leading political figures with authority over the security and intelligence domain who disregard the legal stipulations regarding political neutrality."[174]

202. As I have analysed Romania's complex array of different agencies and sub-structures that collect intelligence for the state,[175] I have realised that preserving political neutrality is merely one of a variety of competing considerations that affect the objectivity and effectiveness of their accountability structures.[176] In the context of my inquiry, it seems to me that while Romania has made at least superficial efforts to rid its civilian intelligence services of the scourges of their *Securitate* past, its oversight mechanisms do not go far enough to prevent the exercise of what could be called "unitary executive authority" – on the part of the President – over military intelligence services and the wider defence community.

203. This analysis conforms to the testimony of our Romanian sources, who said that the Americans chose to work with the military intelligence services because the military "cover" afforded the CIA flexible deployment options and guarantees of secrecy under the NATO framework. As the following comparison shows, there are substantial disparities between the respective monitoring mechanisms in the civilian and military spheres.

[174] See Larry Watts, Office of the National Security Advisor of the Romanian President, "Control and Oversight of Security Intelligence in Romania", Working Paper No. 111, published by the Geneva Centre for the Democratic Control of Armed Forces (DCAF), Geneva, February 2003, copy on file with the Rapporteur (hereinafter "Watts, Oversight of Security Intelligence in Romania"), at p. 27. The author recommends that "real sanctions should be introduced and enforced" in such instances where rule of law is subverted by political considerations.

[175] There are at least six different secret services in Romania, several of them housed under individual Government Ministries. The agencies that I have not discussed specifically in this section include the General Directorate of Intelligence and Internal Protection (*Direcția Generală de Informații și de Protecție Internă*, or DGIPI) in the Ministry of the Interior, and the Independent Protection and Anti-Corruption Agency (*Serviciul Independent de Protecție și Anticorupție*, or SIPA) in the Ministry of Justice.

[176] For a much more developed discussion of the relevant considerations, see: European Commission for Democracy through Law (Venice Commission), "Report on the Democratic Oversight of the Security Services", Study No. 388/2006, CDL-DEM(2007)001, 24.05.2007. In its concluding remarks, the Commission highlights "recurring issues in the design of oversight procedures", as follows: "First is the need to establish mechanisms to prevent political abuse while providing for effective governance of the agencies. Overall, the objective is that security and intelligence agencies should be insulated from political abuse without being isolated from executive governance;" and "the challenge for oversight and accountability is to adapt or devise processes that simultaneously command democratic respect while protecting national security;" at pp. 49-50, § 215 to 226. (Soon to be issued as CDL-AD(2007)016 – to be made available on http://venice.coe.int.

204. First, in the civilian sphere, Romania's two main agencies of the post-Communist era, the Romanian [Domestic] Intelligence Service (*Serviciul roman de informatii, or SRI*) and the Foreign Intelligence Service (*Serviciul de informatii externe, or SIE*) were created under specific laws[177] and a multi-layered oversight structure, which purport to immunise them from manipulation along party-political lines. The SRI and the SIE operate independently of Government and are not subordinated to the incumbent executive. They are each subjected to parliamentary scrutiny through dedicated Special Parliamentary Committees.[178] The **Supreme Council of National Defence** (*Consiliul Suprem de Aparare a Tarii, or CSAT*), an autonomous administrative body chaired by the non-partisan Office of the President,[179] organises and continually monitors the activities of the SRI and the SIE, in line with its mandate to co-ordinate the overall national security and defence of the country. As such, the possibilities for a handful of people at the heart of Government to use the SRI or the SIE to pursue their own personal, political or strategic agenda are exceedingly narrow.

205. In contrast, intelligence gathering in the military sphere is a competence formally overseen by the Ministry of National Defence,[180] through its **General Directorate for Defence Intelligence** (*Directia Generala de Informatii a Apararei, or DGIA*). What little parliamentary scrutiny of defence intelligence is supposed to exist[181] certainly does not apply to its organisational, planning or operational aspects. On the contrary, strict compatibility with NATO structures, insisted upon as a criteria for NATO accession, means that the majority of Romanian military intelligence activities are kept secret from all but those who "need to know".

206. According to our sources, the relevant sub-unit of the DGIA that worked with the CIA on its clandestine operations was the **Directorate for Military Intelligence and Representation** (*Directia Informatii si Reprezentare Militara, or DIRM*), also known as the "**J2" Unit**. This unit was not involved in transporting, holding or interrogating any detainees – since these were tasks performed solely by the Americans – but, according to one Romanian officer, the "J2" officers "co-operated and adjusted" to accommodate the CIA personnel's needs.

207. As part of a wider restructuring of the DGIA in 2003,[182] the "J2" unit increased in scope and importance at a very strategic moment in Romania's co-operation with the United States, just as American forces were deploying into the country in large numbers to launch their aerial missions into Iraq for Operation Iraqi Freedom.[183] The place at which these US forces were stationed, the **86th Air Force Base at Mihail Kogalniceanu Airfield**,[184] became the most significant point in the country for a whole range of collaborative activities in a "partnership" between Romanian and American personnel.

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[177] For the SRI, see the *Law on the Organisation and Functioning of the Romanian Intelligence Service (SRI)*, Law No. 14/1992; for the SIE, see the *Law on the Organisation and Functioning of the Foreign Intelligence Service (SIE)*, Law No. 1/1998.

[178] For the SRI, see the *Decision of the Romanian Parliament on the Organisation and Functioning of the Joint Committee of the Senate and the Chamber of Deputies for Parliamentary Oversight of the Romanian Intelligence Service (SRI)*, Decision No. 30/1993; for the SIE, see the *Decision of the Romanian Parliament on the Organisation and Functioning of the Special Committee for Parliamentary Oversight of the Foreign Intelligence Service (SIE)*, Decision No. 44/1998. Indeed, some commentators say that the increased transparency and growing public trust in the SRI and the SIE owe largely to the strength of these parliamentary accountability mechanisms. See, for example, Watts, Oversight of Security Intelligence in Romania, *ibidem*: "Romania's semi-presidential system has proven itself capable of blocking the over-accumulation and over-centralisation of power by government executives."

[179] In addition to the President (Chair), the membership of the CSAT includes: the Prime Minister (Vice-Chair); the Ministers of Defence, Economy and Commerce, Finance, Justice, Interior and Administrative Reform, and Foreign Affairs; the Directors of the SRI and SIE; the Presidential Advisor on National Security; and the Chief of General Staff; see the CSAT website at: http://csat.presidency.ro/. The CSAT is regulated under a 2002 statute – Law No. 415/2002 – and its activities are themselves reported regularly to the Parliamentary Committee for Defence, Public Order and Security. For further discussion on related matters, see also Karoly Szabo, "Parliamentary Overview of Intelligence Services in Romania," workshop paper published by the Geneva Centre for the Democratic Control of Armed Forces (DCAF), delivered at the workshop on "Democratic and Parliamentary Oversight of Intelligence Services", Geneva, 3-5.10.2002, copy on file with the Rapporteur.

[180] The Ministry of National Defence (*Ministerul Apararii Nationale*) was renamed as the Ministry of Defence (*Ministerul Apararii*) in April 2007. I have used its old name, which applied in the period in question.

[181] Formally speaking, military intelligence activities are supposed to be subject to the same parliamentary scrutiny as all the activities of the Ministry of National Defence, namely through the Committees on Defence, Public Order and National Security in both the Senate and the Chamber of Deputies of the Romanian Parliament. In reality, these Committees are far removed from the actual work of the *DGIA* services.

[182] See, for example, Doru Dragomir, "Hurricane in the Army's Secret Services", Bucharest Zaa, 9.04.2003, at p. 9; available online at http://www.ziua.net/

[183] Between February and June 2003, United States Armed Forces (both airforce and ground troops) deployed an expeditionary group for operations in Iraq at the 86th Air Force Base – Mihail Kogalniceanu Airfield ("MK Airfield"), near Constanta, Romania. According to Romanian military personnel at the airfield, the deployment reached up to "5,000 bodies" at its peak, albeit that most of the troops were only there temporarily, or in transit. MK Airfield was used for the purpose of "regrouping and resupplying air deployments before entering action in theatre in Iraq."

[184] At the time of Operation Iraqi Freedom, and up until 27.04.2004, MK stood on its own as the 57th Air Force Base of the Romanian Air Force. From 1.05.2004, the self-standing air force base at MK was "disbanded" and Romanian military air traffic

208. A noteworthy aspect of this partnership was that everything was carried out under the NATO framework. The deployment at MK Airfield in February 2003 was authorised in a Memorandum of Understanding signed by President Ion Iliescu in late 2002, in which the terms of NATO-SOFA and the bilateral SOFA-Supplemental were expressly referenced. "NATO concepts" were applied to the deployment, including MK's designation as an APOD / APOE,[185] and the phase being referred to as "regrouping." Most important of all, a **Joint Operations Centre** was established in which American and Romanian personnel "from each and every branch" of their respective armed forces and services worked together side-by-side throughout the Operation, sharing operational knowledge in strict accordance with the **NATO Security Policy**.

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209. Members of the Directorate for Military Intelligence, the "J2" Unit, participated in the Joint Operations Centre,[186] which – as our American sources confirmed – also received "visits"[187] from operatives of the CIA's Counterterrorist Centre (CTC) between February and June 2003. While the whole four-month period of Operation Iraqi Freedom at MK Airfield was characterised as "a military activity in support of a military operation," the relationships formed and strengthened between members of the respective intelligence services – both individually and collectively – were just as indispensable in the broader context of the "war on terror."[188] The Operation was construed as a welcome "dry-run" for Romania in NATO and for potential future bilateral actions between the partners.

210. Continuity in the evolving relationship between American and Romanian services can perhaps best be illustrated by highlighting the role of the then Head of the Directorate of Military Intelligence and Representation (*Sef al Directiei de Informatii si Reprezentare Militara*), **Sergiu Tudor Medar**. General-Lieutenant Medar served in the United States for seven years in the 1990s, heading the Office of the Romanian Defense Attache in Washington, DC until 1999. Between 2000 and 2003 he headed the original incarnation of the Directorate of Military Intelligence in the DGIA; then from 2003 until the end of 2005 he was Head of the restructured "J2" Unit. General-Lieutenant Medar was a prescient choice for the CIA as a liaison for secret detention operations in Romania: not only was he trusted beyond doubt in both US and NATO military circles; he was also, as the following quote attests, aware of the potential perils of partnering with military intelligence to achieve an essentially political goal:

> "The civilian leadership's tendency in using its control over intelligence for political purposes is likely to be even bigger than its desire to keep the military component under its firm control. Some equilibrium must be established between the professional experience of the Military Intelligence Service and the authority of the civilian political leadership."[189]

reduced significantly, as part of wider restructuring in the Ministry of National Defence. The MK Airfield is therefore now administered from Fetesti as an extension of the 86th Air Force Base; the only active unit located at MK is the 863 Helicopter Squadron.

[185] APOD stands for Aerial Port of Debarkation; APOE stands for Aerial Port of Embarkation. Under NATO concepts these references mean that MK Airfield was hosting primarily transport aircraft that were bringing in and shipping out personnel and equipment.

[186] Confirmed in interviews by the Rapporteur's representative with Romanian military personnel stationed at MK Airfield. Military intelligence was the second of nine categories of military staff that participated in the Joint Operations Centre. The other categories were: personnel, operations, logistics, planning, communications, training, finance and budget, and "civilo" – or civil-military co-operation.

[187] Visits by US officials to Romanian facilities in the context of their classified bilateral arrangements are regulated under the NATO framework and the *Agreement on the protection of military classified information* of 21 June 1995 (entered into force in 2003). See "Answers of the Romanian Delegation to the Questionnaire on the Alleged Secret Detention Centres", appended to the letter to me from Gyorgy Frunda, Chairperson of the Romanian Delegation to PACE, 20 January 2006; at page 1. Article 5(1) of the 1995 Agreement states as follows: "The authorization for "visits" by one party to units or installations of the other party where access to state classified military information is necessary, will be limited to official purposes... [and] to government officials both parties have agreed upon."

[188] One example of how Romanian military intelligence continued to collaborate with the United States in the "war on terror" was Parliament's endorsement in March 2004 of President Iliescu's proposals to send a special military intelligence detachment of 30 officers to serve in the International Security Assistance Force (ISAF) in Afghanistan. See Rompres News Agency, Bucharest, "Parliament approves Romanian military intelligence unit for Afghanistan," reproduced on BBC Monitoring, 2.03.2004, available at http://www.roembus.org/english/news/international_media/2004/march/02/BBC_Monitoring_2_03_2004_Parliament%20approves%20Romanian%20military%20intelligence%20unit%20for%20Afghanistan.htm.

[189] See Sergiu Medar, "The role of military intelligence in the process of military and political-military decision-making" (original in Romanian), internal document of the Directorate for Military Intelligence, Bucharest, 2000; cited in Florin Ureche, "Civilian Control over Military Intelligence Services", in *Romanian Military Thinking*, April 2006, pp. 69-74, copy on file with the Rapporteur, at p. 69.

223. Nonetheless we were able to confirm the approximate borderlines of the CIA's "outer perimeter" for its secure area in Romania. We were assisted by a source in military intelligence, a detailed map and an annex to the Access Agreement of 2005, in which reference is made to "facilities"[190] generally and to one relevant "manoeuvre area" in particular.[191] Our source used his right index finger to draw an invisible elliptical perimeter on the map, which encompassed a vertical column between the towns of Tulcea (to the north) and Constanta (to the south), as well as an area extending approximately 50 kilometers inland (to the west) and in the opposite direction to the Black Sea coast (to the east).[192] Referring to the role of the Romanian "J2" Unit in supporting bilateral arrangements with the CIA, our source said: *"We have to seal (this) entire area and limit access there."*

224. The secure area in question includes several current and former military installations, including all of those facilities named in the Access Agreement of 2005, which have been used by the United States under a "special regime of access" since late 2001.[193] Nonetheless, the main reason that led one of our CIA sources to say that his "guys were familiar with the area" was its inclusion of the landing point at which scores of civil and military flights carrying American service personnel have landed throughout the "war on terror": Mihail Kogalniceanu Airfield.

225. In the light of all that I have said above about MK Airfield, I only wish to draw attention to one further factor that has made it a venue so conducive to "partnership" with the CIA: its "dual" military-civilian character.[194] Military personnel worked routinely with civilian Air Traffic Controllers in processing both civil and military flights at the Airfield – each according to the applicable aviation rules. The system used at MK Airfield bears great similarities, albeit on a much smaller scale, to the system used at Kabul Airport (OAKB),[195] which became such a hub in the context of coalition military activities in Afghanistan and simultaneously a destination or departure point for multiple known renditions of CIA detainees on board civilian aircraft since the start of the "war on terror".

226. During the period of interest to my inquiry – from 2002 until 2005 – the civilian section of the MK Airfield had a Director General with a formidable "dual" civil-military character of his own. **Rtd. Colonel Mircea Dionisie** was a former controlling **Commander of the military Air Force Base** at MK Airfield in the communist pre-1989 era. He returned to the Airfield in 2002 and became the **Director General of the civilian airport**, now known as *Aeroportul International Mihail Kogalniceanu Constanta* (AIMKC).[196] Rtd. Colonel Dionisie stayed in this position until 12 July 2005 and therefore oversaw the bulk of the flights into and out of the MK Airfield, the exact movements of which – as well as their connections to CIA detainee transfers – my inquiry has attempted to trace.

[190] The four named facilities are as follows: Smardan Training Range; Babadag Training Area and Rat Head; Mihail Kogalniceanu Air Base, co-located with 34th Mechanised Brigade Base; and Cincu Training Range.

[191] See "Annex A – Facilities", the first of two annexes to the Access Agreement between Romania and the United States, 6.12.2005, at p. 9. Under the last of the four named facilities, Cincu Training Range, the "manoeuvre area" is described as follows: "comprised of areas in Tulcea and Constanta counties ("Judetul" in Romanian), bounded generally by the towns of Babadag in the north, Babadag Training Area in the east, Tariverde in the south and Horia in the west."

[192] In total, the perimeter line encompasses an area of about 1,500 square kilometers of territory in south-eastern Romania. See Appendix No. 2 to the present report, entitled "The 'secure zone' for CIA transfers and detentions in Romania."

[193] See the discussion on bilateral NATO SOFA arrangements between Romania and the United States earlier in this report, at section II.iii.b, entitled "Application of the NATO framework in Romania."

[194] The "dual use" character of MK Airfield dates back to 1961, when the Romanian Ministry of National Defence handed over the following elements of the airfield to the civilian authorities of Constanta International Airport: the runway / landing strip; the "parking aprons" for both light and heavy aircraft; the terminal buildings, including the Air Traffic Control Tower; and the main entrance / exit points from the adjacent highway. This restructuring created two "sections" on the MK Airfield: a civilian section and a military section. According to our discussions with Romanian military personnel stationed at the MK Airfield, the civilian and military sections keep one another informed only "for operational reasons (e.g. use of the runway) and on a need-to-know basis." These personnel told us that *"everybody plays by the rules, and that is one of the main reasons for the military side's close co-operation with the civilian side."*

[195] It is a little known fact that Romanian personnel managed and operated Kabul Airport as one of their tasks in the context of their NATO deployment, 2004 to 2006. Our team spoke with a senior military officer who was seconded directly from MK Airfield to serve for several months at OAKB.

[196] Denoted by the ICAO code "LRCK". *Aeroportul International Mihail Kogalniceanu Constanta* (AIMKC) is the new name of the airport. It was previously called simply *Aeroportul International Constanta* (AIC), but – according to its current Director General – took on the additional MK in its name in order to benefit from the "free publicity" generated by the media scandal over CIA flights allegedly having landed at MK Airfield. Mihail Kogalniceanu was the first President of Romania and – in addition to the MK Airfield – also gave his name to a town about 50 kilometres north of Constanta. Romanians tell me it was the first town in the country to have an entirely literate population.

b. Transfer of detainees into Romania: the cover-up persists

227. Our efforts to obtain accurate actual flight records pertaining to the movements of aircraft associated with the CIA in Romania were characterised by obfuscation, inconsistency and genuine confusion. I must begin this assessment, however, by commending my colleagues and their assistant in the Romanian Delegation to PACE and, in particular, its Chairperson Gyorgy Frunda, for demonstrating exceptional good faith and professionalism, and for extending the very best of co-operation and assistance to my inquiry. It is unfortunate that the Romanian authorities more generally did not match the levels of thoroughness and transparency shown by this Delegation.

228. Specifically I hold three principal concerns with the approach of the Romanian authorities towards the repeated allegations of secret detentions in Romania, and towards my inquiry in particular. In summary, my concerns are: far-reaching and unexplained inconsistencies in Romanian flight and airport data; the responsive and defensive posturing of the national parliamentary inquiry, which stopped short of genuine inquisitiveness; and the insistence of Romania on a position of sweeping, categorical denial of all the allegations, in the process overlooking extensive evidence to the contrary from valuable and credible sources.

229. First I was confounded by the clear inconsistencies in the flight data provided to my inquiry from multiple different Romanian sources. In my analysis I have considered data submitted directly from the Romanian Civil Aeronautical Authority (RCAA),[197] data provided by the Romanian Senate Committee,[198] and data gathered independently by our team in the course of its investigations. I have compared the data from these Romanian sources with the records maintained by Eurocontrol, comprehensive aeronautical "data strings" generated by the international flight planning system, and my complete Marty Database. The disagreement between these sources is too fundamental and widespread[199] to be explained away by simple administrative glitches, or even by in-flight changes of destination by Pilots-in-Command, which were communicated to one authority but not to another. There presently exists no truthful account of **detainee transfer flights into Romania**, and the reason for this situation is that the Romanian authorities probably do not want the truth to come out.

[197] See, for example, *information from the records of the Romanian Civil Aeronautic Authority (RCAA) and the Romanian Ministry of National Defence*, contained as Appendices to the letters sent to me by Gyorgy Frunda, Chairperson of the Romanian Delegation to PACE, dated 24.02.2006 and 7.04.2006.

[198] The committee to which I refer is the "Senate Committee of Inquiry to investigate the allegations regarding the use of Romanian territory for CIA detention facilities or flights by CIA-chartered aircraft", established under Article 1 of Decision No. 29 of the Senate, Parliament of Romania, 21.12.2005 (hereinafter referred to as the "Senate Inquiry Committee"). The Chairperson of the Committee was Senator Norica Nicolai, supported by Vice-Chair George Cristian Maior and Secretary Ilie Petrescu. The Committee released its final report on 5.03.2007 (hereinafter "Senate Inquiry Committee Final Report, 5.03.2007" – page numbers refer to the original, Romanian version), a copy of which was submitted as an attachment to Senator Nicolai's letter to me dated 20.03.2007. My inquiry was also provided with copies of most of the annexes to the final report, including substantial information from airport authorities, handling service providers and the national Air Traffic Services Administration (ROMATSA). I am grateful to Senator Nicolai for facilitating access for my inquiry to important information in Romania.

[199] In my letters to the Romanian authorities, I highlighted crucial inconsistencies in flight data relating to the movements of a host of CIA-linked aircraft in Romania, including N313P, N379P and N85VM. The documentation I received back from the Senate Inquiry Committee helps to establish certain landings, but is not authoritative enough to state categorically the exact paths flown by these aircraft, nor the full list of locations in Romania at which they did or did not land. I cannot, for example, content myself with "evidence" that aircraft changed their routes or destinations based on hand-written annotations on flight plans. In several cases I have "data strings" attesting to communications relating to these aircraft that do not correspond with the Senate Inquiry Committee's version of events.

230. I found it especially disappointing that the Senate Inquiry Committee chose to interpret its mandate in the rather restrictive terms of defending Romania against what it called "serious accusations against our country, based solely on 'indications', 'opinions', 'probabilities', 'extrapolations' [and] 'logical deductions'."[200] In particular, the Committee's conclusions are not framed as coherent findings based on objective fact-finding, but rather as "clear responses to the specific questions raised by Mr Dick Marty,"[201] referring to both my 2006 report and subsequent correspondence. Accordingly the categorical nature of the Committee's "General Conclusions,"[202] "Conclusions based on field investigations and site visits"[203] and "Final Conclusions"[204] cannot be sustained. The Committee's work can thus be seen as an exercise in denial and rebuttal, without impartial consideration of the evidence. Particularly in the light of the material and testimony I have received from sources in Romania, the Committee does not appear to have engaged in a credible and comprehensive inquiry.

231. The Romanian national delegation to PACE, in their carefully worded reply, ruled out the existence of unlawful CIA activity,[205] and appeared to offer prospects of constructive and transparent co-operation in the search for the truth. However the Romanian Government and Parliament have preferred to keep control of information by directing everything through the Senate Committee,[206] and ultimately reverted to their initial position of complete denial.[207]

[200] See Senate Inquiry Committee Final Report, 5.03.2007, *supra* note 200, at Chapter 2, "References to Romania", page 5.
[201] See Senate Inquiry Committee Final Report, 5.03.2007, *supra* note 200; generally at Chapter 5, "Conclusions reached by the Committee based on its documentation and monitoring activities"; and specifically at pages 10, 11, 12 and 13.
[202] By way of example, the first general conclusion states categorically: "Neither the Romanian Civil Aeronautic Authority nor any other institutions or structures of state with relevant competences in the field investigated by the Committee has any knowledge about civilian aircraft operated or chartered by the CIA or by any other company on behalf of the CIA, landing or flying over national territory," *Ibidem*, at page 10.
[203] The Committee rules out embarkation or disembarkation of any passengers on the key flights listed in the Marty Report of 2006, and states that aircraft associated with the CIA landed only in Bucharest. With regard to MK Airfield, the Committee "concludes that there is no facility that could have been used for the purpose of detention, not even on an ad-hoc basis. Moreover, none of the flights considered suspicious by the Marty inquiry, by NGOs or by the media has ever landed at this airport;" *Ibidem*, at page 11. Among other evidence, our team obtained records of actual flights into MK Airfield by aircraft associated with the CIA, which directly contradicts the Committee's claim.
[204] Final Conclusion No. 5 states as follows: "On the question of whether certain Romanian institutions could have participated knowingly or participated through omission or negligence in unlawful detainee transfer operations in Romanian airspace or at Romanian airports, the Committee's response is negative;" *Ibidem*, at page 14. It should be noted that other final conclusions are not so categorical, however, particularly with regard to whether secret detention facilities could have existed in locations other than the grounds or immediate vicinity of the named airports.
[205] See *inter alia* "Answers of the Romanian Delegation to the Questionnaire on the Alleged Secret Detention Centres", appended to the letter from Gyorgy Frunda, Chairperson of the Romanian Delegation to PACE, to Dick Marty, 20.01.2006; pp. 5 to 6. The language of such submissions was carefully worded so as not to exclude the types of CIA operations I have described in this report: *"No Romanian authority has any knowledge or information about any aircraft illegally transporting prisoners. No Romanian authority has been, legally or illegally, involved in secret transportation of prisoners The Romanian Government has never issued any authorisation for any transport of prisoners via Romania."*
[206] In two written decisions, on 14 and 21.11.2006, the Romanian Senate rejected the requests of the Romanian Delegation to PACE to respond to my correspondence directly, and instead assigned to the Senate Committee the sole authority for preparing Romania's official responses. These decisions were followed by a four-month period during which we received no communications, ended only by Senator Nicolaï's submission of the Final Report by letter dated 20.05.2007.
[207] At the end of my inquiry, the official position of Romania has developed no further than the original denials it adopted at the beginning. See "Response of the Romanian Government on the investigation initiated by the Secretary General of the Council of Europe, in accordance with Article 52 ECHR", appended to the letter from Mihai-Razvan Ungureanu, Romanian Minister of Foreign Affairs, to Terry Davis, 15.02.2006; at page 4: *" no public official or other person acting in an official capacity has been involved in any manner in the unacknowledged deprivation of liberty of any individual, or transport of any individual while so deprived of their liberty Official investigations have been conducted by several Government authorities [whose] results confirmed that no such activities took place on Romanian territory."*

V. Human rights abuses involved in the CIA secret detention programme

i. Re-humanising the people held in secret detention

232. The policy of secret detentions and renditions pursued by the current US administration has created a dangerous precedent of dehumanisation. Many of the people caught up in the CIA's global spider's web[208] are rightly described as "ghost prisoners"[209] because they have been made invisible for many years.[210]

233. Meanwhile the US Government's descriptions of its captives in the "war on terror" can only serve to exacerbate this dehumanising effect. The Administration routinely speaks of "aliens", "deadly enemies" and "faceless terrorists," with the clear intention of dehumanising its detainees in the eyes of the American population. The NGO community, for its part, calls them "ghost prisoners".

234. By characterising the people held in secret detention as "different" from us – not as humans, but as ghosts, aliens or terrorists – the US Government tries to lead us into the trap of thinking they are not like us, they are not subjects of the law, therefore their human rights do not deserve protection.

235. President Bush has laid this trap on multiple occasions as a means of diverting attention from the abusive conditions in which certain detainees in US custody are being held.[211] Our team heard first-hand how distinctions are drawn in the mind of guards and interrogators: in an interview with one of our CIA sources who has extensive knowledge of detainee treatment, we asked whether a known form of detainee treatment should be considered as abusive. *"Here's my question,"* replied our source. *"Was the guy a terrorist? 'Cause if he's a terrorist then I figure he got what was coming to him, I've met a lot of them and one thing I know for sure is that they ain't human – they ain't like you and me."*

236. Yet what has struck me most often as I have examined the cases of scores of people held in secret detention – some of whom I have met – is precisely the opposite: these detainees' ordeals have affected me profoundly as I have always thought of them as fellow human beings. The worst criminals, even those who deserve the harshest punishment, must be given humane treatment and a fair trial. This, moreover, is what makes us a civilised society.

237. It is for these reasons that we must combat their being seen as "ghost prisoners" by repeatedly pointing out that persons detained in the course of counter-terrorist operations are and remain human beings whose human rights must be protected and who are entitled to humane treatment as laid down in the ECHR. In this section of my report I have set out expressly to place the emphasis on the human aspects of these people held in secret detention.

[208] For the most comprehensive and authoritative known list of persons detained at one point by the United States, and whose fate and whereabouts remain unacknowledged, see the following report produced jointly by six leading human rights organisations: Amnesty International, Cageprisoners, Center for Constitutional Rights, Center for Human Rights and Global Justice at NYU School of Law, Human Rights Watch and REPRIEVE, "Off the Record – US Responsibility for Enforced Disappearances in the War on Terror," 7 June 2007, available at http://www.chrgj.org/docs/OffTheRecord/OFF_THE_RECORD_FINAL.pdf.
[209] See, for example, various reports by Human Rights Watch: most recently "Ghost Prisoner – Two Years in Secret CIA Detention", HRW Volume 19, No. 1(G), February 2007, available at: http://hrw.org/reports/2007/us0207/us0207webcover.pdf; and earlier "List of 'Ghost Prisoners' possibly in CIA custody", 30 November 2005, available at http://hrw.org/english/docs/2005/11/30/usdom12109.htm.
[210] In its report entitled "USA / Yemen: Secret Detention in CIA 'Black Sites'", Amnesty International described how one detainee had been transformed from a person his father described as a "very gentle man, who is always laughing", to someone who sat through an encounter with "never even the ghost of a smile on his face". See AI Index: AMR 51/177/2005, 8 November 2005, available at http://web.amnesty.org/library/index/engamr511772005; at page 2.
[211] The speech delivered by President Bush on 06.09.2006 is a prime example of the type of rhetoric used to convince the audience that the people in US custody are inhuman and undeserving of empathy. The speech is strewn with references to "dangerous men", "terrorist enemies" and "those who kill Americans". Talking about Guantanamo Bay, President Bush states: "It's important for Americans and others across the world to understand the kind of people held". In his conclusion, President Bush states: "The adversaries are different... We're fighting for the cause of humanity, against those who seek to impose the darkness of tyranny and terror upon the entire world."

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instructed to walk along an isolated path without looking over his shoulder. He said he feared that he was "about to be shot in the back and left to die," with nobody having any idea of how he had got there.

278. In the ensuing three years, Mr El-Masri's case has been investigated and reported extensively, including by the *Untersuchungsausschuss* of the German Bundestag and by German prosecutors, both of which I shall address below. Yet a key piece of the jigsaw, namely the means by which Mr El-Masri was returned from Afghanistan to an unknown point in Europe[221], has eluded investigators until now.

279. Today I think I am in a position to reconstruct the circumstances of Mr El-Masri's return from Afghanistan: he was flown out of Kabul on 28 May 2004 on board a CIA-chartered Gulfstream aircraft with the tail number N982RK to a military airbase in Albania called Bezat-Kuçova Aerodrome.[222] We have obtained primary data on this extraordinary homeward rendition from three separate sources and we are able to publish the relevant flight logs from the Marty Database as an appendix to this report.[223]

280. Our team was first alerted to an unusual "flight circuit" through European airspace on the date in question by a submission from the national aviation authorities of Bosnia and Herzegovina (BiH).[224] The submission cited three "diplomatic permissions for state aircraft," which it said had been issued in relation to "flight movements for the needs of CIA, USA." The most relevant of these permissions, of which I subsequently obtained a copy,[225] was described as follows:

> "On the 26 May 2006 permission [was] issued to the company "RICHMON AVIATION" [sic] for traveller charter flight on the day of 28 May 2004. Line: Auki/Gwaunaru'u – Sarajevo – Prag. Aircraft type: Gulsstrim III, Registration N982RK, which is also its call sign."

281. Three elements of this permission caught our attention: the role of the charter company Richmor Aviation;[226] the outlandish notion that a Gulfstream III would fly to Sarajevo from the Solomon Islands airport of Auki/Gwaunaru'u;[227] and the mention of 28 May 2004, which we knew as the date on which Khaled El-Masri was released. The first of these elements was the key to our locating the flight logs for the N982RK aircraft; the second was evidence of a smokescreen on the part of the CIA to cover up the aircraft's actual arrival from Bezat-Kuçova Aerodrome; and the third was the match we had been looking for to solve the mystery of the circumstances of Mr El-Masri's return to Europe.

[221] See El-Masri statement to US Court in Alexandria, 06.04.2006, at p. 21. "Sam", a German-speaking official who accompanied Mr El-Masri on this flight, told him that he "would eventually land in a European country but that it would not be Germany itself."
[222] The military airbase in question appears to have two variations on its name: the first is Bezat-Kuçova; the other is Berat-Kuçovë. The airbase is denoted by the ICAO code LAKV. It is situated in the south of Albania, between the towns of Vlorë and Korcë, about 40 miles (64 km) south of the capital Tirana. The airbase underwent a comprehensive renovation and upgrade between 2002 and 2004 in order to bring it into line with NATO standards, as part of Albania's NATO accession process.
[223] See Appendix No. 3 to the present report, entitled "Flight logs related to the secret 'homeward rendition' of Khaled El-Masri in May 2004."
[224] Submission No. 02-292.7-525-6/06, "Report on flight movements", prepared by Mr Dorde Ratkovic, Director General, Directorate for Civil Aviation in the BiH Ministry of Transport and Communications, Sarajevo, 17.05.2006; attached to the letter to me from Mr Elmir Jahic, Chairperson of the BiH Delegation to PACE, Sarajevo, 14.06.2006.
[225] Permission No. 292.7-351/04 issued by Hasan Hadzepagic, Senior Advisor for Flight Authorisation, Directorate for Civil Aviation in the BiH Ministry of Transport and Communications, Sarajevo, 26.05.2004, sent as a fax to "Richmon [sic] Aviation", USA; attached to the letter to me from Aljosa Campara, Secretary General of the BiH Delegation to PACE, "Report on flight movements – copies of permissions issued", Sarajevo, 8.01.2007.
[226] We were familiar with Richmor Aviation as the operator of the aircraft with the tail number N85VM, which was used in the CIA's rendition of the Egyptian cleric Abu Omar on 17.02.2003. See Appendix No. 4 to the Marty Report 2006, "Flight logs related to the rendition of Abu Omar."
[227] Quite apart from the fantastical route, the N982RK aircraft's maximum flight capacity of 6 hours 52 minutes, as listed in the "data strings" I have obtained, would make it impossible to complete this journey.

282. We have since received confirmation from CIA insiders that Albania was indeed the country to which the Agency opted to send Mr El-Masri from Afghanistan. We were told by these American sources that originally the CIA had asked "the former Yugoslav Republic of Macedonia" whether it would accept a "reversal" of the January 2004 rendition, but that this approach was instantly rejected: *"You can imagine that was the last thing the Macedonians wanted! They had no reason to take the problem back."*

283. The CIA's second choice of Albania was favourable from a geographical point of view since it opened the option to drive Mr El-Masri to the Macedonian border immediately upon arrival and thus set him free in a state of disorientation that might diminish his credibility if he went public with his story. From a policy point of view, Albania has also proven to be a willing bilateral partner in providing the United States with a "dumping ground"[228] for its unwanted detainees in the "war on terror." At least eight former inmates of Guantanamo Bay remain stranded in Albania[229] because their refugee status does not allow them to go home to their families.

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284. At the end of his own ordeal, Mr El-Masri was not shot in the back but instead confronted by police guards at a checkpoint on what appeared to be the border between "the former Yugoslav Republic of Macedonia" and Albania. From there he was driven for about six hours to Tirana, Albania's capital city, and sent home to Germany on a commercial flight from Mother Theresa Airport to Frankfurt. He received a boarding card for this final flight and an Albanian exit stamp in his passport for 29 May 2004.

285. There have been other new developments concerning in particular the activities of the prosecutor's office in Munich, the proceedings in the German Bundestag's parliamentary committee of inquiry (*Untersuchungsausschuss/UA*), Mr El-Masri's civil lawsuit against the CIA before US courts, and, last but not least, his personal situation.

286. The case against Mr El-Masri's kidnappers before the Munich prosecutor's office is still pending. Upon the initiative of the prosecutor, international arrest warrants were launched against 13 suspected CIA agents in January 2007.[230] The Bavarian judicial authorities did not in any way interfere with the launch of these arrest warrants, but no progress has as yet been made in apprehending the persons concerned or even identifying them by their actual names.

287. In Germany – in contrast to Italy - it is not possible to try suspects *in absentia*. In reply to a formal request for judicial cooperation addressed to the Macedonian authorities in early 2006, the prosecutors were given only the "official version" of the events as already publicly stated by the authorities.[231]

288. Nor has any progress been made in identifying "Sam", the German-speaking agent who, it is claimed, accompanied Mr El-Masri home from Afghanistan[232]. It was revealed recently[233] that then Interior Minister Schily was personally present in Kabul at the time when "Sam" announced to Mr El-Masri that he would soon be repatriated. But the prosecutor sees no link between Mr Schily's presence and the allegations made by Mr El-Masri himself that "Sam" was in fact a German federal agent.

[228] The phrase "dumping ground" is used by the US lawyer of five Uighur Muslims from western China who were sent to Albania in May 2006 upon their release from Guantanamo Bay; see BBC News Online, "Albania takes Guantanamo Uighurs", available at http://news.bbc.co.uk/2/hi/americas/4979468.stm.
[229] See, for example, BBC News, "Guantanamo refugee rues asylum deal," 18.05.2007, available at http://news.bbc.co.uk/2/hi/africa/6658187.stm. The nationalities of the eight men in Albania are listed as: an Algerian, an Egyptian, an Uzbek and the five Uighurs.
[230] In its press release of 31.01.2007, the *Prosecutor's Office* acknowledged having received additional information from the Milan Prosecutor's Office and from the Council of Europe's Rapporteur, Dick Marty.
[231] See Marty report 2006, *supra* note 6, p. 27, §§ 106-111.
[232] See Marty report 2006, *supra* note 6, p. 26, §§ 99-100, p. 27, § 103, p. 32, § 130.
[233] See n-tv, 23.11.2006.

289. It has been revealed that the telephones of Mr El-Masri's lawyer, Mr Gnjidic, were tapped from January until May 2006 on the instructions of the prosecutor's office. At the time, there were also long conversations between Mr Gnjidic and my collaborator as part of the mandate given to me by the Parliamentary Assembly. The prosecutor in charge[234] informed me that the reason for the wire-tap, which was court-approved as provided for by law[235], was to document any possible attempts made by the suspected kidnappers to contact Mr Gnjidic with a view to offering Mr El-Masri a settlement. As no such contacts were made, however, the wire-tap was terminated. Mr Gnjidic, who had not been informed of this wire-tap in advance, appealed against the decision authorising the surveillance. Its extension beyond March was found unlawful on appeal, but the legality of the initial wire-tap was upheld. Mr Gnjidic then lodged a constitutional complaint (*Verfassungsbeschwerde*) against the authorisation of the initial wire-tap before the Federal Constitutional Court (*Bundesverfassungsgericht*). In submissions to this court,[236] the Federal Ministry of the Interior commented that if it found the wire-tap justified. On 17 May 2007, the Federal Constitutional Court held that the wire-tap had violated Mr Gnjidic's constitutionally protected right to privacy.

290. Whilst the Bundestag's parliamentary committee of inquiry (UA) has not yet completed its work, it is now undisputed in this body that Mr El-Masri's account of his ordeal is true[237]. This means that there is no longer any doubt that the Macedonian authorities' official version is inaccurate[238]. This confirms our belief that the latter consciously concealed the truth.

291. Disagreement between the representatives of the German Government and opposition parties in the Bundestag committee of inquiry continues to exist as to the extent to which different German authorities were involved or at least informed of Mr El-Masri's case, and when. The testimonies of a Telecom employee and a junior member of the German intelligence services – claiming that Macedonian officials informed the German embassy in Skopje of Mr El-Masri's detention before he was transported to Afghanistan - were not considered by the majority of the committee to be sufficiently conclusive to be able to hold the political leadership accountable[239].

292. More generally, opposition members on the committee have voiced their frustration that the executive is limiting the possibility for the committee to elucidate the truth by invoking official secrecy, refusing access to key files or testimony on this ground. Information relating to the "core field of executive privilege" and information which must be kept secret in the higher interests of the state (*Staatswohl*) is not available to the UA even when meeting in camera. It is the executive itself which decides what information falls into this category, apparently without any parliamentary control; the current trend is to extend this concept of knowledge restricted to the executive, a move which has come in for much criticism from the members of the UA. The latter have recently decided to refer this matter to the Federal Constitutional Court[240]. Even classified information which does not fall into this category has to be dealt with in camera by the committee, which means that it cannot be publicised by the members of the UA; this too has been criticised by some members of the Bundestag[241].

293. Prosecutor Hofmann, who also testified before the UA, had transmitted the entire case file to the committee, including elements that were classified as secret. But during his public testimony, he was obliged to withhold his answers to certain questions relating to classified documents. His offer to discuss the classified material in a closed session was not taken up, although this procedure had been followed for other witnesses.

[234] Mr Martin Hofmann, whom I met in December 2006 in Geneva. I should like to thank Mr Hofmann for his kind cooperation.
[235] A prolongation of the wire-tap was subsequently refused by the competent judge.
[236] On file with the inquiry.
[237] According to Max Stadler, Liberal member of the Bundestag's committee of inquiry and the *Parlamentarisches Kontrollgremium (PKG)* who spoke with a member of our team on 25.05.2007, this is the opinion of all members, including those from the party currently in power.
[238] Mr Stadler, *supra* note 239, indicates that this is also the view of the committee of inquiry, which does not however believe that its terms of reference allows it to record this officially.
[239] The political leadership could only be held responsible for "organisational error" for failing to report back with the relevant information in good time.
[240] Tagesthemen.de of 21.05.2007, citing Dr. Max Stadler (Liberal).
[241] Mr Stadler has alluded to "organised leaks" by members of government parties designed or at least objectively likely to mislead the public on the substance of the in camera discussions – one case in point was the private hearing of officers who had interrogated Mr Kurnaz in Guantanamo Bay and the matter of the American "offer", apparently refused by the German authorities, to allow Mr Kurnaz to be repatriated.

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294. As a result of the UA's work, the German government and government departments have been made more aware of human rights aspects and the rule of law[242]. The UA recently agreed to avail itself, for the first time, of the possibility provided for in the law governing committees of inquiry to appoint a "special investigator" with effect from the summer 2007 parliamentary recess, tasked on behalf of the UA with looking into the CIA rendition flights[243].

295. Meanwhile Mr El-Masri's civil lawsuit in the United States against the CIA is entering its final phase: an appeal to the US Supreme Court, after the rejection of his case on grounds of state secrecy in the first instance, upheld by the court of appeal[244], was announced by Mr Gnjidic on 30 May 2007.

296. Against this background, Mr El-Masri himself is still suffering severely from the psychological consequences of the ordeal he has gone through. He has been repeatedly victimised by personal attacks in the local media and has been unable to find employment in the last three years. In January 2007, he lashed out physically at a vocational training officer, who he felt had treated him unfairly. On 17 May 2007, he was arrested in Neu-Ulm as a suspect in a case of arson and placed in a psychiatric hospital[245]. This dramatic development in Mr El-Masri's personal situation merely confirms the repeated claims by his lawyer, Mr Gnjidic, that Mr El-Masri is in desperate need of immediate professional psycho-social post-traumatic care[246]. According to his current therapist[247], the conflict between his post-traumatic care and the pressure arising from the various ongoing procedures to establish the truth simply adds to Mr El-Masri's problems.

297. It is therefore all the more regrettable that Mr El-Masri has not yet been given an official apology for the abuses he has suffered, despite the fact that Mr Schily has stated before the *Untersuchungsausschuss* that Mr El-Masri is innocent and that the Americans have long since offered their own apology to the German Government.

298. I have the following comments regarding these developments in the El-Masri case.

b. The "legal vacuum": denial of accountability to El-Masri in Germany and in the United States

299. In the present state of affairs, Mr El-Masri is unable to hold accountable those responsible for his ordeal both in Germany and in the United States. The core of the problem is the doctrine of state secrecy, which at present constitutes an absolute obstacle to the effective prosecution of Mr El-Masri's kidnappers in Germany, the full clarification of responsibilities in the *Untersuchungsausschuss* and Mr El-Masri's civil lawsuit against the CIA in the United States.

300. As Mr Gnjidic has said so aptly in his complaint against the wire-tap of his law office: whilst the domain of professional secrecy - the traditionally protected relationship between lawyers and doctors and their clients, journalists and their sources - is gradually shrinking, the realm of state secrecy is increasingly expanding. "Equality of arms" - part of the "fair trial" requirements under Article 6 ECHR - becomes a hollow phrase under these conditions[248].

[242] Mr Stadler gave as an example an apparently similar case of a long-term German resident arrested in Pakistan who was able to return to Germany without the government raising the objections it did in the case of Mr Kurnaz; a second example is the approach adopted by the Bundestag's Legal Affairs Committee to a bill to facilitate information exchange between executive services in the fight against terrorism. The Committee insisted on including measures to prevent this being misused for rendition purposes.
[243] Mr Stadler insisted that this "special investigator" would not be replacing the Committee but would be preparing the way by carrying out preliminary investigations which would facilitate the UA's subsequent work.
[244] No 06-1667 of 02.03.2007 (4th circuit).
[245] He is suspected of having laid fire to a wholesale market in Neu-Ulm (cf. Spiegel online 17.05.2007).
[246] Letter from Mr Gnjidic to Chancellor Merkel of 26.04.2007, passed on to the Bavarian Prime Minister's Office by letter from the Chancellor's office of 11.05.2007 with a request to take this issue up as a matter of urgency (copy of both letters on file); since February 2006, Mr El-Masri has received limited therapy (70 hours) from the treatment centre for torture victims in Neu-Ulm, but this therapy was considered as insufficient both by Mr Gnjidic and by the therapist herself (cf. SPIEGEL-online 18.05.2007). Although Mr El-Masri had asked for treatment at the centre shortly after his return to Germany in 2004, it took until 2006 for Mr Gnjidic to obtain the required health insurance funding agreement to start this limited treatment.
[247] Cf. Spiegel-online, 18.05.2007 (interview with Ms Gerlinde Dötsch).
[248] Mr Gnjidic's graphic comparison : the lawyer gets to fight with a pocket knife, the executive with a sword.

301. The US Supreme Court, if it chooses to hear Mr El-Masri's case, and the German Federal Constitutional Court, following the appeal lodged by the minority representatives of the Bundestag's committee of inquiry, will have to take a position on the extent to which the executive is allowed to act in complete secrecy, without the possibility for either judicial or parliamentary scrutiny of its actions. Here, we have on the one hand lawyers and judges – in favour of judicial and/or parliamentary control, and on the other the executive, and in particular the intelligence agencies and other special services, claiming the freedom to act in secrecy on the pretext of the supposed higher interests of the state. Mr Gnjidic's constitutional complaint, in contrast, has led to a clearer definition of the realm of professional secrecy.

302. These are undeniably key issues for the defence of human rights and for the fight against terrorism. Short-circuiting the different mechanisms of judicial and parliamentary control does not make the fight against terrorism more effective. Rather, this vacuum can lead to arbitrary action and all sorts of dysfunctioning. While certain operational means must of course remain confidential, there is nothing to prevent making provision for transparent procedures for subsequent review. Continuing to invoke state secrecy years after the events is unacceptable in a democratic society.

303. Moreover, state secrecy cannot in any circumstances justify or conceal criminal acts and serious human rights violations. From the point of view of the rule of law, the ruling of the US Court of Appeal (4th circuit) in Mr El-Masri's case[249] is disappointing and regrettable: whilst the Court of Appeal acknowledges that it is for the courts to decide on the extent of state secrecy[250], it takes a very restrictive stance as to the scope of judicial review, insisting on the court being obliged to accord the "utmost deference" to the responsibilities of the executive branch[251]. This "deference" goes so far that "in certain circumstances a court may conclude that an explanation by the Executive of why a question cannot be answered would itself create an unacceptable danger of injurious disclosure. [...] In such a situation, a court is obliged to accept the executive branch's claim of privilege without further demand"[252].

304. One may legitimately ask how such reasoning can be reconciled with the fundamental principles of the rule of law. The case law of the US Supreme Court cited in support of this wide interpretation of the state secrecy doctrine[253] dates back to the 19th century and the worst periods of the Cold War, when there was an almost blind trust in the infallibility and incorruptibility of its secret services. It is therefore to be hoped that the United States Supreme Court will use the opportunity of the El-Masri case to take a fresh approach to and modernise the "state secrets doctrine", to bring it into line with the principle of the separation of powers and the requirement for transparency in a genuinely democratic society.

305. In *Fitzgerald*[254], another United States Court of Appeal rightly points out that *"[w]hen the state secrets privilege is validly asserted, the result is unfairness to individual litigants – through the loss of important evidence or dismissal of a case – in order to protect a greater public value."* How can it be seriously argued that information establishing the responsibility of State officials in serious violations of human rights is of "a greater public value" deserving protection in a democratic society?

[249] No 06-1667 of 02.03.2007
[250] Quoting the US Supreme Court in *Reynolds* (345 US at 9-10) "[j]udicial control over the evidence in a case cannot be abdicated to the caprice of executive officers"
[251] Again quoting the US Supreme Court (*Nixon*, 418 US at 710)
[252] Court of Appeal (*supra* note 246) p. 12, with references to the US Supreme Court's *Reynolds* judgment (345 US at 9).
[253] The *Reynolds* case dates back to 1953; another leading case (*Totten v. United States*, *92 US 105*) to 1875, and the *United States v. Nixon (418 US 683)* to 1974; *Chi & S Air Lines, Inc., v. Waterman S.S.Corp.*, *333 US 103, 111* to 1972
[254] 776 F.2d at 1238 n.3 (cited by the Court of Appeal in the El-Masri case, *supra* note 246, p. 23)

306. The principle of judicial self-restraint is certainly a good thing, but this is truly corrupted when it results in a denial by the judicial system of its own role, leading to impunity for the perpetrators of serious human rights violations.

307. Judges, prosecutors and lawyers cannot *a priori* be considered national security risks, any more than other agents of States themselves. If necessary to safeguard legitimate state secrets that may well be intertwined with illegitimate ones, judicial personnel participating in proceedings involving state secrets can be subjected to a specific clearing or vetting procedure, as is done in a number of jurisdictions, and placed under an obligation to maintain the secrecy of the information they are given access to[255].

308. In order to ensure accountability, information pertaining to serious human rights violations committed by agents of the executive should not, and need not be permitted to be shielded by the notion of state secrecy or national security.

309. What applies to courts must also apply to parliamentary committees of inquiry: the executive must not be allowed to thwart inquiries into its own possible wrongdoings by classifying relevant information.

c. *The German parliamentary committee of inquiry and the work of the prosecutors in Munich*

- *The Bundestag committee of inquiry*

310. The German parliamentary committee of inquiry responsible for establishing the facts in the El-Masri case is emblematic. Of course the *Bundestag*'s decision to conduct a serious inquiry into the case of Mr El-Masri and into possibly reprehensible activities by the German special services is welcome. It is, however, regrettable that most members of the committee have to date been content to receive documentation that has been rendered very incomplete by government censorship. The committee has also frequently been quick to accept the reasons given by witnesses for refusing to give evidence: on each occasion, "state secrecy" or the so-called doctrine of *exekutive Eigenverantwortung* (the domain of the executive's own responsibility, exempt from parliamentary scrutiny) has been accepted. It should also be made clear that the standing committee responsible for supervising the activities of the secret services (*Parlamentarisches Kontrollgremium (PKG)*) has access to secret information[256]; and that the parliamentary committee of inquiry was granted access behind closed doors both to classified documents and to witness testimony on matters classified as secret. What is in dispute between majority and minority representatives is the extent to which parliamentarians can demand access to classified materials, and what use they can make of it in public if they consider that the matter in question requires their constituents to be informed. This matter needs clarification, generally and also for future reference. The parliamentary committee of inquiry is fulfilling its supervisory remit in the interest of parliament as a whole, and its work must not be primarily influenced by considerations of short-term political rivalry[257]. Any majority, in a democratic system, can become the minority at the next election, and should have an interest in protecting parliamentary scrutiny of executive action. I therefore welcome the decision of the opposition representatives on the parliamentary committee of inquiry to apply to the Federal Constitutional Court for a clearer definition of the scope of the doctrine of the executive's own responsibility (*exekutive Eigenverantwortung*)[258].

[255] In the same way as the procedure described by the 4th Circuit Court of Appeals (*supra* note 246, pp. 11-12 and 21-22) for the judicial review of the issue whether the information sought to be protected qualifies as privileged under the state secrets doctrine.
[256] On the other hand, this body has no power to summon witnesses. The government is under an obligation to "report" to the PKG, but there is no statutory obligation (subject to criminal penalty) like that which exists for witnesses summoned by a committee of inquiry, for the executive's representatives on the PKG to tell the truth.
[257] As seems to be the case, according to Mr Stadler, within the German parliamentary committee of inquiry: while the representatives of government parties, especially the Christian Democrats who were in the opposition at the material time, take a very active and open attitude during the examination of witnesses, government discipline comes fully into play when the facts are being assessed, with the representatives of government parties never having voted for a motion to take evidence (*Beweisantrag*) tabled by minority representatives or having tabled such a motion themselves.
[258] cf. tagesthemen.de of 21.06.2007, announcing the appeal to the Federal Constitutional Court.

[illegible] its resources and let it die than to kill every insurgent [because] dynamic insurgencies can replace losses quickly. Skillful counterinsurgents must thus cut off the sources of that recuperative power." One such source is said to be the status afforded to an insurgent by his enemy.

[illegible] 56800&advnnl=1&oref=slogin&adxnnlx=1180692898-m6Kq... [illegible]

[309] See Steve Kleinman, "Barriers to Success: Critical Challenges in Developing a New Educing Information Paradigm," excerpts taken from pp. 254, 255 and 265, in *Intelligence Science Board*, "Educing Information", supra note 308, at pp. 235-266.

359. I support unambiguous, transparent and strictly enforced rules on CIA detainee interrogation. The Executive Order that President Bush "shall issue" imminently[310] should be published in full and should expressly outlaw not only the abhorrent practice of "water boarding," but also techniques like slapping, stress positions, sleep deprivation and extremes of temperature. I note that even the Army Field Manual of September 2006 leaves open the possibility that such techniques are not prohibited, so that manual does not strike me as an appropriately robust set of minimum standards. When the long-awaited rules for the CIA are finally issued, they must set higher, clearer thresholds that maintain the integrity of these important interrogations.

iii. Perceptions of the HVD programme and its likely reactivation

360. At the time of his 6 September 2006 speech, President Bush lauded the HVD programme as a policy that "*has been, and remains, one of the most vital tools in our war against the terrorists*". In the experience of our team during this inquiry, the President's view is largely shared among those officers who had knowledge of the programme. With only very few exceptions, the majority of our sources in the CIA and the wider intelligence community have described the HVD programme as a success, or in one case "*about as good as it could have turned out*".

361. The following is an excerpt from our interview with a senior US intelligence source:

> "I think you have to understand that the programme we ran through 2005, into 2006 to handle the HVDs was both needs-oriented and results-oriented. We needed to show that we could capture those responsible for 9/11, break down key Al-Qaeda cells at their source, and keep the threat of terror attacks as far away from the American people as possible. We needed to work with our most trusted allies to avoid leaks that would endanger national security – ours or theirs. The results speak for themselves.
>
> And if you look at our situation now, the needs are different from the immediate post-9/11 period. Bringing those 14 HVDs to Guantánamo – the Zubaydahs and the KSMs – was like drawing a line under that programme in the way it had been operating, as a lot of guys weren't happy going on with it. Sure, there'll be something else to replace it, but we don't know what that looks like yet."

362. Our sources have stated categorically to us that from the perspective of the CIA officials who operated it, the specific aspects of the "High-Value Detainee" programme on which this report concentrates – including the European "black sites" – belong to a chapter of the post-9/11 story that is essentially closed.

363. At first sight, this analysis appears valid. The 14 HVDs whom our sources agreed to discuss with us (at least on a limited basis) have been transferred to and are all now held at Guantanamo Bay. They have received visits from representatives of the International Committee of the Red Cross (ICRC), which indicates that their fundamental rights as detainees have at last been regularised, at least as far as this particular aspect is concerned. They are no longer regarded as having high "live" intelligence value for the CIA or the US Government,[311] and so they were subject to Combatant Status Review Tribunal (CSRT) proceedings in early 2006 to rubber-stamp their status as "unlawful enemy combatants". Ultimately, these HVDs will be among the first detainees to be charged with specific offences in individual military commissions processes.

[310] According to the Military Commissions Act 2006, at §§ 6(a)(3)(A) and (B), the President "shall issue" an Executive Order containing authoritative interpretations of the "meaning and application of the Geneva Conventions" that would then apply to interrogations carried out by the CIA. Recent news reports have stated that a lengthy deliberative process involving lawyers in the State Department, the White House, Directorate of National Intelligence and the Department of Defense would most likely lead to this Executive Order being published before the summer of 2007; see, for example, Mark Mazzetti, "CIA Awaits Rules on Terrorism Interrogations," in *The New York Times*, 25.03.2007, available at: http://www.nytimes.com/2007/03/25/washington/25intercepts.html?ex=1332475200&en=c7c0514347050512&ei=5088&partner=rssnyt&emc=rss

[311] See Remarks by President Bush, 06.09.2006, *supra* note 3: "*We have largely completed our questioning of the men – and to start the process for bringing them to trial, we must bring them into the open. One of our sources also conceded that having held these detainees for several years in incommunicado detention, it would be "disingenuous" to say that they are still "live intelligence assets"*".

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364. On the other hand, however, there can be little doubt that the Bush Administration is prepared to resort once again to some form of CIA detention and interrogation regime in the future. If President Bush's claim on 6 September 2006 that "*there are now no terrorists in the CIA program*" represented the closing of one chapter, then his very next sentence heralded the opening of another: "*But as more high-ranking terrorists are captured, the need to obtain intelligence from them will remain critical – and having a CIA program for questioning terrorists will continue to be crucial to getting life-saving information*".[312]

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365. Indeed, there are clear indications that the HVD programme has been reactivated in recent months. The transfer of Abd Al-Iraqi to Guantanamo Bay in April 2007[313] bore strikingly similar characteristics to the 14 transfers in September 2006: during his several months in CIA detention prior to his transfer to Cuba, he appears to have been kept incommunicado and subjected to interrogation at an unknown site.

366. Indeed Al-Iraqi's handover to the Department of Defense only *after* his intelligence value to the CIA had been completely exploited would seem to confirm this statement from one of our intelligence sources: "*The CIA has gone from having no interest in interrogation to being the agency of preference in this area. We'll only give them up to the DoD once we've got everything we can out of them.*"

iv. Concluding thoughts

367. It is my sincere hope that my report this year will catalyse a renewed appreciation of the legal and moral quagmire into which we have collectively sunk as a result of the US-led "war on terror." Almost six years in, we seem no closer to pulling ourselves out of this quagmire, partly because of the absence of factual clarity – perpetuated by secrecy, cover-up and dishonesty – about the exact practices in which the US and its allies have engaged, and partly because a lack of urgency and political will on both sides of the Atlantic to unite around consensus solutions.

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368. By clarifying some of the unspoken truths that have previously held us back in this exercise, I hope I have spurred right-minded Americans and Europeans alike into realising that our common values, in tandem with our common security, depend on our uniting to end the abusive practices inherent in US policies like the "High-Value Detainee" programme.

[312] See Remarks by President Bush, 06.09.2006, *supra* note 3. Also, for the President's interpretation of the CIA programme's status under the revised law, see The White House, Office of the Press Secretary, "President Bush Signs Military Commissions Act of 2006", 17.10.2006, available at http://www.whitehouse.gov/news/releases/2006/10/20061017-1.html. The Act, he said, "will allow the Central Intelligence Agency to continue its program for questioning key terrorist leaders and operatives."

[313] See US Department of Defense, "Defense Department takes custody of al-Qaeda leader," 27 April 2007, available at http://www.defenselink.mil/news/newsarticle.aspx?id=32969.