

Committee on Legal Affairs and Human Rights

Alleged secret detention centres in Council of Europe member states

Information Memorandum (revised)

by Mr Dick Marty, Chairperson of the Committee

A. Introduction

1. Following an article published in the Washington Post on 2 November 2005, based on information from Human Rights Watch (HRW), the international media have reported allegations that the CIA was running or had run a system of secret prisons, including in certain “central and east European democracies”.

2. While the Washington Post did not cite any countries by name, the HRW singled out Poland and Romania. The press has carried denials by officials not only in Poland and Romania but also in Latvia, the Czech Republic, Georgia and Armenia.

3. On 3 November, the spokesman of the Vice-President of the European Commission and Commissioner for Freedom, Justice and Security, Mr Roscam Abbing, said that the Commission would be seeking further information, taking the view that such secret detention centres would be a violation of the founding principles of the European Union. On 4 November, he said that the Commission had no reason to doubt the denials made by the Polish and Romanian governments. On 14 November, Commissioner Frattini told the European Parliament that he welcomed the investigation initiated by the Council of Europe and that his departments would be keeping a close watch on this.

4. On 4 November, Alvaro Gil-Robles, the Council of Europe’s Commissioner for Human Rights called for an investigation into these allegations.

5. The President of the Parliamentary Assembly, René van der Linden, in a press release dated 4 November asked the Committee on Legal Affairs and Human Rights to look into these allegations, stating that if such detention centres did in fact exist, it would be a violation of the principles of both the European Convention on Human Rights and the European Convention on the Prevention of Torture.

6. At its meeting on 7 November 2005, the Committee on Legal Affairs and Human Rights

- considered the possibility of asking the Standing Committee for an urgent procedure debate
- appointed its Chair, Mr Marty, as rapporteur
- asked Mr Marty to collate all relevant information and present his conclusions at the next meeting
- authorised Mr Marty to visit Poland and Romania if he judged this necessary
- left it to him to ask, if he felt it necessary, the President of the Assembly for a debate under urgent procedure on behalf of the Committee
- called on the Secretary General of the Council of Europe to ask all member states for any information in this connection (Article 52 of the European Convention on Human Rights).

B. Information received to date

i. List of suspect aircraft

7. I received from HRW a list of 31 aircraft (type, identification number) alleged to belong to entities with direct or indirect links to the CIA, it is claimed were used by the CIA to transport prisoners in its "war against terrorism".

8. I asked the head of Eurocontrol, Mr Aguado, to provide me with information on the European airports used by these aircraft between 2002 and 2005, where they came from and where they were headed to. So far I have received no response. Eurocontrol had refused a similar request from HRW.

9. I also received from HRW information on the flights made by some of the suspect aircraft using various European airports, including frequently Palma de Majorca, Larnaca and Shannon. Details of other flights by suspect aircraft have been published in various newspapers this week and I have obtained a list of transits and landings by such aircraft in Switzerland.

ii. Suspect locations in Poland and Romania

10. HRW informed me of several specific locations suspected of housing secret CIA detention centres in Poland and Romania, providing me with the precise geographical co-ordinates which could be used for satellite imaging:

- Szymany airport, in north-eastern Poland, close to a military training centre, and
- the Mihail Kogalniceanu military airfield in southern Romania, another airfield (no name given) and the Fetesti military base (also known as Cocargeaua)

11. I do not think I could justify making a visit to these locations at this stage. I would like first of all to corroborate the information, enabling me to assess the likelihood of making any interesting findings. As already stated in a press article, following the publication of the allegations it would be only natural for any evidence to have been removed before I was able to travel there.

iii. Criminal investigations under way in certain countries

12. In two countries (Italy and Germany), judicial investigations have begun into the "abduction" of persons, subsequently transported to Guantanamo Bay, Afghanistan or other detention centres, using some of the aircraft referred to above (paragraph B.i.). The Italian prosecution service has issued arrest warrants against several CIA agents following the forceful abduction of an Islamist, Abu Omar, in a street in Milan in February 2003. The German judicial authorities are taking part in this investigation and have begun another into the case of a German citizen of Lebanese origin, Khaled Al-Masri. Arrested by mistake in Macedonia, he was transported to Kabul where he was interrogated. Lastly, Spanish Interior Minister José Antonio Alonso announced on 15 November that a Spanish judge is to investigate whether the Son Sant Joan airport in Majorca was used by the CIA as a base to transport Islamist suspects.

13. In addition, according to recent press reports, the Norwegian government is said to have asked the US Embassy for information on the landing in Oslo on 20 July of an aircraft alleged to have been used by the American authorities to transport suspected extremists.

14. Similarly, it is believed that the Swedish Government has asked the civil aviation authorities for "full information" following press reports that several aircraft suspected of belonging to the CIA had landed at Swedish airports in the last three years.

15. Lastly, the Swiss authorities are attempting to ascertain whether aircraft chartered by the CIA had violated Swiss sovereignty and international law by landing on several occasions in Geneva in 2003-2004, following a parliamentary question from my colleague Boris Banga.

iv. Reaction in the United States

16. On a proposal from Senator Kerry, the American Senate has asked the Defense Secretary for a detailed confidential report to be submitted to the Senate and House of Representatives Defense Committees on knowledge of the Secretary and his staff of the present or past existence of secret facilities

outside the United States, used to detain individuals captured in the global war against terrorism, run by or at the request of the US government (Amendment SA 2507 to Defense Appropriations Bill S. 1042, tabled on 10 November 2005 and adopted by the Senate by 82-9 votes).

17. According to a CNN report carried in the press the CIA is said to have launched an investigation to discover the source of the information on which the Washington Post article on secret prisons in eastern Europe was based, and to have handed the file over to the Justice Department.

18. The US President George W. Bush, in response to allegations of secret prisons where detainees are claimed to have been tortured, merely denied any use of torture in an interview on 7 November and added that his country was “at war” and that his government “had the obligation to protect the American people”.

19. State Department spokesman Sean McCormack (quoted by the BBC as early as 3 November) did not deny the allegations either, but simply stated that if the State Department received a request to co-operate with a European investigation, it would take a look at it. In the meantime, last week I submitted a request for information to the United States Permanent Observer to the Council of Europe.

v. Denials by political leaders in member states

20. Following publication of the allegations, several political leaders in the countries named have issued denials worded in different ways.

21. Romanian Prime Minister Calin Tariceanu has said that “there are no CIA bases in Romania”. When asked whether Romanian government agents had ever co-operated with the CIA by receiving prisoners and whether she could explain the alleged CIA flight details, the chief government spokeswoman, Oana Marinescu, simply said “In the portfolio of projects of the Romanian government, there is no activity such as the one that you refer to.”

22. The former Polish Defence Minister, Jerzy Szmajdzinski, said “We aren't detaining terrorists, or interrogating them, or doing anything else with them.”

23. In a statement forwarded to the Council of Europe on 14 November by the Permanent Representative of Poland, the spokesman of the Polish Government, Konrad Ciesiolkewicz, said that the Polish government strongly denied the allegations in the media on the existence of secret prisons for foreign terrorists in the Republic of Poland. There are no such prisons in Poland and there are no prisoners held in contravention of the laws and international treaties to which Poland is a signatory state.

24. According to the BBC (3 November 2005), Czech Interior Minister Frantisek Bublan said that his country, along with 10 others which he did not name, had rejected a US request to “take” prisoners being held at the Guantanamo Bay prison camp base. But the Prague Daily Monitor (9 November) reports more specifically that the US request had related to prisoners from a Chinese province held in Guantanamo Bay who had turned out not to be connected with Al-Qaida, and who could not be returned to their own country as they would be under threat there. The request was to “place” these individuals under the political asylum procedure and therefore not to put them in any secret or other prisons.

vi. ICRC

25. The International Red Cross publicly states that it has tried unsuccessfully for more than two years to persuade Washington to allow it access to prisoners secretly detained abroad in the “war against terrorism”.

vii. Information on secret detention centres in the Chechen Republic and Ingushetia

26. According to information from Russian and international human rights NGOs and the Council of Europe's Committee for the Prevention of Torture, it would appear that there have been and continue to be secret illegal detention centres on the territory of the Russian Federation. It should be examined to what extent this subject should be included in the report that could be prepared hereupon.

C. Possible avenues to explore

i. Analysis of aircraft movements

27. It might be possible, particularly with the help of Eurocontrol, to establish a sort of pattern of the movements of the aircraft concerned, which could be compared with the sporadic data obtained from other sources (and whose credibility could thus be verified), which could include information on the departure from Kabul of aircraft transporting prisoners.

28. This analysis would be made more difficult given that the aircraft in question often change identification number.

29. Nonetheless, co-operation from Eurocontrol could prove vital in order to obtain, if not evidence of the existence of secret detention centres, then at least fairly clear indications that airports located in Council of Europe member states have been used for purposes which require more specific explanations from the United States.

ii. Satellite imaging

30. Using the precise co-ordinates I have acquired, it would be possible to obtain high resolution satellite images (at least 10 meters it has been suggested), taken at intervals between early 2002 and the present. This would show any new work undertaken (renovation of shacks, installation of barbed-wire fencing, watch towers etc) which could lead one to conclude that prisoners had been held there. Such a series of images could also possibly show any recent attempts to remove traces of the earlier development of facilities.

31. I contacted the European Union's satellite centre in Torrejon in Spain, which has considerable technical resources, used amongst other things for monitoring, from space, the allocation of farming subsidies. But so far I have not yet had any reply as to whether they would be available to co-operate in this way; such a decision would have to be taken by the Council of Ministers^[2].

32. In parallel, I am pursuing other ways of obtaining satellite images and the assistance of a technical expert in order to be able to interpret them correctly. These steps would be made all the easier if the governments of the member states concerned gave a clear statement to the effect that they had no objection to the use of such technical means in my investigation.

iii. On-the-spot visits

33. I have already been authorised by the Committee to make a fact-finding visit to the countries concerned. I have no interest in unnecessary travel but I am prepared to make a visit to obtain relevant information. If a visit were to be made, I would like to be accompanied by an expert. Would the Committee agree to that?

iv. Requests for information sent to the governments of Council of Europe member states and the United States

34. I could submit a request for information via the chairs of the parliamentary delegations of all Council of Europe member states. In addition to asking whether the authorities have been contacted in order to authorise secret detention in one form or another, I suggest drawing up a questionnaire which would provide clear information on the procedures in force enabling countries to exercise their responsibilities of monitoring the legality of any use made of American military bases on their territory.

35. Last week I asked for information from the chairs of the Romanian and Polish national delegations to the PACE, and from the permanent Observer of the United States to the Council of Europe.

v. Co-operation with the judicial authorities in member states

36. The judicial investigations in question (see under B.iii above) could provide very useful information for this investigation. Any abduction involves holding a person against his or her will, and therefore secret imprisonment. I have already made an initial promising contact with a German public prosecutor who has expressed a keen interest in cooperating. Contacts will be made with the authorities of the other countries.

vi. Co-operation with the European Union, in particular the European Parliament

- 37. I have contacted members of the European parliament who were particularly interested in the matter – without wishing to exclude others. During the EP session in Strasbourg last week, our Secretariat contacted Angelika Beer (Germany/Greens) and Kathalijne Buitenweg (Netherlands/Greens). They said they were willing to co-operate with our investigation and help ensure fruitful co-operation between the various bodies of the European Union and ourselves. Ms Buitenweg will be attending the Legal Affairs Committee meeting on 22 November and a member of the European Commission’s Criminal Law Department will also be present.

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- **vii. Contacts with members of the US Congress**

- 38. I intend to contact Senator Kerry to see to what extent he can share with us the information he has requested from the US Government, and the information that prompted him to make that request.

- **viii. Exchange of information with journalists and NGOs**

- 39. I have already had contacts with several investigative journalists and with representatives of various non-governmental organisations and I am confident that ongoing co-operation could produce worthwhile results.

D. Conclusion – where should we go now?

i. Need to continue the investigation on a broader basis

40. In my opinion, the information I have already and the various possible avenues to explore, which may or may not be promising, require a more in-depth investigation than what I have been able to do so far in a few days. Today it is clear that we cannot limit ourselves solely to the “secret prisons” issue, and that we must include the use – or misuse – by the United States of facilities located in our countries for the purposes of illegal detention, even of a short duration, in the case, for example, of transporting those who have been abducted or in order to transport prisoners to countries where they will be subject to torture or other inhuman treatment. It is also clear that the allegations of secret detention centres do not relate solely to the CIA but also, for example, to the situation in the North Caucasus.

ii. Procedure

- 41. I therefore propose that we submit a new motion for a resolution which is sufficiently broad to cover all aspects of the subject, to circulate for signature on 22 November 2005 and which could be sent to our Committee for report very quickly, given that the Bureau and the Standing Committee are meeting on 25 November (copy of the motion for a resolution is appended to this memorandum). I am prepared to continue as rapporteur; this could be officialised at our Committee meeting on 13 December, and I shall do my utmost to prepare a report which the Committee could present, if appropriate, at the part-session in late January 2006, in the form of a debate under urgent procedure.

iii. Objectives of the future investigation

42. To launch the debate, I suggest that the objective of the future investigation should be as follows: we wish to establish the truth, and the whole truth, not in order to “accuse” countries in order to impose “sanctions” on them, but in order to send a clear and strong message that even in the name of the “war against terrorism”, unlawful and inhumane practices linked to the arrest, transport and detention, for any length of time, of prisoners suspected of whatever crime cannot be tolerated in any Council of Europe member state. In our future report, we could make the necessary clarifications as to the authorities’ responsibilities for what takes place in their countries and, by establishing the truth of what has happened in the past, we could show that violations of the principles enshrined in the European Convention on Human Rights and the European Convention for the Prevention of Torture will ultimately come out into the open.

APPENDIX

Alleged secret detention centres in Council of Europe member states

Motion for a resolution

presented by Mr Marty and ...

1. The Parliamentary Assembly is deeply concerned about reports alleging that secret detention centres have existed and may still exist in member states of the Council of Europe.
2. The alleged existence of such secret detention centres dating back to apparently 2001, has recently been given substantial press coverage and is based on information from a number of sources, especially Human Rights Watch.
3. The holding of individuals *incommunicado* in secret detention centres is a flagrant violation of the European Convention on Human Rights (ECHR) and the European Convention for the Prevention of Torture (ECPT) by which member states of the Council of Europe are bound. Observer states to the Council of Europe are also bound by the UN Covenant on Civil and Political Rights and the UN Convention against Torture.
4. Also, judicial procedures on abduction charges or other enquiries relating to the practice of “extraordinary rendition” are underway with respect to US Central Intelligence Agency operatives in certain member states, including Denmark, Germany, Italy, Spain, Sweden and Switzerland.
5. The Assembly recalls, in this connection, its strong appeal to all member states of the Council of Europe “to ensure that their territory and facilities are not used in connection with practices of secret detention or rendition in possible violation of international human rights law” (paragraph 10 vii of Resolution 1433 (2005) on the lawfulness of detentions by the United States in Guantánamo Bay).
6. It also recalls its strong condemnation of enforced disappearances defined as “*the deprivation of liberty, refusal to acknowledge the deprivation of liberty or concealment of the fate and the whereabouts of the disappeared person and placing of the person outside the protection of the law*”, stressing that such disappearances are “*a very serious human rights violation on par with torture and murder*” (paragraphs 1 and 2 of Resolution 1463 (2005) on enforced disappearances).
7. The issue of secret detentions may merit a wider analysis. The European Committee for the Prevention of Torture (CPT) has published two statements in 2001 and 2003 detailing serious human rights abuses committed in secret places of detention in the North Caucasus, and Russian and international non-governmental organisations have recently provided fresh information on such practices.
8. The Assembly calls for an immediate investigation of these issues, including the alleged use of airspace, airports and other facilities in Council of Europe member states to transport illegally detained suspected terrorists.
9. The Assembly encourages the competent authorities of all member and observer states to examine the allegations and to make public the results of their enquiries. There is an urgent need for the Assembly to verify, if necessary by means of *in loco* visits to member states or any other means, whether secret detention centres existed and/or still exist.
10. It calls on the United States, as an observer state of the Council of Europe, to take a clear stand on the specific allegations of abuse in a comprehensive and transparent manner.
11. The Assembly reiterates the proposal, made on 7 November 2005 by its Legal Affairs and Human Rights Committee, that the Secretary General of the Council of Europe ask all states parties for information on this subject by virtue of powers of inquiry vested in him under article 52 of the ECHR.
12. It urges all other international organisations and institutions, including the European Union,

UN, NATO, as well as specialist institutions such as the European Union Satellite Centre and Eurocontrol, to cooperate with the Assembly in its undertaking to determine the veracity of allegations made.

13. The Assembly welcomes the recognition by the EU Commission Vice-President, Franco Frattini, and UN Special Rapporteur on Torture, Manfred Nowak, of the obligation of states to comply with two of the Council of Europe's key legal instruments, the ECHR and the ECPT, and invites them to cooperate actively in the Assembly's work on this subject.

14. Finally, the Assembly reiterates the Council of Europe's determination to support the fight against terrorism, whilst stressing the need for states to respect their international human rights obligations. Human rights violations committed in the fight against terrorism are counterproductive – they are in fact victories for the terrorists, whose aim it is precisely to destroy our societies governed by the Rule of Law.

signed:

Dick MARTY (Switzerland, ALDE)

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[1] Document declassified by the Committee on 22 November 2005.

[2] The Secretariat of the Council sent me an image request form which left me somewhat baffled. Given the specific nature of this investigation, it is out of the question that the Council of Europe should be obliged to pay for the provision of such images. Our secretariat has written a letter along these lines, but so far no reply has been received.