

Committee on Legal Affairs and Human Rights

Alleged secret detentions in Council of Europe member states

Information Memorandum II

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A. Introduction

1. First of all, it is necessary to set this work in context in terms of both facts and chronology (the latter being of some significance in this affair). I would stress that the allegations that are now receiving media coverage worldwide were already known and were condemned by the Council of Europe Parliamentary Assembly in a report on the "Lawfulness of detentions by the United States in Guantánamo Bay" presented by my colleague Kevin McNamara, to which I shall refer in this memorandum^[1]. In his report he condemned the illegal practice of "extraordinary rendition" and recommended that Council of Europe member states "*ensure that their territory and facilities [were] not used in connection with practices of secret detention or rendition in possible violation of international human rights law*"^[2].

2. At the time, the issue did not elicit the same media coverage as it is now receiving. We may well ask why it is only now that the allegations concerning secret detention centres in Europe are triggering a proper debate and public shock and indignation at the reports of ill-treatment and even torture in this connection. In

countries that pride themselves in being long-standing democracies that protect human rights, the revelation of these allegations should have sparked off reactions and categorical condemnation several months ago, and yet this was not the case, with a few exceptions, such as the article by the writer and journalist Stephen Grey ("United States: trade in torture", *Le Monde diplomatique*, April 2005) and the articles by Guido Olimpico in the *Corriere della Sera* and his book *Operazione Hotel California* (Feltrinelli, October 2005).

3. I am particularly struck by the fact that it is in the United States that the discussions first really took off. Following an article in *The Washington Post* and a report by *Human Rights Watch* (HRW) published in early November, the international media have reported allegations that the CIA is or was running a system of secret prisons, including prisons in certain "central and east European democracies". Numerous aircraft chartered by the CIA allegedly flew over, to and from European territory (benefiting, therefore, from airport facilities in Council of Europe member states) in order to transport suspects, completely illegally, to these secret centres.

4. Whereas *The Washington Post* did not mention any countries by name (further to an agreement entered into with the United States Government, which, to my mind, suggests that the reports are true), HRW expressly mentioned Poland and Romania. The press reports also quote denials by officials from Poland^[3] and Romania, but also Latvia, the Czech Republic, Georgia, Armenia and Bulgaria.

5. Since then, recent further information has extended the list of countries allegedly concerned by the existence of secret detention centres. According to a fax from the Egyptian Ministry of European Affairs to the Egyptian Embassy in London, intercepted by the Swiss intelligence services, such centres existed in Romania, Bulgaria, Macedonia, Kosovo and Ukraine.

6. On 5 December 2005 ABC reported, in turn, the existence of secret prisons in Poland and Romania that had apparently been closed following *The Washington Post's* revelations. According to ABC, eleven suspects detained in these centres were then transferred to CIA facilities in North Africa. They were allegedly submitted to the harshest interrogation techniques (so-called "enhanced interrogation techniques"). I would point out that the ABC article confirming the use of secret detention camps in Poland and Romania by the CIA was available on the Internet for only a very short time before being withdrawn. This strikes me as a telling indication of the pressure put on the media in this affair (in this particular case, the pressure was apparently brought to bear direct by the CIA).

7. It would seem from confidential contacts that the information revealed by *The Washington Post*, HRW and ABC came from different sources, probably all well-informed official sources. This is clearly a factor that adds to the credibility of the allegations, since the media concerned have not simply taken information from one another.

8. In an interview broadcast by the American channel ABC on 29 November 2005, the Director of the United States Central Intelligence Agency, Porter Goss, did not deny the existence of CIA secret prisons in various parts of the world where people suspected of terrorism were held. He did, however, categorically deny that the United States used torture, while refusing to pass judgment on certain interrogation techniques used by its services.

9. On 5 December 2005, Condoleezza Rice, the American Secretary of State, made a statement addressed to Europeans in which she did not, at any point, deny the existence of the alleged centres, or of the flights transporting detainees, but reaffirmed the need to resort to "extraordinary renditions" in the context of efforts to counter terrorism. The only thing that Ms Rice categorically denied was the use of torture.

10. On 3 November Mr Friso Roscam Abbing, spokesman for Franco Frattini, Vice-President of the European Commission and Commissioner for Justice, Freedom and Security, said that the Commission would be seeking further information, on the grounds 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 by the Polish and Romanian Governments. On 14 November Mr Frattini told the European Parliament that he welcomed the investigation initiated by the Council of Europe and that his departments would be following it closely. On 7 December 2005 Mr Frattini wrote to his colleagues Jacques Barrot and Benita Ferrero-Waldner asking them to support the requests the Committee on Legal Affairs and Human Rights of the Council of Europe Parliamentary Assembly had submitted to Eurocontrol and the European Union Satellite Centre (EUSC). On 28 November 2005 the British Foreign Secretary, Jack Straw, asked the American authorities, on behalf of the European Union, for explanations of the alleged stopovers in Europe of aircraft chartered by the CIA.

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

12. The same day, the President of the Parliamentary Assembly, René van der Linden, asked the Committee on Legal Affairs and Human Rights, in a press release, to look into the 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 for the Prevention of Torture.

13. Mention should also be made of the stand taken by the United Nations High Commissioner for Human Rights, Ms Louise Arbour, who said in an article in *Le Monde* published on 7 December 2005 that secret detention was a form of torture in itself, for the person detained, who was at the mercy of the detaining authorities, and, worse still, for the families, who were faced with a situation that amounted to that of a missing person.

14. On 15 December the European Parliament agreed, in principle, to set up a temporary committee to investigate the alleged illegal transfer of detainees and the suspected existence of secret CIA detention facilities in the European Union and in candidate countries. On 12 January 2006 the European parliamentarians decided to go ahead and set up such a committee. On 18 January the European Parliament, sitting in Strasbourg, approved the mandate and membership suggested by the Conference of Presidents of the Political Groups for its temporary 46-member committee, which is to investigate the allegations of CIA prisons in Europe where persons suspected of terrorism have allegedly been detained and tortured. I am highly satisfied to note that the work of this committee explicitly reflects a continued desire to co-operate fully with our investigation.

15. In November and December 2005 the Committee on Legal Affairs and Human Rights was particularly active in connection with this affair. At its meeting on 7 November 2005, following President van der Linden's request, it discussed the matter, including the possibility of inviting the Secretary General of the Council of Europe to ask all Contracting Parties to the European Convention on Human Rights for information about the allegations, in accordance with the procedure provided for in Article 52 of the Convention. At the next meeting, on 22 November, I presented the information I had been able to obtain and my preliminary conclusions^[4]. At its meeting on 13 December 2005 the committee:

- appointed me Rapporteur
- decided to ask the European Commission for Democracy through Law (Venice Commission) to prepare a legal opinion assessing the legality of secret detention in the light of Council of Europe member states' international obligations, in particular the European Convention on Human Rights and the European Convention for the Prevention of Torture, and expressed the wish that this opinion be submitted as soon as possible;
- instructed its Chair to submit to the Bureau a request for an urgent procedure debate on the allegations of secret detention in Council of Europe member states at the January 2006 part-session of the Assembly;
- extended the Rapporteur's mandate to visit the headquarters of the European institutions and make fact-finding visits to certain Council of Europe member states if he deemed it necessary;
- was informed by the Deputy Secretary General of the initiatives taken by the Secretary General in accordance with Article 52 of the ECHR.

16. On behalf of the Committee on Legal Affairs and Human Rights, I submitted a request to the Bureau for a debate under urgent procedure on the allegations of secret detention in Council of Europe member states at the January 2006 part-session of the Assembly. I was informed that, as the deadline for States' replies under the procedure set in motion under Article 52 ECHR was not until 21 February, the Assembly Bureau had decided, at its meeting on 9 January 2006, to suggest holding a current affairs debate, ie a debate without a report, which nevertheless leaves me free to submit this information memorandum to the Committee on Legal Affairs and Human Rights.

B.

Steps taken to date

17. Following the Committee's meeting on 7 November, on 14 November 2005 requests for information were sent to the Polish and Romanian delegations to the Council of Europe Parliamentary Assembly and to the United States Permanent Observer to the Council of Europe.

18. On 21 November 2005, the Secretary General of the Council of Europe sent a request for information to the States Parties to the European Convention on Human Rights, in accordance with the procedure provided for in Article 52, asking them to reply by 21 February 2006 (see Appendix IV).

19. Letters were sent to the EU Satellite Centre and Eurocontrol on 29 November 2005, asking them to provide technical assistance with the preparation of the prospective report by forwarding certain information concerning flights and satellite pictures of certain sites, taken on different dates.

20. The Venice Commission, for its part, was informed at its meeting on 15 December 2005 of the request from the Committee on Legal Affairs and Human Rights for an opinion. It decided to instruct several of its members to start work on the matter (see Appendix III).

21. In a letter dated 10 January 2006, the Secretary of the Venice Commission informed me that work was already under way. The Venice Commission has instructed a working group comprising six eminent experts to draft an opinion for approval at its next plenary session, on 17 and 18 March 2006.

22. A questionnaire was forwarded to all the leaders of national delegations to the Parliamentary Assembly on 19 December 2005 so that the parliamentarians would put questions to their governments within their own parliaments, making use of their twofold mandate as national parliamentarians and members of the Assembly (see Appendix II).

23. On 5 January 2006, I met the prosecutor responsible for the Abu Omar case, Mr Armando Spataro, in Milan. He told me about one of the most comprehensive judicial inquiries so far carried out in Europe into a kidnapping carried out as part of an "extraordinary rendition" operation by the services of a foreign country.

24. I also had various meetings with NGO representatives and investigative journalists specialising in terrorism.

C. Criminal investigations and other reactions

a. Council of Europe member countries

i. Overview

25. In two countries (**Italy** and **Germany**) judicial investigations have begun into "abduction" of persons subsequently transported to Guantánamo, Afghanistan and other detention centres by means of aircraft belonging to entities with hidden direct or indirect links to the CIA. The Italian prosecution service has even issued arrest warrants against CIA agents after the violent abduction of a Muslim, Abu Omar, in a Milan street in February 2003. The German judicial authorities are taking part in the investigation and have themselves begun investigating the case of a German citizen of Lebanese origin, Khaled al Masri. After being arrested by mistake in Macedonia he was reportedly taken to Kabul for interrogation^[5]. Lastly, a **Spanish** judge is enquiring into whether the CIA used Son Sant Joan airport in Majorca as a base for transport of Muslim suspects, as announced by the Spanish minister of internal affairs, José Antonio Alonso, on 15 November 2005. The same aircraft as transported Abu Omar landed at least three times in Spain (and in other European countries).

26. The **Polish** Government ordered an enquiry into the alleged existence in Poland of secret CIA detention centres. The findings were to have been made known in December, but so far none have been published (although a parliamentary committee had been informed of these findings). On 21 December 2005, I wrote to the head of the Polish delegation to the Parliamentary Assembly, Mr Iwinski, asking him to let me have the findings as soon as possible.

27. On 6 December 2005, at the instigation of the opposition, the **Romanian** Parliament set up a commission to investigate the alleged existence of a secret detention centre on Romanian territory which the American secret services were said to have used for torture. A non-governmental human rights organisation (OADO – Organizația Pentru Apărarea Drepturilor Omului) sent specialists to all the places specifically mentioned in recent months as possible sites of secret detention centres. Their conclusions do not seem to provide any evidence of such centres. Traces of destroyed temporary structures are visible near Babadag training camp, Fetești airbase and Mihail Kogălniceanu army base, but seemingly they were used in connection with international military exercises in the 2003-2005 period; American military personnel in transit were apparently accommodated there in May and June 2003. OADO stresses the absence of any basis for the allegations. On 20 January 2006 the head of the Romanian delegation to the Assembly wrote to me forwarding his delegation's replies to my 19 December 2005 questionnaire to heads of PACE delegations. The replies give general information about agreements between the United States and Romania on secret-service co-operation and NATO agreements. The bilateral agreement signed on 6 December 2005 (and not yet ratified) provides in its preamble that the parties are to respect national sovereignty, the United Nations Charter, human rights and their international obligations. The replies stress that no official Romanian authority was aware of any secret detention centre on Romanian territory. Nor have the Romanian authorities received any request for overflight of Romanian territory or use of Romanian airports by aircraft suspected of belonging to the CIA. They also state that military airfields have not been used by civil aircraft. The government has not asked for any further explanations, saying that it is satisfied with those given by Condoleezza Rice.

28. In the **United Kingdom** the NGO Liberty threatened the government with legal action for facilitating

and colluding in use of torture if there was not an immediate enquiry into the very large number of flights and overflights by CIA-chartered planes and the possible use of certain United Kingdom airports. In reply to a parliamentary question on the subject, the United Kingdom foreign affairs minister, Jack Straw, stated in December 2005 that a thorough search of the relevant logs had not found any CIA request to use British airports in connection with transport of suspects. According to an internal memorandum dated December 2005, attributed to the private office of the foreign affairs minister and published by the *New Statesman* on 19 January 2006, the British Government intends to take the following approach to the problem: extraordinary renditions are usually illegal, but complete confidence should be placed in the assurances provided by Ms Condoleezza Rice during her trip to Europe. The British press made a point of accusing the Government of duplicity. It remains to be seen whether the memorandum does indeed reflect the Government's official attitude. On 20 January I also received, from Mr Angus Robertson MP, a detailed report of numerous suspect movements of aircraft transiting through Scotland.

29. Further to questions to the government in the Bundestag from the leftwing and Liberal groups, the **German** Government asked the American authorities for information about CIA use, or not, of Frankfurt and Ramstein airports. In answer to most of the questions from the two groups, the government stated that it could provide replies only to the committee specially authorised to oversee the secret services. Asked whether the government or the German secret services knew of the existence of any secret detention centres on German or European territory, the government categorically denied any knowledge of such centres on national territory; with regard to the remainder of the question, it referred to its objection of principle that it was the special committee which had jurisdiction in the matter. In answer to a question from the leftwing group, the German air traffic safety office provided a detailed list of flights by two aircraft apparently chartered by the CIA which had landed at airports in Germany in 2002 and 2003, 137 and 146 times respectively and mainly at Frankfurt, Berlin and the US Ramstein base. However, the office was unable to provide the members of parliament with information as to the identity of any passengers. On 17 January 2006 the German members of parliament decided to set up a committee of enquiry to report back as soon as possible on the role of the intelligence services (BND) in Baghdad and on certain aspects of anti-terrorist action (including allegations of flights and overflights of German territory by CIA-chartered aircraft). Discussions are still under way as there seem to be misgivings in some political circles about setting up a committee that might undermine the operational capacity of the BND.

30. The **Armenian** parliamentary delegation forwarded to the head of internal security services the questionnaire which was sent on 19 December 2005 to heads of national delegations to the Parliamentary Assembly. The replies received shed no further light.

31. In response to parliamentary questions, the **Belgian** Government has launched an enquiry into flights and over-flights by CIA-chartered aircraft. So far, no stopover at a military airport has been discovered.

32. With regard to **Bosnia and Herzegovina**, their American lawyer^[6] has sent me a detailed account of the case of six Bosnians abducted by American agents on Bosnian soil and taken to Guantánamo Bay, despite a Bosnia and Herzegovina Federal Supreme Court judgment ordering their release after police investigation had failed to uncover the slightest evidence against them. I shall be following developments in the case as part of my further investigations.

33. In a letter dated 19 January 2006, the leader of the **Cypriot** delegation to the Assembly forwarded to me his government's replies to the questionnaire I sent to the leaders of national delegations to the Assembly on 19 December 2005. The replies mention several landings in Cypriot airports, all of a technical nature (and therefore not subject to authorisation), of aircraft on the list forwarded to national delegations. The Cypriot Government states that it has no knowledge of secret detention centres on the part of national territory that is actually controlled by the Republic of Cyprus. It stresses that it is in its interests that full light should be shed on the matter and that it intends to use diplomatic channels to obtain explanations from the American authorities.

34. The **Danish** Government has asked the American authorities for explanations about CIA-chartered flights for alleged transport of prisoners over Danish territory.

35. The **Finnish** security services have reportedly asked the CIA for information about any passengers aboard a cargo plane which made a stop at Helsinki in 2003.

36. The **French** foreign affairs ministry has stated that it is checking with the civil aviation authorities on two flights which made stops in French territory and had apparently been chartered by the CIA.

37. In reply to a question from a European Parliament member, **Greece** is looking into the alleged existence of a secret prison at Souda naval base in Crete where persons suspected of involvement in the attacks on the London underground were allegedly subjected to violent interrogation by British agents.

38. The head of the **Irish** delegation to the Parliamentary Assembly informed me of the many questions

to the government in the Irish Parliament, and of the replies received. In substance, the government expressed total condemnation of the practice of “extraordinary renditions” and stated that it had never authorised any overflights of Irish territory by chartered aircraft for that purpose.

39. The **Norwegian** Government apparently asked the American embassy for information about a plane which landed at Oslo on 20 July 2005 and was allegedly used by the American authorities for transport of suspected extremists.

40. The **Swedish** Government has instructed the relevant department and the civil aviation authority to look into flights to and from Swedish airports by United-States-registered aircraft since 2002.

ii. *The more detailed cases of Italy and Switzerland*

• **Italy**

41. At midday on 17 June 2003 an Egyptian citizen, Hassam Osama Mustafa Nasr, known as Abu Omar, was abducted in the middle of Milan. Thanks to an outstanding and tenacious investigation by the Milan judiciary and the DIGOS police services, Abu Omar’s is undoubtedly the best known and best documented case of “extraordinary rendition”^[7].

42. Via the military airbases at Aviano (Italy) and Ramstein (Germany) Abu Omar was flown to Egypt, where he was tortured before being released and re-arrested. To my knowledge no proceedings were brought against Omar in Egypt.

43. The Italian judicial investigation established, beyond all reasonable doubt, that the operation was carried out by the CIA (which has not issued any denials). The Italian investigators likewise established that the presumed leader of the abduction operation – who had worked as the American consul in Milan – was in Egypt for two weeks immediately after Omar was handed over to the Egyptian authorities. It may safely be inferred that he took part, in one way or another, in Omar’s interrogation.

44. The proceedings instituted in Milan are concerned with 25 American agents, against 22 of whom the Italian authorities have issued arrest warrants.

45. Abu Omar was a political refugee. Suspected of Islamic militancy, he had been under surveillance by the Milan police and judicial authorities. As a result of the surveillance operation, the Italian police were probably on the point of uncovering an activist network operating in northern Italy. Abu Omar’s abduction, as the Milan judicial authorities expressly point out, sabotaged the Italian surveillance operation and thereby dealt a blow to anti-terrorist action.

46. Is it conceivable or possible that an operation of that kind, with deployment of resources on that scale in a friendly country that was an ally (being a member of the coalition in Iraq), was carried out without the national authorities – or at least Italian opposite numbers – being informed? The Italian Government has denied having been informed. The presence on Italian territory of at least 25 foreign agents who abducted someone who had been granted political asylum and was already under police surveillance might have been expected, if not to create a diplomatic incident, then at least to trigger a sharp response from the national authorities. As far as I know, there was no such response. A further interesting point is that the Italian justice minister has so far not forwarded to the American authorities the Milan judicial authorities’ requests for assistance and extradition.

47. Abu Omar’s abduction is a perfect illustration of “extraordinary rendition”. It is a clear indication that the method exists, together with complex logistic support in various parts of Europe and considerable deployment of personnel. It also plants doubts and raises the question of involvement of national authorities at one or other level.

• **Switzerland**

48. The methods used to counter the terrorist threat are also under debate in Switzerland.

49. In May 2002 an American citizen, José Padilla, was placed under close surveillance by the Swiss federal police and US agents when he flew into Zurich from Pakistan. Padilla was suspected of wanting to introduce a “dirty” bomb into the United States and explode it. Apparently the Swiss police even questioned him before he flew on to Chicago, where he was arrested. Since then Padilla has been in detention without any detailed charges being brought against him and is considered an “enemy combatant”. It was only quite recently that he was handed over to the civil justice authorities to avoid the Supreme Court’s ordering his release. Visiting Switzerland in June 2002, the United States justice minister, John Ashcroft, warmly

congratulated the Swiss authorities on the valuable part they had played in Padilla's arrest. However, the case has sparked controversy in Switzerland, to such an extent that a parliamentary committee has begun an enquiry, for it would seem that the police co-operated closely with the American services without notifying the competent judge, or at any rate informed him after the event, when Padilla had already been arrested in the United States. If notification had been made in time – as procedure requires – Padilla would most likely have been arrested and handed over to the American authorities in accordance with the procedure laid down and with the safeguards which operate in cases of judicial assistance and extradition (which are not applied to so-called "enemy combatants"). My request to consult the parliamentary committee's report was refused on the justice ministry's advice, on the ground that the file contained material "concerning third parties and potentially harmful to relations with another country".

50. In June 2005 the Swiss press, in connection with what it called the "Guantánamo Express", mentioned several aircraft which had temporarily landed in Switzerland and were suspected of carrying prisoners. On a visit to the United States in late June 2005, the Swiss foreign affairs minister asked his opposite number for explanations. To date, and despite a repeat request to the United States ambassador in Bern in December, no reply has been forthcoming from the American authorities.

51. The Egyptian Abu Omar, abducted by the CIA in Milan on 17 February 2003 (see the above section on Italy), was flown from the Italian base at Aviano to Ramstein in Germany, and then on to Cairo. The Italian judicial authorities have identified the aircraft used. The data, when compared with data held by Swiss air traffic control, indicate that he was flown through Swiss air space, which has prompted the federal prosecution authorities to institute an enquiry (the prosecution authorities at Zweibrücken, within whose jurisdiction the Ramstein base is located, have done likewise).

52. On 8 January the Swiss newspaper *Sonntagsblick* stated that, during the night of 11 to 12 November 2005, the Swiss intelligence services intercepted a fax from the Egyptian European affairs ministry to the Egyptian embassy in London referring to the existence of secret detention centres in Romania, Bulgaria, Ukraine, Macedonia and Kosovo. The newspaper published a copy of a Swiss departmental memorandum (in French) dated 14 November 2005 summarising the content of the original message intercepted (probably in Arabic). It was from the newspaper article that I discovered the content of the intercepted fax. Interception of the Egyptian fax has not been denied by the parties concerned. On the contrary the Swiss authorities are investigating the breach of official secrecy.

53. The foreign affairs minister stated in an interview published on 15 January 2006 that the Swiss authorities would co-operate with me "as far as possible".

B. Debate in North America

54. In the United States, the authorities' attitude in the war on terrorism and the controversial methods used by the CIA in that connection have also aroused controversy.

55. The CIA action programme set up after 11 September 2001 and known as the "GST programme", gives the CIA greatly enhanced powers (apparently comparable to those which existed during the cold war). It allows the CIA to arrest suspects with the help of foreign internal security services, hold them captive abroad, employ interrogation techniques (some of which are very widely regarded as possibly contravening the United States' international undertakings regarding prohibition of torture) and fly prisoners between countries^[8].

56. The facts as reported by several official sources point to highly controversial practices on the part of the American security services.

57. Several prominent figures have openly condemned the practices in question. One can but welcome the perseverance shown by Senator John McCain, who was himself a torture victim in Vietnam and who was responsible for an amendment to the 2006 defence expenditure bill expressly prohibiting cruel, inhuman and degrading treatment of foreign prisoners, whether in CIA hands, in the United States or abroad. The amendment is extremely significant in the context of my report, implying that such treatment was not hitherto prohibited by American law in the circumstances referred to. It also strikes me as fairly revealing that Vice-President Dick Cheney fought, unsuccessfully, to have the McCain amendment not apply to the CIA. However, we cannot be altogether confident of the effects the amendment will have – the press reports that President Bush seems to reserve the right to disregard the amendment in certain circumstances^[9].

58. Similarly, extension of the Patriot Act was agreed to only after fierce debate and resistance in the Senate, and only for six months (during which period it is hoped to make its content more flexible). The fact is that a large number of senators regard the provisions of the Act, which was adopted in the wake of 11 September 2001 and is concerned, in particular, with empowering the FBI to secretly obtain information on telecommunications, as placing undue restrictions on citizens' rights and freedoms.

59. The uproar in the United States over telephone taps which President Bush has authorised, apparently without any legal basis whatever, can only reinforce that sentiment. The revelation by *The New York Times* has further fuelled present controversy.

60. Amnesty International (AI) expressed serious concern about the attitude adopted by the Canadian authorities. As suspect flights had been reported over the country, AI asked the authorities on 22 November 2005 to look into the matter. In an open letter to the Minister of Public Safety and Emergency Preparedness dated 18 January 2006, AI observes that there has still been no serious investigation into these allegations. We have no doubt that Canada, a permanent observer to the Assembly, will shed full light on the allegations.

D. Reminder: anti-terrorist action must respect human rights

61. The Parliamentary Assembly has made its position very clear, which is that it shares “the United States’ determination to combat international terrorism and fully endorses the importance of detecting and preventing terrorist crimes, prosecuting and punishing terrorists and protecting human lives”^[10].

62. Obviously that position is the only possible one and, as far as action on terrorism is concerned, requires close international co-operation, which, however, must be organised on the basis of clear, precise agreements and in compliance with agencies’ powers and responsibilities.

63. “Rendition” of prisoners must be carried out in accordance with legal procedure, so that the prisoner is afforded all the legal guarantees to which he or she is entitled, including a fair trial within a reasonable time. In no case should it be made possible for a person to be returned or transferred “in reliance on ‘diplomatic assurances’ from countries known to engage in the systematic practice of torture and ... unless the absence of a risk of ill-treatment is firmly established”^[11].

64. It cannot be overemphasised that nothing and no one can justify waiving the principles of the rule of law and respect for human rights and that torture, in addition to being an unreliable way of obtaining information, is in any case absolutely prohibited.

65. As the Assembly has stated, “some human rights (such as the right to be protected from torture or inhuman treatment) are absolute, and should never be interfered with by state authorities, including internal security services.”^[12] Secret services’ role, however fundamentally important to counter-terrorist action, clearly can never place such services above the law.

E. Preliminary analysis of the information already obtained

a. Awareness of Council of Europe member states?

66. “Rendition” affecting Europe seems to have concerned more than a hundred persons in recent years^[13]. Hundreds of CIA-chartered flights have passed through numerous European countries^[14]. It is highly unlikely that European governments, or at least their intelligence services, were unaware. And a number of revelations have already been published by the press, especially in America, over the past few years. It is, to say the least, curious that media interest, especially in Europe, suddenly surged after the article in *The Washington Post* in early November 2005.

67. The statements made by Secretary of State, Condoleezza Rice, during and before her European visit of December 2005, and by her predecessor, Colin Powell, who said that the US had always respected the national sovereignty of its allies, are taken by some as both a reprimand and a warning: “stop being hypocritical”, and “do you really want us to say what happened?”.

68. In the case of Abu Omar it was obvious that the CIA acted without informing the Italian judicial and police authorities. The Milan public prosecutors explicitly state that the action taken by the American service, which they consider constituted a criminal offence, prevented them from competing investigations which they were conducting against Omar and which was on the verge of identifying a network of activists considered potentially dangerous. The Italians’ meticulous and highly professional work had thus been undone by the unexpected intervention by CIA agents who, by abducting Abu Omar, had sabotaged a major anti-terrorist operation. This “rendition” is a glaring illustration of the fact that such actions, which infringe the principles of the rule of law, are not only unacceptable from the legal and ethical point of view but also ineffective, or indeed damaging to the fight against terrorism. This lack of co-operation with and confidence in the authorities officially mandated to fight crime is bound to have very serious consequences, challenging the very functioning of the law-based State and its democratic foundation. Similarly, we might add that the American authorities in Ramstein are refusing to co-operate with the German prosecutor responsible for the

German strand of the Abu Omar case, on Washington's orders. It is difficult to believe that such an approach to relations between authorities in different countries can provide any valid basis for genuine co-operation among States endeavouring together to combat the worst threats facing us in modern times.

b. Extraordinary rendition and torture – a link known and accepted?

69. Over the last few months, a number of former officials of the American intelligence services, some of whom had held responsible positions, have given interviews and provided many details of the resources used against actual and suspected terrorists. These statements, which have in fact been corroborated by indiscretions from officials still serving, clearly confirm that the current US Administration seems to start from the principle that the principles of the rule of law and human rights are incompatible with efficient action against terrorism. Even the laws of war, especially the Geneva Conventions, are not accepted or applied. The relocation of prison camps to Guantanamo and elsewhere indicates that even American legal standards are seen as obstacles by the US Administration. "Extraordinary rendition" and secret detention facilitate the use of degrading treatment and torture. It is even the stated objective of such practices, as the following quotations would appear to confirm.

70. Mr Michael Scheuer, one of the architects of the "rendition" system further developed during the Presidency and with the agreement of Bill Clinton, formerly headed the CIA's Bin Laden unit. He stated in an interview with *Die Zeit*^[15] that the CIA was within its rights to break all laws except American law. He expressed doubt as to the existence of secret prisons in eastern Europe, given the fact that the US had, in his opinion, sufficient capacity in other places, particularly in Iraq and Cuba.

71. In another interview, given to the *Sunday Herald* in October 2005, Mr Scheuer is reported to have said, on the subject of his knowledge of the use of torture, that he had no doubt about this and that the White House was more willing than the CIA itself to ignore the legal details ("to turn a blind eye to the legal niceties"). The CIA was aware that it would eventually have to take the blame ("The Agency always knew it would be left holding the baby for this one")^[16].

72. As early as March 2005, in a CBS interview, Mr Scheuer had admitted knowing that suspects were tortured in Egypt, adding that it was "very convenient" finding "someone else to do your dirty work"^[17].

73. Mr Robert Baer, a former CIA agent interviewed by British journalist Stephen Grey, is reported to have said: "If you want a serious interrogation, you send a prisoner to Jordan. If you want them to be tortured, you send them to Syria. If you want someone to disappear - never to see them again - you send them to Egypt."^[18]

74. Mr Vincent Cannistraro, former head of counter-espionage in the CIA is reported to have said that a Guantánamo detainee suspected of belonging to Al-Qaeda and who was refusing to co-operate provided better information after being "rendered" to Egypt: "They promptly tore his fingernails out and he started to tell things"^[19]. Mr Cannistraro also reportedly said that Egyptian prisons were full of men without finger and toenails. "It's crude, but highly effective, although we could never condone it publicly. The Egyptians and Jordanians are not that squeamish"^[20]. Lastly, he also said that only someone "deaf, dumb and blind" could believe that the Syrians did not use torture, despite their claims to the contrary^[21].

75. Some officials who have remained nameless have given even more direct evidence. A CIA member directly involved in "renditions", for instance, was quoted by *The Washington Post* back in December 2002 as saying "We don't kick the [expletive] out of them. We send them to other countries so they can kick the [expletive] out of them"^[22].

76. "If you don't violate someone's human rights some of the time, you probably aren't doing your job": this was allegedly said by one official who had supervised the capture and transfer of alleged terrorists^[23].

77. Another official directly involved in "renditions" said that he knew the persons concerned would probably be tortured ("I ... do it with my eyes open")^[24].

78. Some officials of President Bush's administration have said that the CIA in practice uses a narrow definition of what amounts to "knowing" that a suspect has been tortured: "If we're not there in the room, who is to say?"^[25].

79. Another case of rendition concerns a so-called Muslim militant in Canada, called Arar. Some American officials speaking on condition of anonymity are reported to have said that there was strong evidence that Mr Arar had long been associated with suspected Islamist militants in Canada. They reported that he had confessed under torture in Syria that he had received terrorist training in Afghanistan, and had given the names of his instructors and other details^[26].

80. Others reportedly told *Time* that no American had been in the room in which the Syrians interrogated Mr Zammar. American officials in Damascus gave written questions to the Syrians, who passed back Zammar's answers. State Department officials appreciated this arrangement, which kept the American government out of any torture that the Syrians might use against him. Some State Department officials suspected that he had indeed been tortured^[27].

81. In an interview with Dana Priest (*The Washington Post*) published in March 2005, another CIA official involved in "renditions" described other countries' "assurances" as "a farce"^[28], and admitted that it was widely understood that interrogation practices that would be illegal in the United States were being used^[29]. In the same interview, he said that "They say they are not abusing them, and that satisfies the legal requirement, but we all know they do"^[30].

82. It seems, furthermore, that the CIA's partners quite clearly understand the worse than ambiguous attitude it takes to the use of torture; one Arab diplomat from a country actively involved in anti-terror operations and sharing intelligence with the CIA reportedly said that it was unrealistic to believe that the CIA really wanted to verify the assurances given: "It would be stupid to keep track of them because then you would know what's going on [...] It's really more like 'Don't ask, don't tell.'"^[31].

83. In this context, it can be noted that in May 2005 the U.N. Committee against Torture held that the 1984 U.N. Convention against Torture had been violated by Sweden with respect to the removal, to Egypt, of Ahmed Agiza and Mohammed al-Zari, back in December 2001 (see *Agazi v. Sweden*, CAT/C/34/D/233/2003 of 24 May 2005).

84. Another case concerning a certain Mr Mahdouh Habib, Australian citizen arrested in Pakistan in October 2002, is prompting debate in Australia, highlighting the legal difficulties arising out of the use of torture: "After promising for more than three years that it would charge Mr. Habib, the Bush administration told the Australians in January that it would not prosecute him because the C.I.A. did not want the evidence about Mr. Habib being taken to Egypt, and his allegations of torture, raised in court", Australian officials reportedly said^[32].

85. Drawing on all this concordant information and evidence we can say that there is a great deal of coherent, convergent evidence pointing to the existence of a system of "relocation" or "outsourcing" of torture. Acts of torture, or severe violations of detainees' dignity through the administration of inhuman or degrading treatment, are carried out outside national territory and beyond the authority of the national intelligence services. Does this mean that torture is so easy to use in this day and age? Is it enough for one's own secret services not to be physically present at the place of interrogation and to pretend to have no official knowledge of this practice to state that the law is not being broken? In this context, the statements made by Mr Schäuble, Germany's new Minister for the Interior, appear at the very least highly debatable, if not alarming. He seems to consider that the use of information obtained by dubious means is acceptable, provided that the German services were not perpetrating acts of torture themselves^[33].

86. Did such pointers to the existence of "networked" torture really escape the notice of Council of Europe member states? What is, therefore, the share of responsibility of member states when their airport facilities are used to transport detainees to places where they will be subjected to torture, ie places – dare I say – of public notoriety? Is there true co-operation between European states and the United States, or do the former display a respectable kind of duplicity?

87. These assumptions are obviously very serious, but all these questions require plain, honest answers. The opinion to be delivered by the Venice Commission in March 2006 will give us a clearer view of the legal consequences of these practices, including member States' responsibility in the light of the international treaties and the rules of general international law to which they are subject.

88. With specific reference to the awareness among member states' authorities of torture committed by their "partners" in the context of the fight against terrorism, we shall hear a personal account at our Committee's meeting of 24 January 2006 from Mr Craig Murray, former British Ambassador to Uzbekistan. The documents that he has already forwarded to me, and which led me to invite him to give his evidence, appear to be damning for the UK authorities, which seem to have knowingly continued to make use of

information obtained under torture and supplied by the Uzbek intelligence services, thereby encouraging the practice of torture. Mr Murray was unable to persuade his authorities to cease doing so, and therefore resigned.^[34]

89. Allegations have just been published to the effect that some German executive authorities had themselves, during co-operation with the American FBI, "outsourced" acts of torture, in collusion with the Lebanese and Syrian services. These allegations are currently being checked, and in the light of the statements quoted above such verification would appear necessary and urgent.

c. Secret detention centres

90. At this stage of the investigations, there is no formal, irrefutable evidence of the existence of secret CIA detention centres in Romania, Poland or any other country. Nevertheless, there are many indications from various sources which must be considered reliable, justifying the continuation of the analytical and investigative work. The information requested from the European Union Satellite Centre and from Eurocontrol should be supplied and evaluated in the very near future. The Egyptian message intercepted by the Swiss services, the authenticity of which is no longer in doubt, contains nothing very new, but it does nonetheless point to a different source regarding the existence of these centres. The Egyptian services have a reputation for efficiency, and there is a great deal of evidence to the effect that they have engaged in very active co-operation in carrying out these renditions.

d. Kosovo and Chechnya

91. Where Kosovo is concerned, the KFOR detention centre (Camp Bondsteel) is not "secret" in so far as its existence has been well-known for a long time now. Back in 2002 the Commissioner for Human Rights, Mr Gil-Robles, reported on his findings *in situ*. At the hearing with our committee on 13 December 2005 the Commissioner for Human Rights repeated that the Kfor detention centre had "many parallels with Guantanamo: prisoners arrested without recourse to any kind of judicial procedure or legal representation". Nor is Camp Bondsteel open for inspection by the Council of Europe's Committee for the Prevention of Torture (CPT), which has the right to inspect all places of detention in States Parties to the European Convention for the Prevention of Torture (including Serbia and Montenegro), and which has not hitherto obtained authorisation to visit. Negotiations are in progress with KFOR.

92. Where Chechnya is concerned, Mr Bindig's report, which is to be discussed in the plenary sitting of 25 January, reports on numerous cases of "enforced disappearances" and torture, as well as the existence of secret places of detention, all strongly criticised by the CPT in two public statements to which I referred in my December 2005 introductory memorandum, and which are still waiting to be given their due importance by the Committee of Ministers of the Council of Europe.

F. Looking ahead to the continuing investigation

93. The replies from Eurocontrol and the European Union Satellite Centre would appear to be imminent, as the Romanian authorities have now agreed supply satellite photographs of places located on their territory. We will not be able to pronounce on the importance and the scope of this information until a later juncture.

94. The factual elements secured to date, thanks *inter alia* to the action of the Council of Europe, have induced the European Parliament to set up a temporary special committee responsible for investigating any possible unlawful action taken in the context of the fight against terrorism in the European Union member or applicant States. This decision underscores the seriousness of the evidence secured so far. It is felicitous that other international institutions are also dealing with these issues, and the Council of Europe and its Rapporteur will obviously fully co-operate with them.

95. We should also mention the remarkable work being done by various NGOs and numerous investigatory journalists. Such journalists symbolise the commitment of a community which is determined to ascertain the truth and will not allow the fight against terrorism, which is absolutely vital, to justify using unspeakable methods, thereby raising the threat of a lapse into barbarity. Consequently, the officials who are well aware of the fact and who in all conscience cannot accept these methods, provide a major channel for ascertaining the truth. These officials face two contradictory imperatives, namely official secrecy and the ethical duty not to collude in acts infringing human dignity. In this context, whistle-blowing is the expression of civil commitment and courage, rather than an act of denunciation or betrayal.

96. The replies which the Council of Europe's member States must supply under the procedure set out in Article 52 of the European Convention on Human Rights must reach the Secretary General by 21 February 2006. These replies will provide additional material for assessing the situation.

97. Similarly, the legal opinion requested from the Venice Commission will be very important for the conclusions of the final report, particularly in terms of the Council of Europe member States' obligations under

the European Convention on Human Rights in order to ensure that their territory, and even their airspace, are not misused, even by friendly and allied third states, for the purposes of human rights violations. National procedures for parliamentary supervision of intelligence services will have to be analysed and, where necessary, improved, in order to ensure that abuse cannot be perpetrated on the pretext of the confidentiality of current procedures. Parliamentarians must also analyse the repeated recourse by executives authorities to the concepts of "State secrecy" and "higher interests" in withholding information.

98. My experience as the Assembly's rapporteur on this particularly sensitive and substantial subject also makes me wonder about the resources at the Parliamentary Assembly's disposal for conducting this kind of inquiry. When national procedures cannot appropriately deal with investigations into possible human rights violations which are more than individual cases (for which the European Court of Human Rights has jurisdiction) and which transcend borders, we are justified in wondering whether the current instruments are still equal to the task. Instead of one single member as Rapporteur with the support of the normal resources of the Committee's secretariat, already overwhelmed by other current reports, we might seriously consider whether setting up a true committee of inquiry, assisted by experts and holding more extensive investigatory powers, might not be a better solution and more able to deal with these new important challenges.

99. As we have said, no cogent evidence has yet emerged on the existence in Europe of detention camps like the one at Guantanamo Bay. On the other hand, it has been proved (and in fact never denied), that individuals have been abducted, deprived of their liberty and all rights, and transported to different destinations in Europe, to be handed over to countries in which they have suffered degrading treatment and torture. This is serious enough to justify the continuation of the Council of Europe's inquiries and strenuous efforts from all member States to ascertain the truth.

100. There is a heated public debate in America on the requisite resources for fighting terrorism. The fact that detention and interrogation centres have been relocated to other countries is proof that the authorities are fully aware that the methods used are incompatible with the American legal system. Europe must clearly and unambiguously declare that it refuses outright to tolerate such doings in its territory, or anywhere else.

101. It is equally unacceptable and appalling to ease one's conscience by delegating such tasks – illegal secret detention and use of torture – to third countries (which have long been the target of high-profile specific and repeated denunciations of very serious human rights violations and the lack of any kind of democratic control).

102. In fact, we must go beyond ascertaining the existence or non-existence of secret detention centres in Europe. The issue at stake is even more important than that. The current US Administration obviously considers that the traditional instruments of the democratic State governed by the rule of law – justice, constitutional guarantees of a fair trial, respect for human dignity – are inappropriate for facing up to the terrorist threat. Persons assumed to be terrorists are therefore arrested, interrogated, deported and detained without any rights or safeguards, thus accepting the concrete and inevitable risk of subjecting completely innocent people to such treatment (inside the CIA an internal inquiry is reportedly under way into several cases of individuals who were abducted, imprisoned and tortured, before it emerged that the wrong people had been targeted). Is Europe prepared to accept such an approach? Can we really say that human rights are an obstacle to national security? Can there be any real security without respect for human dignity?

103. The safety and security of citizens and the fight against the terrorist threat are undeniable fundamental priorities for democracies and an immense challenge to the State founded on the rule of law. In a remarkable judgment handed down in June 2004, the US Supreme Court used the following very clear terms: "The point at issue in this case is nothing less than the essence of a free society. If this national is still attached to the ideals symbolised in its flag, it must not use the weapons of tyrants to resist an attack by the forces of tyranny". Frank, open dialogue between the institutions on both sides of the Atlantic is necessary, indeed absolutely vital, if we wish to implement the most effective means of combating the new threats facing us. This can only be achieved if one side answers the questions and the other is genuinely prepared to ask them.

* * *

Update: 23.01.06

On 23rd January 2006, the Rapporteur received information from both the EU Satellite Center and Eurocontrol. He will now undertake an analysis of the information (satellite pictures, flights records) provided.

APPENDIX I

Alleged secret detentions in Council of Europe member states:

Background information

Rapporteur of the Committee on Legal Affairs and Human Rights (AS/Jur): Mr Dick Marty, Switzerland, ALDE (appointed 13.12.2005)

Rapporteur for opinion of the Political Affairs Committee: Mr Peter Schieder, Austria, SOC

· Mandate: Doc 10748, Reference 3153 of 25.11.2005

· Expiry date for adoption of the report: 25.11.2007

AS/Jur meeting on 7.11.2005:

- considered the possibility of asking the Standing Committee of the Assembly for an urgent procedure debate
- [provisionally] appointed its Chairperson, Mr Marty, as Rapporteur and instructed him to collect pertinent information and to present his conclusions at the next meeting
- authorised him, if he deemed it necessary, to make fact-finding visits to Poland and Romania in this context
- left it to him, if he deemed it necessary, to address a request for an urgent procedure debate to the President of the Assembly on behalf of the Committee
- invited the Secretary General of the Council of Europe to ask States Parties to the European Convention on Human Rights (ECHR) for information on this subject (Article 52)

14.11.2005: Letters to US authorities (Observer to the CoE), and Polish and Romanian PACE Delegations, asking for information

17.11.2005: Reply from Romanian PACE Delegation

AS/Jur meeting on 22.11.2005:

- considered and took note of an information memorandum (AS/Jur (2005) 52 rev 2) submitted by the Rapporteur, decided to declassify it and transmit it to the Bureau with a view to its public distribution at the Standing Committee's meeting in Bucharest on 25 November 2005
- held an exchange of views with Mrs Kathalijne Buitenweg, MEP (Netherlands, Group of the Greens), member of the Committee on Civil Liberties, Justice and Home Affairs of the European Parliament and Mr Emmanuel Crabit, Principal Administrator in the Directorate-General for Justice, Freedom and Security of the European Commission
- asked its Chairperson to table a motion for a resolution on alleged secret detention centres in Council of Europe member States and to propose to the President of the Assembly that the text be referred to the Committee on Legal Affairs and Human Rights for report as soon as possible (letter sent on 24.11.2005)

29.11.2005: Letters to Mr Frank Asbeck, Director of European Union Satellite Centre, and to Mr Victor Aguado, Director General of Eurocontrol, asking for their cooperation

5.12.2005: Letter from Eurocontrol, informing that they are seeking agreement of member states governing body

6.12.2005: Letter from US Ambassador (Observer to the CoE), enclosing public statement made by US Secretary of State on 5.12.2005

[7.12.2005: Letters from Mr Frattini, Vice-President of European Commission to Mrs Benita Ferrero-Waldner, European Commissioner, and to Mr Jacques Barrot, Vice-President of European Commission, asking for support for Mr Marty (concerning EU Satellite Centre and Eurocontrol respectively)]

9.12.2005: Interim provisional reply from EU Satellite Centre

12.12.2005: AS/Bur invited the national parliaments to cooperate fully with Mr Marty in the preparation of his report

AS/Jur meeting on 3.12.2005:

- held an exchange of views with Mrs Maud de Boer Buquicchio, Deputy Secretary General of the Council of Europe, Mr Alvaro Gil-Robles, Council of Europe Human Rights Commissioner, Mr Cem Özdemir, member of the European Parliament (Germany, Group of the Greens/European Free Alliance), and Mr Emmanuel Crabit, Principal Administrator in the Directorate-General for Justice, Freedom and Security of the European Commission
- heard a statement by the Rapporteur on developments on this issue since the last meeting,
- approved a public statement by the Rapporteur
- authorised the Rapporteur to go to the seats of the European institutions and to make fact-finding visits to certain Council of Europe member states if he deemed it necessary
- decided to ask the European Commission for Democracy through Law (Venice Commission) to prepare a legal opinion assessing the legality of secret detention in the light of Council of Europe member states' international obligations, in particular the European Convention on Human Rights and the European Convention for the Prevention of Torture, and expressed the wish that this opinion be submitted as soon as possible
- asked its Chairperson to submit to the Bureau a request for an urgent procedure debate on «the alleged secret detentions in Council of Europe member states» during the Assembly's January 2006 part-session

14.12.2005: Letter to Mr Brian Ross, Journalist ABC

14.12.2005: Letter to Mr Lenn Downie, Editor, Washington Post

14.12.2005: Letter from Mr Frank Asbeck, EU Satellite Centre, informing that the provision of satellite images is not

part of the Centre's mission

- 15.12.2005: Letter sent to the Venice Commission requesting a legal opinion (see Appendix III)
16.12.2005: "Information Notice" (reply) from Polish Delegation
16.12.2005: Letter sent to the President of the Assembly proposing an urgent procedure debate
19.12.2005: Letters sent all PACE delegations, enclosing questions which MPs could put to their governments and a list of alleged flight patterns (see Appendix II)
21.12.2005: Letter from Washington Post (Mr Downie), informing that it was not possible to disclose their sources
21.12.2005: Follow-up letter to Mr Iwinski, Head of Polish PACE Delegation
22.12.2005: Letter sent to Mr Javier Solana, SG of the Council of the European Union, asking him to authorise EU Satellite Centre cooperation
10.01.2006: Letter from Venice Commission: adoption of its opinion foreseen on 17-18.03.2005
11.01.2006: Reminder letter to Mr Victor Aguado, Director General of Eurocontrol + reminder e-mail from AS/Jur secretariat to Mr Solana's secretariat
16.01.2005: Reminder messages sent to Mr Iwinski and Mr Ross (ABC)
19.01.2006: Letter from ABC (on behalf of Mr Brian Ross) informing that it was not possible to disclose their sources, but that they could provide the video recording of the report of 5 December 2005 (to which Mr Marty replied that he would indeed appreciate receiving the video recording)
23.01.2006: Information received from the EU Satellite Center and Eurocontrol

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APPENDIX II

Letter of 19 December 2005 from Mr Dick Marty, Chairperson of the Committee on Legal Affairs and Human Rights to the Chairpersons of the National Delegations

...

As you are no doubt aware, the Committee on Legal Affairs and Human Rights has instructed me to prepare a report on "*Alleged secret detention centres in Council of Europe member states*" (Doc 10748).

At its meeting in Paris on 13 December 2005, the Committee discussed the action taken on this issue in their national parliaments. I have been asked, at the request of members of the Committee, to prepare a list of pertinent questions which members of parliament could address to their governments. I would be grateful if you could forward this list to the members of your Parliament as soon as possible. The pressure thus brought to bear in national parliaments will reinforce that exerted by international organisations.

I would also be grateful if you could send me replies already given or to be given by your governments to these questions. This information will be extremely useful if the Assembly decides to follow the Committee's proposal to hold an urgent procedure debate on this matter during the January 2006 part-session.

Thanking you in advance for your cooperation, I remain,

...

[Enclosed with this letter was a list of alleged flight patterns of suspected CIA flights.]

Appendix to the letter:

Questions which members of the Parliamentary Assembly might put to their respective governments in their national parliament:

Secret services:

-

- Is the Government systematically informed of the activities of foreign secret services (in particular the CIA) on

national territory?

- How does it supervise co-operation between the national secret services and those of partner countries? To what extent might the Government have tolerated certain illegal activities by foreign secret services on national territory by adopting a passive attitude?
- Are there any specific agreements with the USA on combating terrorism (possibly providing for the USA to have bases on national territory or even to carry out policing operations independently)?

Secret detention centres:

- Does the Government have any information regarding the existence of secret detention centres on national territory or elsewhere in Europe? If so, what information? Since when?
- Have the authorities been contacted by the authorities or secret services of other countries requesting permission for the (secret) detention and/or "rendition" of prisoners on national territory?
- Has the Government requested information from the American authorities regarding the alleged existence of secret detention centres in Europe? If so, what replies has it received to date?

Flights to, from or over national territory by CIA aircraft/transportation of prisoners:

- Does the Government know of any flights to, from or over national territory by aircraft chartered by the CIA or related agencies (outsourcing)? If so, since when, and how frequent have they been?
- Was permission requested from the Government or the competent authorities for the flights and overflights in question? If so, what was its/their response?
- What information must be provided in support of such requests? Must a list of passengers' names (always) be supplied?
- What implications do the NATO accords or other similar agreements have for the procedures for requesting permission for the alleged flights? Do these procedures only apply to military flights or can they be extended to civilian flights?
- Does the Government know of (or has it tolerated by adopting a passive attitude) the illegal transportation of prisoners on those flights? If so, since when has this been the case?
- What is the legal basis allowing prisoners to be transported *via* national territory by a third country? Has the Government ever authorised this kind of transportation? If so, what kind of assurances can it demand regarding the conditions under which these prisoners are held?
- Does the Government know of any landings on national territory of aircraft which may have carried such prisoners (eg on their way to the Guantanamo Bay base)? If so, please give details.
- Does the Government know of, or has it been passively or actively involved in, the carrying out of abductions by foreign secret services on national territory or that of other states? Have there been any judicial investigations into these cases? If so, what results have there been so far?
- Has the Government requested information from the American authorities regarding alleged flights to, from or over national territory by aircraft chartered by the CIA which may have been used for the illegal transportation of prisoners? If so, what replies has it received so far?

APPENDIX III

Letter of 15 December 2005 from Mr Dick Marty, Chairperson of the Committee on Legal Affairs and Human Rights to Mr Antonio La Pergola, President of the European Commission for Democracy through Law

...

As you are no doubt aware, I am preparing a report on "alleged secret detention centres in Council of Europe member states" (PACE Doc 10748 and document AS/Jur (2005) 52 rev 2, copies attached). In this context, I have been mandated by the Committee on Legal Affairs and Human Rights to request a Legal Opinion from the Venice Commission.

The Committee would appreciate receiving an Opinion with respect to the following two inter-related matters:

1. An assessment of the legality of secret detention in the light of Council of Europe member States' international law obligations, in particular the European Convention on Human Rights and the European Convention for the Prevention of Torture. In particular, to what extent is a State responsible if - actively or passively - it permits illegal

detention or abduction by a third State or an agent thereof?

2. What are the legal obligations of Council of Europe member States, under human rights and general international law, regarding the transport of detainees by other States through their territory, including their airspace? What is the relationship between such obligations and possible countervailing obligations which derive from other treaties, including treaties concluded with non-member States?

Bearing in mind that my report is to be presented at the Assembly's session on 23- 27 January 2006, I would very much appreciate it if the said Legal Opinion, or at least an interim or provisional version thereof, could be provided to the Committee on Legal Affairs and Human Rights before the Assembly's January 2006 part-session.

...

APPENDIX IV

Communication of 21 November 2005 from the Secretary General of the Council of Europe to the Contracting Parties to the ECHR

Request for an explanation in accordance with Article 52 of the European Convention on Human Rights

The Secretary General of the Council of Europe,

Having regard to the Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter referred to as "the Convention") and its Protocols;

Having regard also to the case law of the European Court of Human Rights which has given concrete expression to the rights and freedoms guaranteed thereunder and which has affirmed that the law and practice of the High Contracting Parties must comply with the provisions of the Convention and its additional Protocols;

Noting that there have been recent reports suggesting that individuals, notably persons suspected of involvement in acts of terrorism, may have been apprehended and detained, or transported while deprived of their liberty, by or at the instigation of foreign agencies, with the active or passive cooperation of High Contracting Parties to the Convention or by High Contracting Parties themselves at their own initiative, without such deprivation of liberty having been acknowledged;

Bearing in mind the fundamental importance of the safeguards contained in the Convention against arbitrary deprivation of liberty both in their own right and for the protection of the right to life and for upholding the absolute prohibition of torture or inhuman or degrading treatment or punishment;

Considering that, under Article 1 of the Convention, the High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms guaranteed therein and that the participation, acquiescence or connivance of the authorities of a Contracting State in the acts of the agents of another State affecting Convention rights may engage the Contracting State's responsibility under the Convention and that such responsibility may also be engaged where that State's agents are acting *ultra vires* or contrary to instructions;

Considering also that unacknowledged deprivation of liberty raises serious questions concerning the effective implementation of, and compliance with, the Convention, notably its Articles 2, 3, 5, 6, 8, 13 and Article 2 of Protocol No. 4 to the Convention;

Acting on the basis of the powers conferred on him by virtue of Article 52 of the European Convention of Human Rights:

1. Requests the Governments of the High Contracting Parties to furnish an explanation of the manner in which their internal law ensures the effective implementation of the provisions of the Convention and its additional Protocols, as interpreted by the European Court of Human Rights, regarding the following specific issues:
 - explanation of the manner in which their internal law ensures that acts by officials of foreign agencies within their jurisdiction are subject to adequate controls;
 - explanation of the manner in which their internal law ensures that adequate safeguards exist to prevent unacknowledged deprivation of liberty of any person within their jurisdiction, whether such deprivation of liberty is linked to an action or an omission directly attributable to the High Contracting Party or whether that Party has aided or assisted the agents of another State in conduct amounting to such deprivation of liberty, including aid or assistance in the transportation by aircraft or otherwise of persons so deprived of their liberty;
 - explanation of the manner in which their internal law provides an adequate response to any alleged infringements of Convention rights of individuals within their jurisdiction, notably in the context of deprivation of liberty, resulting from the conduct of officials of foreign agencies. In particular, explanation

of the availability of effective investigations that are prompt, independent and capable of leading to the identification and sanctioning of those responsible for any illegal acts, including those responsible for aiding or assisting in the commission of such acts, and the payment of adequate compensation to victims;

In the context of the foregoing explanations, an explanation is requested as to whether, in the period running from 1 January 2002 (or from the moment of entry in force of the Convention if that occurred on a later date) until the present, any public official or other person acting in an official capacity has been involved in any manner – whether by action or omission – in the unacknowledged deprivation of liberty of any individual, or transport of any individual while so deprived of their liberty, including where such deprivation of liberty may have occurred by or at the instigation of any foreign agency. Information is to be provided on whether any official investigation is under way and/or on any completed investigation;

2. Requests that these explanations be provided by 21 February 2006.

[1] See Doc.10497, report by the Committee on Legal Affairs and Human Rights (Rapporteur: McNamara) and Resolution 1433 (2005), on the *lawfulness of detentions by the United States in Guantánamo Bay*.

[2] Above-mentioned Resolution 1433 (2005), § 10.vii.

[3] A denial that was firmly reiterated by President Aleksander Kwasniewski on 7 December 2005.

[4] See document AS/Jur (2005) 52 rev 2, Information Memorandum presented by the Rapporteur. See also the statement on *alleged secret detention centres in Council of Europe member States* adopted by the Assembly's Standing Committee at its meeting in Bucharest on 25 November 2005 (Synopsis No.2005/130).

[5] A reporter working for the German television channel ZDF, Mr Brase, has passed onto me a certain amount of information and contact details of people involved locally, which I shall follow up in the next stages of my own enquiry.

[6] Stephen H. Oleskey, of the law company WilmerHale.

[7] I have met the prosecutor who headed the investigation, Armando Spataro, and was able to obtain as full information as confidentiality and procedural requirements permitted. The Abu Omar case is likewise described in the book, already referred to, by the *Corriere della Sera* journalist Guido Olimpio, *Operazione Hotel California*, Feltrinelli, October 2005.

[8] Dana Priest, "Covert CIA Program Withstands New Furor – Anti-Terror Efforts Continue to Grow", *The Washington Post*, 30 December 2005.

[9] Charlie Savage, "Bush could bypass new torture ban – Waiver right is reserved", *The Boston Globe*, 4 January 2006.

[10] Resolution 1433(2005) on the lawfulness of detentions by the United States in Guantánamo Bay, §1.

[11] *Idem*, §8.x.

[12] Recommendation 1402(1999) on control of internal security services in Council of Europe member states, §4.

[13] Michael Scheuer, writing in *Die Zeit* of 29 December 2005, referred to "hundreds, but not thousands" of persons held by the United States in the context of "rendition".

[14] According to a list obtained from Germany's Office for Air Traffic Safety by the Left Party group in Germany, two aircraft linked to the CIA had landed at airports within Germany in 2002 and 2003, 137 and 146 times respectively. I dare not extrapolate the number of potentially suspect flights in all Council of Europe member states during the period under examination by the 40 aircraft allegedly linked to the CIA!

[15] *Die Zeit*, 29 December 2005.

[16] Neil Mackay, "These two men are experts on rendition: one invented it, the other has seen its full horrors", *Sunday Herald* (Scotland), 16 October 2005, available at <http://www.sundayherald.com/52305>.

[17] *Ibid.*

[18] Stephen Grey, "America's Gulag", *The New Statesman*, 17 May 2004, available at <http://www.newstatesman.com/200405170016>.

[19] Knut Royce, "Mixed Reviews from Experts. Critics: Make Case on Deceit, Not Terror", *Newsday*, 6 February 2003.

[20] Ian Bruce, "Middleman Reveals Al Qaeda Secrets", *The Herald* (Scotland), 17 October 2002.

[21] Shannon McCaffrey, "Canadian Sent to Syrian Prison Disputes U.S. Claims against Torture", *Knight-Ridder*, 1 August 2004.

[22] Dana Priest and Barton Gellman. "U.S. Decries Abuse but Defends Interrogations", *The Washington Post*, 26 December 2002, available at <http://www.washingtonpost.com/ac2/wp-dyn/A37943 - 2002Dec25?language=printer>;

also see Doc. 10497, report of the Committee on Legal Affairs and Human Rights on the lawfulness of detentions by the United States in Guantánamo Bay, rapporteur Kevin McNamara.

[23] Ibid.

[24] Ibid.

[25] Ibid.

[26] Clifford Krauss, "Qaeda Pawn, U.S. Calls Him; Victim, He Calls Himself", *New York Times*, 18 November 2003.

[27] Mitch Frank, "Help from an Unlikely Ally", *Time*, 1 July 2002.

[28] Dana Priest, "CIA's Assurances on Transferred Suspects Doubted", *The Washington Post*, 17 March 2005, available at <http://www.washingtonpost.com/wp-dyn/articles/A42072-2005Mar16.html>

[29] Ibid.

[30] Ibid.

[31] Ibid.

[32] Raymond Bonner, "Australians Uneasy About U.S. detainee case", *New York Times*, 10 April 2005.

[33] Spiegel online, 16 December 2005; see also the opposite stance adopted by the President of the Constitutional Court, Mr Papier, in the *Handelsblatt*, 26 December 2005.

[34] See in this context the judgment of the House of Lords of 8 December 2005 confirming that information obtained under torture cannot be used in evidence before the courts.