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Temporary Committee on the alleged use of European countries by the CIA for the transport and illegal detention of prisoners

9.6.2006

NOTICE TO MEMBERS

N° 3

Subject: Summary of proceedings of the meeting of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe held in Paris on 7 June 2006

Committee Members will find attached a summary of proceedings of the meeting of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe held in Paris on 7 June 2006 prepared by the Secretariat.

DIRECTORATE-GENERAL
FOR INTERNAL POLICIES

Committee on Legal Affairs and Human Rights, held in Paris, Wednesday 7 June 2006¹.

Mr. Marty in the chair:

1. Adoption of the Agenda
2. Minutes: Minutes of the meeting held in Strasbourg on 10-13 April 2006 approved.
3. Alleged secret detentions in Council of Europe (CoE) Member States.
Rapporteur: Mr. Marty, Switzerland, ALDE
(AS/Jur 2006, 16 Parts I and II)

Consideration of a draft report and adoption of a draft resolution and a draft recommendation.

Mr. Jurgens (NL, Soc.) in the chair:

Mr. Jurgens gave the floor to the President of the Parliamentary Assembly of the Council of Europe, **Mr. Van der Linden** who stated that this (draft) Report is one of the most important reports in its years. It is about Europe's moral consciousness. He stated that now is the time to show there are no double standards for the members and non-members of the CoE.

Mr. Marty started by looking back on the December 13, 2005 when he was appointed as a Rapporteur. He stressed that the role of the members of the Committee was not to be advocates of their respective governments. Then the Rapporteur moved to more specific points mentioned in the draft Report (Part I) and its Explanatory memorandum (Part II). In the more detailed Memorandum (Part II) he commented on the explanation of the "**spider's web**" flights used by the CIA -including a number of European countries (see the Annex to Part II), representing a "**rendition circuit**" - and involving a plan of action. From these facts it is possible to conclude, according to Mr. Marty, that "*people were taken to Syria, Jemen etc. - countries where torture is indeed practiced*".

Senator Marty continued by stating that the U.S. has made a choice: classical/conventional procedures for fighting against terrorism were not sufficient. On the basis of repeated political statements by President Bush saying that the U.S. is "at war" a grey legal zone has been developed, invention of "*enemy combatant*" was one of the new legal concepts introduced by the U.S.

According to Marty, the US is exercising a "**legal and juridical apartheid**" = a choice that Europe cannot support under any circumstances (Guantanamo Bay given as an example).

The explanatory memorandum deals with 10 rendition cases, involving 17 individuals where European governments are involved to a various degrees.

¹ Cem Özdemir, 3rd vice-chair of the EP's TDIP Temporary Committee attended the meeting.

The Italian case:

Thanks to the Italian judicial independence, the Prosecutor of Milan was able to issue 22 arrest warrants against the CIA agents and has recently proven, that Italian agents did in fact participated in the operation concerning Abu Omar. It has been proven, in the words of Mr. Marty, that the Italian "police officer" on the street was in fact an Italian secret agent. Mr. Marty found it unfortunate that the then justice minister of Italy refused to hand over those arrest warrants to the US authorities.

One can conclude that the statement of Ms. Rice on 5 December 2005 of "respecting the national sovereignty" is therefore truthful - by the very fact of the involvement of the home secret services.

He also admitted, however, that governments and/or ministers in some Member States (CoE) might not have been informed. Secret services simply acted on their own.

Other Member States:

There is therefore evidence on the basis of which the Member States were supposed to take on a "positive obligation" - to make a transparent inquiry. Examples were given - **Germany** - where it took "some time" to set up an enquiry committee, in **Poland and Romania** - where, whilst not in a position of proving any detention centres, no sufficient and transparent enquiry took place to date.

Poland also failed to hand over complete flight data to the Rapporteur, while other countries, like the Czech Republic had no problem with doing so.

A matter of concern in the words of the Rapporteur - is the future. He insisted that democratic control, rule of law are the only instruments how to fight terrorists.

A way forward:

Given that the facts are still emerging, which can be proved by additions to this report made during the last days of concluding this draft Report, **an ad-hoc sub-committee of the Legal Affairs Committee (PACE) is proposed to be set up** for the Rapporteur to continue in his work.

The chair, Mr. Jurgens, then opened the floor for discussion. The following members took the floor: Mrs. Däubler-Gmelin (D, Soc.), Mr. Pourgourides (Cy, EPP-CD) and Mr. Frunda (Romania, EPP-CD). The members expressed their support for the Report and in one case, (Mr. Frunda) suggested to "start monitoring the suspected countries".

The Committee then adopted the attached resolution and recommendation.

Press Conference followed after the meeting:

Mr. Van der Linden opened the press conference by thanking for the work of Mr. Marty and his small team. He stressed that the fight against terrorism is the highest priority but the rule of law must stand at the first place. He also pointed out that this report had a strong "preventative function" and that open parliamentary enquiries should be set up to follow up on the work that has been achieved so far, also thanks to this committee.

Mr. Marty started by saying that he was appointed in December as a "special" Rapporteur but was granted no real power. Today, however, with the findings made, the Rapporteur called for the work to continue in an ad-hoc subcommittee. In his words, the civic engagement, expressed by the NGOs and the press so far, deserves a special attention.

New findings have been uncovered, concepts like "veil of secrecy/silence" , participation of various states to various degrees, "legal and judicial apartheid" by the US being exercised; political use of the being "at war", detention for an unlimited period without trial, a new term- an "enemy combatant" - introduced and used to serve the purpose.

Mr. Marty agreed that the instruments of criminal justice needed to be changed, adapted but this requires wide discussion among the States. This cannot be done by the US alone.



Parliamentary **Assembly** **Assemblée** parlementaire

Provisional version
7 June 2006

Alleged secret detentions and unlawful inter-state transfers of detainees involving Council of Europe member states¹

Committee on Legal Affairs and Human Rights

Rapporteur: Mr Dick Marty, Switzerland, Alliance of Liberals and Democrats for Europe

A. Draft resolution

1. The Council of Europe is both the point of reference and the guardian for human rights, democracy and respect for the rule of law in Europe. It draws its legal and moral authority from, *inter alia*, the common standards of human rights protection embodied in the European Convention on Human Rights (ECHR) and the European Convention on the Prevention of Torture (ECPT), to which all of its 46 member States subscribe.
2. The Parliamentary Assembly of the Council of Europe places human rights at the heart of its work. The Assembly must raise the alarm internationally whenever human rights are set aside, or when established standards of their application are undermined.
3. The Assembly reaffirms its absolute commitment to overcoming the threat of terrorism; but it must equally speak out in the strongest possible terms against the numerous and systematic human rights abuses committed in the pursuit of the so-called “war on terrorism”. It considers that such violations play into the hands of the terrorists and ultimately serve to strengthen those who aim to destroy the established political, legal and social order.

¹ Texts adopted by the Committee at its meeting in Paris on 7 June 2006.

4. The United States of America finds that neither the classic instruments of criminal law and procedure, nor the framework of the laws of war (including respect for the Geneva Conventions) has been apt to address the terrorist threat. As a result it has introduced new legal concepts, such as “enemy combatant” and “rendition”, which were previously unheard of in international law and stand contrary to the basic legal principles that prevail on our continent.

5. Thus, across the world, the United States has progressively woven a clandestine “spider’s web” of disappearances, secret detentions and unlawful inter-state transfers, often encompassing countries notorious for their use of torture. Hundreds of persons have become entrapped in this web, in some cases merely suspected of sympathising with a presumed terrorist organisation.

6. The “spider’s web” has been spun out with the collaboration or tolerance of many countries, including several Council of Europe member States. This co-operation, which took place in secret and without any democratic legitimacy, has spawned a system that is utterly incompatible with the fundamental principles of the Council of Europe.

7. The facts and information gathered to date, along with new factual patterns in the process of being uncovered, indicate that the key elements of this “spider’s web” have included a world-wide network of secret detentions on CIA “black sites” and in military or naval installations; the CIA’s programme of “renditions”, under which terrorist suspects are flown between States on civilian aircraft, outside of the scope of any legal protections, often to be handed over to States who customarily resort to degrading treatment and torture; and the use of military airbases and aircraft to transport detainees as human cargo to Guantanamo Bay in Cuba or to other detention centres.

8. The Assembly condemns the systematic exclusion of all forms of judicial protection and regrets that, by depriving hundreds of suspects of their basic rights, including the right to a fair trial, the United States has done a disservice to the cause of justice and has tarnished its own hard-won reputation as a beacon of the defence of civil liberties and human rights.

9. Some Council of Europe member States have knowingly colluded with the United States to carry out these unlawful operations; some others have tolerated them or simply turned a blind eye. They have also gone to great lengths to ensure that such operations remain secret and protected from effective national or international scrutiny.

10. This collusion with the United States of America by some Council of Europe member States has taken several different forms. Having carried out legal and factual analysis on a range of cases of alleged secret detentions and unlawful inter-state transfers, the Assembly has identified instances in which Council of Europe member States have acted in one or several of the following ways, wilfully or at least recklessly in violation of their international human rights obligations:

- 10.1. secretly detaining a person on European territory for an indefinite period of time, whilst denying that person’s basic human rights and failing to ensure procedural legal guarantees such as *habeas corpus*;
- 10.2. capturing a person and handing the person over to the United States, in the knowledge that such a person would be unlawfully transferred into a US-administered detention facility;
- 10.3. permitting the unlawful transportation of detainees on civilian aircraft carrying out “renditions” operations, travelling through European airspace or across European territory;
- 10.4. passing on information or intelligence to the United States where it was foreseeable that such material would be relied upon directly to carry out a “rendition” operation or to hold a person in secret detention;
- 10.5. participating directly in interrogations of persons subjected to “rendition”, or held in secret detention;
- 10.6. accepting or making use of information gathered in the course of detainee interrogations, before, during or after which the detainee in question was threatened or subjected to torture or other forms of human rights abuse;
- 10.7. making available civilian airports or military airfields as “staging points” or platforms for rendition or other unlawful detainee transfer operations, whereby an aircraft prepares for and takes off on its operation from such a point; and

- 10.8. making available civilian airports or military airfields as “stopover points” for rendition operations, whereby an aircraft lands briefly at such a point on the outward or homeward flight, for example to refuel.
11. Attempts to expose the true nature and extent of these unlawful operations have invariably faced obstruction or dismissal, from the United States and its European partners alike. The authorities of most Council of Europe member States have denied their participation, in many cases without actually having carried out any inquiries or serious investigations.
12. In other instances such attempts have been thwarted on the grounds of national security or state secrecy. The Assembly takes the view that neither national security nor state secrecy can be invoked in such a sweeping, systematic fashion as to shield these unlawful operations from robust parliamentary and judicial scrutiny.
13. The Assembly highlights the widespread breach of the positive obligations of all Council of Europe member States to investigate such allegations in a full and thorough manner. It has now been demonstrated incontestably, by numerous well-documented and convergent facts, that secret detentions and unlawful inter-state transfers involving European countries have taken place, such as to require in-depth inquiries and urgent responses by the executive and legislative branches of all the countries concerned.
14. While the Assembly has been seized in this instance with looking into allegations concerning very specific facts, it cannot ignore other allegations surrounding the existence of other secret detention centres in Europe, apparently also set up in the context of the “war on terrorism”. In particular, the Assembly expresses its deep concern at the continued reports of secret detentions in the North Caucasus. The European Committee for the Prevention of Torture issued a Public Statement on this subject in 2003, which was recently supplemented by new, detailed victim testimony and credible allegations from non-governmental organisations. Further serious investigation and analysis of secret detentions in the North Caucasus is clearly required.
15. The Assembly also regrets that detention centres in Kosovo were not accessible, until very recently, to the European Committee for the Prevention of Torture. The lack of access seems all the more unacceptable in light of the fact that the international community intervened in that region with the declared aim of restoring order, peace and the respect for human rights.
16. The Assembly’s central objective is to prevent violations of the sort described in this resolution from occurring in the future.
17. The Assembly therefore commends the Secretary General of the Council of Europe for the swift and thorough use of his power of inquiry under Article 52 ECHR.
18. The Assembly calls upon the member States of the Council of Europe to:
- 18.1. undertake a critical review of the legal framework that regulates the intelligence services, with the dual objective of enhancing their efficiency and strengthening accountability mechanisms against abuse; clear regulations must also govern co-operation with foreign services and the activities of foreign services on national territory;
 - 18.2. ensure that the laws governing state secrecy protect persons who disclose illegal activities of state organs (so-called “whistle-blowers”) from disciplinary or criminal sanctions;
 - 18.3. undertake a review of bilateral agreements signed between Council of Europe member States and the United States, particularly those on the status of US forces stationed in Europe and on the use of military and other infrastructures, to ensure that these agreements conform fully to applicable international human rights norms; and
 - 18.4. urge the United States to dismantle its system of secret detentions and unlawful inter-state transfers and to co-operate more closely with the Council of Europe in establishing common means of overcoming the threat of terrorism in line with international human rights standards and respect for the rule of law.

19. The Assembly also calls on the United States of America, which is an Observer State to the Council of Europe and Europe's long-standing ally in resisting tyranny and defending human rights and the rule of law, to:
- 19.1. send a strong message to the world by demonstrating that terrorism can be vanquished by lawful means, thereby proving the superiority of the democratic model founded on respect of human dignity;
 - 19.2. co-operate more closely in identifying and employing the most effective means with which to prevent and suppress the terrorist threat in conformity with international human rights norms and the rule of law;
 - 19.3. align its definitions of torture and other cruel, inhuman or degrading treatment with the definition used by the UN Committee Against Torture;
 - 19.4. prohibit the transfer of persons suspected of involvement in terrorism to countries that practise torture and that fail to guarantee the right to a fair trial;
 - 19.5. issue official apologies and award compensation to the victims of illegal detentions against whom no formal accusations, nor any court proceedings, have ever been brought; and
 - 19.6. refrain from prosecuting any officials, former officials or journalists who, by providing testimony or other information, have helped to bring to light the system of unlawful detentions and mistreatment.
20. The Assembly calls upon its Committee on Legal Affairs and Human Rights urgently to establish an ad hoc Sub-Committee to continue this inquiry into alleged secret detentions and unlawful inter-state transfers involving Council of Europe member States, in view of new facts that are still in the process of being uncovered.
21. The Assembly further urges its members to call for rigorous inquiries in their respective national parliaments, especially in those states from which no or insufficient information has been forthcoming.
22. The Assembly recognises, in the context of the present inquiry into secret detentions, that it lacks appropriate investigative powers akin to those provided to parliamentary inquiries in member States, including the powers to subpoena witnesses and compel disclosure of documents, and calls for consideration of this issue.
23. Finally, the Assembly expresses its appreciation to the relevant European Union institutions (European Commission, European Parliament and EU Satellite Centre), as well as to Eurocontrol, for their invaluable contributions to this inquiry, whilst reiterating the Council of Europe's role as the guardian of human rights throughout Europe.

B. Draft recommendation

1. The Parliamentary Assembly refers to its Resolution ... (2006) on alleged secret detentions and unlawful inter-state transfers involving Council of Europe member states.
2. The Assembly also recalls its Resolution 1433 (2005) and its recommendation on the legality of the detention of persons by the United States in Guantanamo Bay.
3. The Assembly urges the Committee of Ministers to draft a recommendation to Council of Europe member States containing:
 - 3.1. common measures to guarantee more effectively the human rights of persons suspected of terrorist offences who are captured from, detained in or transported through Council of Europe member States; and
 - 3.2. a set of minimum requirements for "human rights protection clauses", for inclusion in bilateral and multilateral agreements with third parties, especially those concerning the use of military installations on the territory of Council of Europe member States.

4. The Assembly urgently requests that:
 - 4.1. an initiative be launched on an international level, expressly involving the United States, an Observer to the Council of Europe, to develop a common, truly global strategy to address the terrorist threat. The strategy should conform in all its elements with the fundamental principles of our common heritage in terms of democracy, human rights and respect for the rule of law.
 - 4.2. a proposal be considered, in instances where States are unable or unwilling to prosecute persons accused of terrorist acts, to bring these persons within the jurisdiction of an international court that is competent to try them. One possibility worth considering would be to vest such a competence in the International Criminal Court, whilst renewing invitations to join the Court to the United States and other countries that have not yet done so.
5. The Assembly finally recommends that the Committee of Ministers should consider means of improving the Council of Europe's ability to react rapidly and effectively to allegations of systematic human rights abuse involving several member States.