

EXHIBIT G

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

Report
Committee on Legal Affairs and Human Rights
Rapporteur: Mr Dick Marty, Switzerland, Alliance of Liberals and Democrats for Europe

Summary

Our analysis of the CIA 'rendition' programme has revealed a network that resembles a 'spider's web' spun across the globe. The analysis is based on official information provided by national and international air traffic control authorities, as well as on other information. This 'web' is composed of several landing points, which we have subdivided into different categories, and which are linked up among themselves by civilian planes used by the CIA or military aircraft.

Analysis of the network's functioning and of ten individual cases allows us to make a number of conclusions both about human rights violations – some of which continue – and about the responsibilities of some Council of Europe Member states, which are bound by the European Convention on Human Rights and the European Convention for the Prevention of Torture.

The United States, an observer state of our Organisation, actually created this reprehensible network, which we criticise in light of the values shared on both sides of the Atlantic. But we also believe having established that it is only through the intentional or grossly negligent collusion of the European partners that this "web" was able to spread also over Europe.

Whilst hard evidence, at least according to the strict meaning of the word, is still not forthcoming, a number of coherent and converging elements indicate that secret detention centres have indeed existed and unlawful inter-state transfers have taken place in Europe. It is not intended to pronounce that the authorities of these countries are 'guilty' for having tolerated secret detention sites, but rather it is to hold them 'responsible' for failing to comply with the positive obligation to diligently investigate any serious allegation of fundamental rights violations.

The draft resolution and recommendation propose different measures so that terrorism can be fought effectively whilst respecting human rights at the same time.

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.
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) have 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 notably 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, as explained in the explanatory memorandum¹:
 - 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*;

¹ See Doc ...

- 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;

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.

C. Explanatory memorandum
by Mr Dick Marty, Rapporteur

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183. The working methods of this commission, a genuine commission of inquiry with real powers of investigation, empowered to take cognisance of classified information, strike me as very interesting. However, Mr Paul Cavalluzo, principal lawyer to the Commissioner, the Honourable Dennis O'Connor, has reportedly deplored the tendency of the Canadian authorities to use national security confidentiality; Mr Arar's lawyers, Lorne Waldman et Marlys Edwardh, have accused the Government to "hide behind" official secrecy considerations.

3.7. Muhammad Bashmila and Salah Ali Qaru

184. The cases of Mr Bashmila and Mr Ali Qaru are described in an Amnesty International report¹⁶⁷ based on inquiries made on the spot and intensive discussions with the victims. It is likely that they owe their recent release to Amnesty's commitment. The two men, who have never been accused of the slightest terrorist crimes, were arrested in Jordan and disappeared, as far as their families were concerned, into the American "spider's web" in October 2003¹⁶⁸. According to AI's investigations, they were held in at least four secret American detention centres, probably in three different countries. The former detainees themselves say that they spent time in Djibouti, Afghanistan and - of particular interest to us - "somewhere in eastern Europe". The exact location of the place where they spent the final 13 months from the end of April 2004 onwards remains unknown. The men gave a precise description of their place of detention, which has not yet been published in full¹⁶⁹, and of the route along which they were taken. Particularly intriguing is their return flight to Yemen on 5 May 2005, reportedly a non-stop flight lasting approximately seven hours. I wrote to the Yemeni authorities and asked where the plane had come from, and the arrival of the aircraft on that date with the two men on board was officially confirmed to me. Unfortunately, although I wrote again, I have not yet received the specific information requested. Since the aircraft concerned was probably a military one, the information obtained from Eurocontrol has also been unable to clarify this matter. We have been unable to locate a site corresponding to the description provided.

3.8. Mohammed Zammar

185. Mr Zammar, a German of Syrian origin, was suspected of having been involved in the "Hamburg cell" of Al Qaeda and had been under police surveillance for several years in Germany. After 11 September 2001, he had been the subject of a criminal investigation for "support for a terrorist organisation", but there was insufficient evidence to keep him in prison.

186. On 27 October 2001, he is reported to have left Germany for Morocco, where he spent several weeks. When he attempted to return to Germany, he was allegedly arrested by Moroccan officials at Casablanca airport early in December, and to have been questioned by Moroccan and American officials for over two weeks. Towards the end of December 2001, he is said to have been flown to Damascus, Syria, on a CIA-linked aircraft¹⁷⁰.

187. The case has received extensive press coverage¹⁷¹, and there have been allegations that Mr Zammar's arrest in Morocco was facilitated through the provision of information by German services, that he was tortured by Syrian services and that he was questioned in Syria by German officials.

188. A detailed German government report to the *Bundestag*, a copy of which I have obtained¹⁷², gives a balanced version of this affair.

describes in detail the procedures followed where the government invokes CLSN, disputes on the matter being settled in the last resort by the federal court.

¹⁶⁶ See the "summaries of hearings in camera" (note 163 above), in particular para. 12 pp and 33. Given the provisional and incomplete nature of these summaries, I prefer not to comment in greater detail.

¹⁶⁷ Below the radar: secret flights to torture and "disappearance", 5 April 2006, AI Index: AMR 51/051/2006. My particular thanks go to Mrs Anne Fitzgerald for her co-operation with our committee's secretariat on this subject.

¹⁶⁸ AI's report (pp 9-16) gives a precise description of the sufferings of the victims and their families.

¹⁶⁹ Cf AI report (pp 13 and 14). One particularly interesting piece of information is a geographical deduction based on the prayer times provided, which were taken from an Internet site (islamicfinder.org). The time of the sunset prayer ranged from 4.30 to 8.45 pm (allowing for the change to summer time, which the whole of Europe uses, but not Afghanistan, Jordan or Pakistan). This corresponds to a location north of the 41st parallel, so well to the north of the Middle East, and very probably within a Council of Europe member state.

¹⁷⁰ The Eurocontrol data available to us does not enable us to confirm this flight, which took place between two non-European airports.

¹⁷¹ Examples are the items published in the Washington Post on 12 and 19 June 2002 and 31 January 2003, in *Der Spiegel* in July 2002 and November 2005, and in Focus of 20 September 2002, and shown on *Kalla Fakta* (the fourth Swedish TV channel) on 22 November 2004.