

EXHIBIT C

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Committee on Legal Affairs and Human Rights

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

Draft report – Part II (Explanatory memorandum)

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C. Explanatory memorandum by Mr Dick Marty, Rapporteur

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Milan prosecuting authorities, however: an agent belonging to an elite *Carabinieri* unit has admitted taking part in Abu Omar's abduction as part of an operation co-ordinated by the SISMI, the military intelligence services¹⁴⁵. The head of SISMI had formally denied any participation of his service in the abduction; he even affirmed that he had only been informed of this episode after the abduction itself¹⁴⁶.

3.5. Bisher Al-Rawi and Jamil El-Banna

163. This case, which concerns two British permanent residents arrested in Gambia in November 2002 and transferred first to Afghanistan and from there to Guantanamo (where they still are) is an example of (ill-conceived) cooperation between the services of a European country (the British MI5) and the CIA in abducting persons against whom there is no evidence enabling them to be kept in prison lawfully, and whose principal crime is to be on social terms with a leading Islamist against whom the authorities have no evidence either – namely Abu Qatada.

164. The information made public to date¹⁴⁷ shows that the abduction of Messrs Al-Rawi and El-Banna was indeed motivated by information – partly erroneous – supplied by MI5.

165. Bisher Al-Rawi and Jamil El-Banna were arrested in Gambia on 8 November 2002. They intended to join Mr Al-Rawi's brother Wahab, a British citizen, and help him set up a mobile peanut processing plant. The British authorities were well aware of this business trip¹⁴⁸. On 1 November, Messrs Al-Rawi and El-Banna left on their trip, but did not get very far. At Gatwick airport they were arrested by reason of a suspect item in Mr Al-Rawi's hand luggage.

166. On the same day, a first telegram from MI5 informed the CIA that the two men had been arrested under the 2000 anti-terrorist act. That telegram contained false information, including the statement that Mr Al-Rawi was an Islamist extremist, and that the search of his luggage had revealed that he was carrying a sort of improvised electronic device which could be used, according to preliminary investigations, as a component of a home-made bomb¹⁴⁹.

167. The two men spent 48 hours in police custody, until the police decided that the "suspicious device" was nothing other than a battery charger on sale in several electronic goods shops (Dixons, Argos, Maplins). Mr Al-Rawi explained this when he was arrested, but it had to be checked. The conclusion to the charger episode – that it was indeed a 'harmless device' – was communicated to the Ministry of Foreign Affairs by MI5 in a telegram of 11 November 2002. Unfortunately, there is no evidence that this information was ever conveyed to the CIA. The allegations concerning this 'device' reappeared in their 'trial' before the CSRT (Combatant Status Review Tribunal)¹⁵⁰ as 'evidence' that they were 'enemy combatants'.

¹⁴⁵ See *Corriere della Sera* and *La Repubblica* of 11 May 2006.

¹⁴⁶ Statement of General Pollari at the meeting of the TDIP on 6 March 2006

¹⁴⁷ I wish to thank in particular my British colleague Andrew Tyrie, chairman of the House of Commons All-Party Parliamentary Group (APPG) on renditions, who helped to arrange for two members of our committee secretariat to attend an APPG hearing of the brother, wife and lawyers of Mr Al-Rawi and Mr El-Banna; I also thank the two men's American and British lawyers, Mr Brent Mickum and Ms Gareth Peirce, along with Clive Stafford-Smith, the legal director of REPRIEVE, for the detailed information they provided for my inquiries.

¹⁴⁸ Mr El-Banna informed his lawyer that two MI5 agents had come to his home and told him that they knew all about his planned trip. In reply to his question as to whether everything was in order, they said yes and wished him good luck. Mr El-Banna's wife confirmed this visit at the APPG hearing on 28 March 2006.

¹⁴⁹ Telegram of 1 November 2002, made public on 27 March 2006, with other telegrams dated 4, 8 and 11 November and 6 December 2002; these documents are normally classified secret, but came into the public domain after being cited on 22 and 23 March 2006 at a public hearing in the Queens Bench Division of the High Court in London, before Lord Justice Latham and Mr Justice Tugendhat. The telegrams were also the subject of the APPG hearing on 27 March 2006. It is clear to the lawyers that not everything is said in the telegrams, which moreover refer to other communications, including telephone calls.

¹⁵⁰ See US Department of Defense, unclassified Combatant Status Review Tribunal (CSRT) transcripts disclosed in the matter of *El-Banna et al v. Bush*, in the US District Court of Columbia (copies of all transcripts on file with the Rapporteur), October 2004.