

EUROPEAN PARLIAMENT

2004



2009

Session document

FINAL
A6-0213/2006

15.6.2006

INTERIM REPORT

on the alleged use of European countries by the CIA for the transportation and
illegal detention of prisoners
(2006/2027(INI))

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

Rapporteur: Giovanni Claudio Fava

CONTENTS

	Page
MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION	3
EXPLANATORY STATEMENT.....	14
MINORITY OPINION	23
PROCEDURE	24

MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners (2006/2027(INI))

The European Parliament,

- having regard to its resolution of 15 December 2005 on presumed use of European countries by the CIA for the transportation and illegal detention of prisoners¹,
 - having regard to its decision of 18 January 2006 to set up a temporary committee on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners²,
 - having regard to Rule 175 of its Rules of Procedure,
 - having regard to the interim report of the Temporary Committee on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners (A6-0213/2006),
- A. whereas the main aim of the work of the temporary committee is to establish whether, in the context of the allegations, the action of the European Union (EU) and its Member States complies with the founding principles set out in Article 6 of the Treaty on European Union (TEU) and guarantees, in particular, the protection of fundamental rights as defined, *inter alia*, by the Convention on the Protection of Human Rights and Fundamental Freedoms, adopted by the Council of Europe on 4 November 1950 (hereafter referred to as the 'ECHR'),
- B. whereas in Europe the Charter of Fundamental Rights of the European Union³, proclaimed by the European Parliament, the Council and the Commission at the European Council meeting in Nice on 7 December 2000 and incorporated in Part II of the Treaty establishing a Constitution for Europe, constitutes one of the reference texts not only for the Court of Justice of the European Communities, but also for constitutional courts and other courts in the Member States,
- C. whereas the fight against terrorism cannot be won by sacrificing the very principles that terrorism seeks to destroy, notably that the protection of fundamental rights must never be compromised; whereas terrorism must be fought by legal means and it must be defeated while respecting international and national law and with a responsible attitude on the part of governments and public opinion alike,
- D. whereas the principle of the inviolability of human dignity appears in the opening clause of the Charter of Fundamental Rights and underlies every other fundamental right, in particular the right to life (Article 2), the prohibition of torture and inhuman or degrading treatment or punishment (Article 4), the right to protection in the event of removal,

¹ *Texts Adopted* of that date, P6_TA(2005)0529.

² *Texts Adopted* of that date, P6_TA(2006)0012.

³ OJ C 364, 18.12.2000, p. 1.

expulsion or extradition (Article 19) and the right to an effective remedy and to a fair trial (Article 47) and whereas this principle may not be subject to restrictions, even for the purposes of security in times both of peace and war,

- E. whereas, according to international human rights standards such as those laid down in the United Nations (UN) Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and its related instruments, and in particular the ECHR, the European Union Member States are under an obligation to ensure that any person under their jurisdiction enjoys the fundamental rights granted at international level, including the prohibition of transfers where there is a risk of torture or other cruel, inhuman or degrading treatment or punishment,
- F. whereas European and international human rights law prohibits enforced disappearances, including secret detentions - in which an individual is held incommunicado, without information about his or her fate or whereabouts being revealed to his or her family or the public, outside the purview of any legal process,
- G. whereas, in addition to the provisions of the ECHR, the allegations may give rise to liability on the part of the Member States as parties to:
- the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the United Nations General Assembly on 10 December 1984,
 - the International Covenant on Civil and Political Rights, adopted by the United Nations General Assembly on 16 December 1966,
 - the Chicago Convention of 7 December 1944 on International Civil Aviation, and in particular Articles 3, 4 and 6 thereof,
- H. whereas the closest possible cooperation between European, American and all governments in the world committed to the same cause is necessary to combat terrorism,
- I. whereas the closest possible consultation and cooperation is necessary between the temporary committee and the Council of Europe, the United Nations High Commissioner for Human Rights and the authorities of the Member States, and in particular the national parliaments,
- J. whereas this consultation and cooperation should take account of activities and investigations already carried out, and in particular:
- the final reports of the Swedish Ombudsman¹, the Swedish Parliament's Constitutional Affairs Committee² and the reports still awaited from the United Nations Committee against Torture³ which refer inter alia to the illegal abduction and rendition to Egypt of Muhammed Al Zery and Ahmed Agiza,

¹ Parliamentary Ombudsman, 'A review of the enforcement by the Security Police of a Government decision to expel two Egyptian citizens', reference No 2169-2004 (22 May 2005)

² Swedish Parliament, 'The Swedish Government's handling of matters relating to expulsion to Egypt', Scrutiny report 2005/06-KU2 - http://www.riksdagen.se/templates/R_PageExtended___7639.aspx

³ Decision of the Committee Against Torture, Communication No 233/2003, Mr Ahmed Hussein Kamil Agiza/Sweden (20 May 2005), <http://www.unhchr.ch/tbs/doc.nsf/MasterFrameView/3ef42bcd48fe9d9bc1257020005533ca?Opendocument>

- the information memoranda of 22 November 2005 and 22 January 2006 on 'Alleged secret detentions in Council of Europe member states' by Senator Dick Marty, chair and rapporteur for the Committee on Legal Affairs and Human Rights of the Council of Europe Parliamentary Assembly,
 - judicial investigations in progress in various Member States, in particular the conclusions reached in Italy in the investigation by the Deputy Public Prosecutor of Milan¹ on the illegal abduction and rendition to Egypt of the Egyptian national Abu Omar, and the ongoing investigation in Germany by the Munich Public Prosecution Office on the alleged abduction and detention of the German citizen, Khaled El-Masri,
 - parliamentary inquiries in progress or already concluded in various Member States and accession countries,
 - statements made by the authorities of several Member States, in particular Germany, the United Kingdom, Spain and Ireland, regarding landings of civil aircraft used by the Central Intelligence Agency (CIA) which have taken place on their territories,
- K. whereas, in the same way, special importance must be attached to the interim report by the Secretary-General of the Council of Europe², drawn up as part of the inquiry conducted under Article 52 of the ECHR, and the statements made by the Secretary-General at the press conference on 12 April 2006 in response to the detailed replies provided by the Member States of the Council of Europe³, including the European Union Member States; whereas the Secretary-General has stated that it is clear that rendition flights have taken place, that ‘virtually none of our Member States have proper legislative and administrative measures to effectively protect individuals against violations of human rights committed by agents of friendly foreign security services operating on their territory’ and that he has received ‘official acknowledgement of the ‘handing over’ of individuals to foreign officials through procedures which do not comply with the standards and safeguards required by the ECHR and other legal instruments of the Council of Europe⁴,
- L. whereas this initial phase of the temporary committee's work has made it possible to assemble a coherent dossier of information deriving, in particular:
- from the hearings held on 13 and 23 February, 6, 13, 21 and 23 March, 20 and 25 April and 2 May 2006 with lawyers, journalists, representatives of non-governmental organisations (NGOs), alleged victims of extraordinary renditions, representatives of the public authorities of the Member States and representatives of the European institutions,
 - from written contributions from guest speakers and official and other documents to

¹ Milan Court, Sezione Giudice per le indagini preliminari, Reference numbers 10838/05 R.G.N.R and 1966/05 R.G.GIP.

² Report by the Secretary-General on the use of his powers under Article 52 of the European Convention on Human Rights, in the light of reports suggesting that individuals, notably persons suspected of involvement in acts of terrorism, may have been arrested and detained, or transported while deprived of their liberty, by or at the instigation of foreign agencies,
<https://wcd.coe.int/ViewDoc.jsp?Ref=SG/Inf%282006%295&Sector=secPrivateOffice&Language=lanEnglish&Ver=original&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75>.

³ <http://www.coe.int/T/E/Com/Files/Events/2006-cia/annexes.asp>.

⁴ Notes for the press conference given by Terry Davis, Secretary-General of the Council of Europe, on Wednesday 12 April 2006,
http://www.coe.int/T/E/Com/Files/PA-Sessions/April-2006/20060412_Speaking-notes_sg.asp

- which the temporary committee has had access to date,
- from statements by representatives of the United States (US) government on their acknowledged practice of rendition,
- M. whereas, in the absence of any quasi-judicial investigatory powers and in the face of alleged activity by intelligence services being kept secret by national authorities, the temporary committee has nonetheless succeeded in establishing a prima facie case that illegal practices have taken place on European territory affecting European citizens and residents and has therefore shifted to European governments the burden of proving whether, in fact, their human rights obligations under Article 6 TEU and the ECHR have been met,
- N. whereas the work carried out to date by the temporary committee confirms the validity of Parliament's decision of 18 January 2006 to set up the committee but has also shown the need to carry out further checks and gather additional information, and whereas it must therefore be allowed to continue its work so that it can fully carry out the mandate conferred on it,
- O. whereas paragraph 3 of its decision of 18 January 2006 stipulates that the temporary committee is to present an interim report to Parliament, with detailed proposals on how it will continue its work,
- P. whereas, in the present resolution, "European countries" should be understood as meaning Member States and accession, candidate and associate countries, as outlined in the mandate of the temporary committee adopted on 18 January 2006,
- Q. whereas the present resolution covers three different types of arrangement which the United States appears to have:
- extraordinary rendition, in which individuals are transferred to another government for interrogation;
 - secret detention, in which individuals are transferred to locations under the control of the United States; and
 - proxy detention, in which individuals are transferred to the custody of a third country for detention at the behest of the United States; while no public record exists of a European country holding an individual at the behest of the United States it is very possible that individuals may have passed through European countries on their way to such detention,

On the information obtained to date by the temporary committee

1. Endorses the conclusions of the Secretary-General of the Council of Europe following the inquiry conducted under Article 52 of the ECHR;
2. Notes also, in this context, Opinion No 363/2005 delivered by the European Commission for Democracy through Law (Venice Commission)¹ to the Parliamentary Assembly of the Council of Europe, and in particular the following points:

¹ http://www.venice.coe.int/docs/2006/CDL-AD%282006%29009-e.asp#_Toc130704767

- active and passive cooperation by a Council of Europe member state in imposing and executing secret detentions engages its responsibility under the ECHR,
 - a Council of Europe member state's responsibility is also engaged where its agents (police, security forces, etc.) cooperate with foreign authorities or do not prevent an arrest or unacknowledged detention without government knowledge, acting ultra vires;
3. Regrets that the rules governing the activities of secret services seem inadequate in several Member States, which means that more effective controls must be set up, in particular as regards the activities of foreign secret services on their territory, and considers that rules of cooperation should be established at EU level;
 4. Regrets that the North Atlantic Treaty Organisation (NATO) has denied the temporary committee access to the full text of the NATO Council Decision adopted on 4 October 2001 on the implementation of Article 5 of the Washington Treaty; urgently invites NATO to grant access to the full text of the Decision to clarify the matter;
 5. Understands the importance of close co-operation between the intelligence services of the Member States and those of its allies, but stresses that such cooperation should not be confused with the abandonment of sovereignty over European territory and airspace;

On the illegal seizures, removals, arrests, abductions, extraordinary renditions and secret detentions carried out by the CIA, other US agencies or services or other third-country security services

6. Is concerned that, according to the information which has already emerged in the Member States, the Council of Europe and the work of the temporary committee, serious and inadmissible violations of fundamental human rights have, since 11 September 2001 and as part of the essential action to combat terrorism, taken place on several occasions, in particular with reference to the ECHR, the United Nations Convention against Torture, the Charter of Fundamental Rights of the European Union and the International Covenant on Civil and Political Rights;
7. Is lead to believe on the basis of evidence presented to the temporary committee that, in a number of cases, the CIA or other US services have been directly responsible for the illegal seizure, removal, abduction and detention of terrorist suspects on the territory of Member States, accession and candidate countries and for the extraordinary rendition of, amongst others, European nationals or residents; recalls that these actions do not correspond to known international law concepts and are contrary to the fundamental principles of human rights law;
8. Regrets that the agreements of understanding between US and European countries have not been made available to the temporary committee;
9. Condemns the practice of extraordinary renditions, which is aimed at ensuring that suspects are not brought before a court but are transferred to third countries to be interrogated, including under torture, and detained in facilities controlled by the United States or local authorities; considers unacceptable the practices of certain governments consisting in limiting their responsibilities by asking for diplomatic assurances from countries in respect of which there is strong reason to believe they practice torture, which view was also expressed in the conclusions of Manfred Nowak, Special Rapporteur on the

question of torture; considers, moreover, that the extraordinary rendition of persons to places where torture is endemic is a violation of the principle of 'non-refoulement', as laid down in Article 3 of the UN Convention Against Torture;

10. Considers diplomatic assurances, insofar as they request an exception to the norm, to be a tacit acknowledgement of the existence of torture practices in third countries and therefore contradictory to the EU's responsibilities as set forth in the "Guidelines to EU policy towards third countries on torture and other cruel, inhuman or degrading treatment or punishment," adopted by the Council on 9 April 2001;
11. Is disturbed by the testimony given to the temporary committee by the Canadian citizen, Maher Arar, who was arrested by the US authorities, transferred by the CIA through a European airport and detained for twelve months in Syria, where he was subjected to torture;
12. Is deeply concerned that all the work of the temporary committee so far seems to indicate that European airspace and airports have been used by CIA front-companies in order to bypass the legal obligations for state aircraft as set out in the Chicago Convention, thus enabling persons suspected of terrorism to be transferred illegally to the custody of the CIA or the US military or to other countries (including Egypt, Jordan, Syria and Afghanistan) which frequently use torture during interrogations, as is recognised by the US government itself¹;
13. Welcomes the reaction of the US Congress, which has implemented the McCain Amendment designed to ensure better protection for alleged terrorists from illegal treatment by state agencies;

On the possibility that Member States and accession and candidate countries have, through their actions or by omission, been involved or complicit in arrests, illegal seizures, removals, abductions, expulsions, extraordinary renditions and secret detentions

14. Considers it implausible, on the basis of the testimonies and documents received to date, that certain European governments were not aware of the activities linked to extraordinary rendition taking place on their territory; in particular, considers it utterly implausible that many hundreds of flights through the airspace of several Member States, and a similar number of movements in and out of European airports could have taken place without the knowledge of either the security services or the intelligence services and without senior officials from those services being at least questioned on the link between those flights and the practice of extraordinary rendition; notes that this assumption is supported by the fact that senior figures in the US administration have always claimed to have acted without encroaching on the national sovereignty of European countries;
15. Considers it equally implausible, in the light of the results of the judicial enquiries and of the testimonies and documentation examined, that the abduction, by CIA agents in Milan on 17 February 2003, of the Egyptian national, Abu Omar, who was subsequently taken to Aviano and later to Ramstein, could have been organised and carried out without the Italian authorities or security services being informed thereof in advance;

¹ See US Department of State country reports on human rights practices (2003)

16. Condemns the abduction by the CIA of the German national, Khaled el Masri, who was held in Afghanistan from January to May 2004 and subjected to degrading and inhuman treatment; notes further the suspicion – not yet allayed – that Khaled el Masri was illegally held before that date, from 31 December 2003 to 23 January 2004, in the Former Yugoslav Republic of Macedonia and that he was transported from there to Afghanistan on 23-24 January 2004; considers the measures that the Former Yugoslav Republic of Macedonia claims to have taken to investigate the matter to be inadequate;
17. Welcomes the parliamentary inquiry in the German Bundestag and awaits the final results of its committee of inquiry;
18. Emphasises the need for more democratic and judicial scrutiny of EU counter-terrorism measures; takes the view that the Council's Working Group on the fight against terrorism should systematically deal with the protection of human rights during its meetings and publish an annual report on this matter;
19. Calls on the future Fundamental Rights Agency to pay particular attention to cases involving the extradition of alleged terrorist suspects from Member States to third countries;
20. Deplores the fact that the Swedish state relinquished control of law enforcement on 18 December 2001 at Bromma airport when the Government's decision to expel two Egyptian citizens, Mohammed Al Zary and Ahmed Agiza, was executed and US operatives were allowed to exercise public authority on Swedish territory, which, according to the Swedish Chief Parliamentary Ombudsman, is not compatible with Swedish law;
21. Deplores the fact that Sweden's expulsion of the Egyptian nationals Mohammed Al Zary and Ahmed Agiza, in December 2001, was based solely on diplomatic assurances from the Egyptian government, which did not provide effective safeguards against torture;
22. Urges that investigations be continued to clarify the role of US soldiers, who were part of the NATO-led Stabilisation Force (SFOR), in the abduction and transfer to Guantánamo Bay of six Bosnian nationals and/or residents of Algerian origin, contrary to a binding interim decision by the Human Rights Chamber for Bosnia and Herzegovina and despite the decision by the Bosnian Supreme Court to release the suspects, as testified by the UN special rapporteur on torture, Manfred Nowak, who was a member of the Human Rights Chamber for Bosnia-Herzegovina at that time; calls for the possible role of the Bosnian government in this case to be examined further; highlights the need for more information on the possible involvement of NATO and the United Nations International Police Task Force (IPTF) in this connection;
23. Urges that investigations be continued to clarify the alleged existence of a secret detention facility in Kosovo and the possible involvement of the Kosovo Force (KFOR) in the illegal detention of terrorist suspects;
24. Proposes to invite the Secretary-General of NATO to a hearing of the temporary committee to clarify inter alia the possible involvement of SFOR and KFOR forces in the illegal arrest, handing over and detention of terrorist suspects;

25. Reminds the Member States that, under the case-law of the European Court of Human Rights, States have substantive and procedural positive obligations as regards human rights, are required to take legislative measures to prevent human rights violations taking place on their territory and must also investigate alleged violations and punish those responsible where such violations have taken place; further notes that, in the event of violations of the ECHR, they may be held liable for failure to comply with those positive obligations; stresses, consequently, that the Member States have an obligation to carry out investigations to ascertain whether their territory and their airspace have been used in the commission of violations of human rights, by themselves or by third countries with their necessary direct or indirect cooperation, and that they must also take all legislative measures needed to prevent the recurrence of such violations;

On the use of torture

26. Stresses that the prohibition of torture or cruel, inhuman and degrading treatment as defined in Article 1 of the United Nations Convention against Torture, is absolute and allows no exceptions whether in times of war or threat of war, domestic political instability or any other emergency; recalls that cases of incommunicado detention, abduction or extraordinary rendition constitute violations of fundamental rights under international law, in particular Articles 3 and 5 of the ECHR, especially since these acts are synonymous with torture or inhuman and degrading treatment;
27. Recalls that information or confessions extracted under torture or by means of cruel, inhuman and degrading treatment may under no circumstances be considered as valid evidence, as laid down in the United Nations Convention against Torture, nor should they be used in any other way; reiterates commonly-held scepticism regarding the reliability of confessions obtained through torture and their contribution to the prevention and combating of terrorism, as testified, among others, by the former British Ambassador to Uzbekistan, Craig Murray, in a hearing before the temporary committee;
28. Urges the Member States and accession and candidate countries to strictly comply with Article 3 of the UN Convention against Torture, in particular the principle of 'non-refoulement' according to which 'no state party shall expel, return ('refouler') or extradite a person to another state where there are substantial grounds for believing that he would be in danger of being subjected to torture'; calls also on the United States to review its interpretation of the principle of 'non-refoulement', as set out in Article 3 of the Convention;
29. Calls on the Member States to reject altogether reliance on diplomatic assurances against torture, as recommended by the UN Special Rapporteur on Torture, Manfred Nowak;
30. Calls on the Council to adopt a common position against the use by Member States of diplomatic assurances from third countries, where there are substantial grounds for believing that individuals would be in danger of being subjected to torture or ill-treatment;

On the use of European airspace and European airports by the CIA

31. Believes that many of the flights by aircraft owned or hired by the CIA using the airspace and airports of Member States and accession and candidate countries have involved repeated violations of the Chicago Convention because the obligation to obtain

authorisation, as laid down by Article 3 of this Convention in relation to state flights, was not complied with;

32. Deplores the fact that no Member State or accession or candidate country has adopted procedures aimed at verifying whether civilian aircraft are being used for purposes incompatible with internationally established human rights standards;
33. Considers European legislation on the single European sky, the use, control and management of national airspace, the use of Member State airports and European carriers to be totally inadequate; stresses the need to establish new national, European and international standards; calls on the Commission to immediately improve legislation by bringing forward a directive aimed at harmonising national laws on the surveillance of non-commercial civil aviation;
34. Calls on the Commission to bring forward recommendations for Member States in relation to improving standards of monitoring the activity of privately chartered aircraft using EU airports and airspace;
35. Considers it necessary to shed light on the true substance of the agreement initialled in Athens on 22 January 2003, which speaks of ‘increased use of European transit facilities to support the return of criminal/inadmissible aliens’;
36. Considers it necessary to establish how airspace, civil and military airports, and NATO and US bases have actually been used by the US secret services;
37. Considers it necessary to ascertain whether there is any evidence to confirm that secret prisons have been operating in some European countries, as has been alleged in several investigations by journalists and authoritative NGOs;

On the official delegation visits undertaken so far by the temporary committee

38. Considers that the two official delegations to the Former Yugoslav Republic of Macedonia and the United States of America have been a source of essential information for the work of the temporary committee and have made it possible to directly ascertain both the political authorities’ version of events and the view held by civilian society;
39. Condemns the fact that the German national, Khalid El-Masri, was held illegally in Afghanistan for more than four months in 2004; deplores the reluctance of the authorities of the Former Yugoslav Republic of Macedonia to confirm that El-Masri was in Skopje and was probably being held there before his rendition to Afghanistan by CIA agents;
40. Regrets the US government's strongly restrictive interpretation of the Convention against Torture, and notably of the prohibition on any renditions that may lead to extradited prisoners being subjected to torture or degrading, cruel and inhuman treatment;

On the future work of the temporary committee

41. Notes the need to continue the work of the temporary committee and further examine the relevant events in order to ascertain whether there has been a violation of Article 6 of the Treaty on European Union by one or more Member States; stresses also that the

investigations should be extended to events and countries which have not been explicitly mentioned in this resolution;

42. Decides therefore that the temporary committee will continue its work for the remainder of its established twelve-month term, without prejudice to the provisions of Rule 175 of its Rules of Procedure on the possibility of extending the term;
43. Considers that preparatory legislative work at EU and Council of Europe level should be initiated as soon as possible in order to provide adequate legal protection for persons within the jurisdiction of Member States and to ensure effective parliamentary scrutiny of intelligence services at national and European level; to that end considers it essential to set up the European Union Agency for Fundamental Rights and make it operational;
44. Regrets the clear differences of approach that have emerged to date between the American and European legal models regarding the matters falling within the temporary committee's remit; points to the urgent need for extraordinary renditions to be clearly prohibited in international law and for the European institutions to adopt a common position on this matter and address this issue with the third countries concerned;
45. Considers that the temporary committee should also, on completion of its work, suggest the principles to be adopted, in particular:
 - concerning the need for internal EU monitoring arrangements to ensure that Member States meet their human rights obligations, as regards new rules on the exchange of information between intelligence services,
 - as regards agreements with third countries and international organisations on combating terrorism;
 - as regards agreements with third countries in connection with the European Neighbourhood Policy, the most important underlying principle of which should always be respect for human rights;
46. Calls on its Bureau to take the necessary measures to enable the temporary committee, in view of the very specific nature of its powers, to fully carry out the mandate conferred on it by granting any appropriate derogation from Parliament's internal rules until completion of its work, in particular with regard to:
 - the number of experts invited to hearings of the temporary committee and entitled to reimbursement of their expenses,
 - the number of visits and members authorised in the context of official delegations of the temporary committee,
 - the drafting, in all the official languages of the EU, of verbatim reports of hearings conducted by the temporary committee;
47. Welcomes the work done by the Council of Europe, and in particular by the rapporteur of its Committee on Legal Affairs and Human Rights, and the cooperation established between the Council of Europe and the temporary committee;
48. Calls on the Council and each of its members, and in particular its Presidency, to lend their full and unconditional support to the work of the temporary committee, in

accordance with the principle of loyal cooperation as defined by the Treaties and the decisions of the Court of Justice of the European Communities;

49. Calls on the Member States to take a stronger stance on the closing of the detention centre in Guantánamo Bay and to take a pro-active role in finding a solution for detainees against whom no legal proceedings will be brought and who cannot return to their country of origin or residence because they have become stateless or face torture or other cruel, inhuman and degrading treatment;
50. Urges Member States to provide all European citizens and all those having resided in the EU who are currently detained at Guantánamo with all necessary support and assistance, in particular legal aid;
51. Encourages the Council of Europe Committee for Prevention of Torture (CPT) to work towards ensuring that each Council of Europe Member State complies with its obligation¹ to inform the CPT of any detention facility on their territory and allow access to such facilities;
52. Encourages the Commission to give its backing to the temporary committee in all the steps it is required to take;
53. Recalls the vital importance of working in full cooperation with the parliaments of the Member States, accession countries, candidate countries and associate countries, in particular with those which have undertaken work on the same subject;
54. Instructs its President to forward this resolution to the Council, the Commission, the governments and parliaments of the Member States and accession countries, candidate countries and associate countries, the Council of Europe and the Government and both Houses of the United States Congress.

¹ European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Ref.: CPT/Inf/C (2002) 1 [EN] (Part 1) - Strasbourg, 26.XI.1987, Art. 8.

EXPLANATORY STATEMENT

The preliminary report presented in this document aims to provide an initial and provisional assessment of the work conducted by our committee to date. At the same time, we are obliged to request - as our remit so entitles - authorisation for our work to continue up to its natural 12-month cut-off point, with your rapporteur considering this to be absolutely necessary.

In this first phase of activity, in which we benefited greatly from the excellent work done by Dick Marty at the Council of Europe and by its Secretary-General, Terry Davis, we focused primarily on the experiences of certain probable victims of extraordinary rendition (Abu Omar, Khaled Al Masri, Maher Arar, Mohamed El Zary, Ahmed Al Giza and the 'six Algerians' - five of Bosnian nationality - arrested in Bosnia and transferred to Guantánamo). In the course of our hearings we heard their testimonies (or, for those still held in detention, those of their lawyers), which were often enhanced by the findings of enquiries under way in many countries. After reconstructing the events and the context in which they occurred, we came to the conclusion that there had been **a marked scaling-back of instruments for the safeguard and guarantee of human rights after 11 September**. This scaling-back also contravened some basic tenets of international law, not least the United Nations Convention against Torture, violated not only as regards the complete ban on torture but also as regards the explicit ban on extraditing prisoners to countries in which there is a risk of their being subjected to torture or to degrading or inhuman treatment.

Much of our work centred on gathering information and documents, responses and other data on the practice of extraordinary rendition (an extra-judicial system used for the purposes of the *War on Terror*), on the use of torture and on the hypothesis that the CIA had used clandestine prisons in European countries. In each instance, valid and precise information was provided by NGOs operating in the field of human rights, and especially by representatives of Amnesty International and Human Right Watch (whom we met both in Brussels and in Washington). Their cooperation - along with other important meetings (e.g. with Armando Spataro, deputy public prosecutor for Milan; Craig Murray, the former British ambassador; Michelle Picard, President of the Human Rights Chamber in Bosnia-Herzegovina; and Manfred Novak, the United Nations Special Rapporteur on Torture) has enabled us to establish the legitimacy of the questions on which our remit was based, and which we must continue to investigate.

As regards 'extraordinary renditions' in particular, many of the sources we consulted (sometimes confidentially) have confirmed that this practice was in all probability used to combat terrorism, and that it could be presumed that this was with the tacit or explicit collaboration of some European governments. In the next phase of our work we must examine more closely, as is provided for in our mandate, the role and potential responsibilities of Member States and associate and candidate countries.

The committee has conducted two missions : one to the Former Yugoslav Republic of Macedonia (FYROM) and the other to the United States of America.

The mission to Skopje served to elucidate the case of Al Masri, the German citizen stopped on 31 December 2003 at the border with Serbia, and allegedly held in detention for 23 days in Skopje itself before finally being transferred to Afghanistan where he remained in prison for almost five months before being released and returned to Germany. Given that the Al Masri affair merits closer attention (we propose, among other things, to arrange hearings with the German foreign minister, the Head of the German national security service and the public prosecutor of Munich, who is investigating this case), the visit to Skopje also enabled us to get the official version of Al Masri's time in the capital of FYROM – which your rapporteur considers to have been given with great reticence - from that country's authorities.

The mission to Washington – made worthwhile by the quantity and quality of the meetings held - allowed the committee, among other things, to hear the views of the State Department and some members of Congress on the issues it was addressing. The impression that we received - especially after questioning John Bellinger, the State Department's chief legal advisor - was that the Bush Administration openly claimed it had 'freedom of action' in its fight against al Qaeda, even in respect of accepted international law and certain international conventions. Your rapporteur disagrees with that attitude, in the light of the prime duty to ensure respect for human rights and human dignity, values which must be guaranteed in time of peace and of war and, therefore, also in the context of combating terrorism.

These feelings were confirmed by the meetings held both with Democrat members of Congress such as Ed Markey (author of a bill to ban renditions) and Republican members such as Arlen Specter (chairman of the Senate Select Committee on Intelligence), all of whom expressed serious concern over the consequences of the Bush Administration's policies in the sphere of human rights.

Special attention has also rightly been awarded to the issue of European flights by aircraft operated by companies with direct or indirect links to the CIA. By cross-referencing the data obtained by Eurocontrol with that of the Federal Aviation Administration and with other sources available to it (NGOs, journalists, victims), our committee has been able to piece together records for over a thousand stop-overs made in Europe between late 2001 and late 2005 that it can be presumed were operated by the CIA. It is certainly possible that some of those flights were used for the rendition of prisoners.

One of the initial assessments that can be made is that it seems clear that many Member States interpreted the Chicago Convention, in your rapporteur's view, in an excessively liberal manner.

The implicit and substantive objective of each phase of the committee's work - both present and future - remains that of preventing the possibility of the serious violations of fundamental rights recorded post 11 September from reoccurring in the context of the fight against international terrorism.

Your rapporteur has prepared four working documents in this regard:

- a chronological list of the main events over the last 18 months, from the first press revelations on extraordinary renditions to the present¹.

¹ PE 374.338

- a brief reconstruction of cases of probable extraordinary rendition investigated by the committee¹.
- an overview of the flights operated by the CIA in Europe, referring to 32 aircraft which either belonged or were definitely used – either directly or through 'front companies' - by US intelligence (a comprehensive file on all the aircraft used by the CIA will follow)².
- a record of the statements made to the committee by Craig Murray, former British Ambassador to Uzbekistan, (to which are annexed documents in which Mr Murray denounces the use of torture, which he witnessed at first hand in Uzbekistan)³;

¹ PE 374.339

² PE 374.340

³ PE 374.341

Annex 1: TDIP Committee events

DATE		TIME	INSTITUTION-PLACE	SUBJECT
15 December 2005 - Thursday			EP	Plenary sitting 1: Resolution on presumed use of European countries by the CIA for the Transportation and Illegal Detention of Prisoners -TDIP-(P6_TA-PROV(2005)0529
PLENARY - Jan. (from 16 to 19)	18 January 2006 - Wednesday	12h00 - 13h00	EP - STR	Plenary sitting 2: Decision setting up a temporary committee on TDIP (P6_TA-PROV(2006)0012
	24 January 2006 - Tuesday	08h30	Council of Europe - Strasbourg	Parliamentary Assembly 1: Meeting of the Committee on Legal Affairs and Human Rights (Point 1 of the Agenda: <i>Alleged secret detentions in Council of Europe member states</i>) and debate in plenary of the Parliamentary Assembly. Follow-up by the TDIP secretariat
26 January 2006 - Thursday		09h00-10h00	EP - BXL	TDIP Committee 1: Constituent meeting (election of chairman, <u>Carlos COELHO</u> and vice-chairmen, <u>Baroness Sarah LUDFORD</u> , <u>Giorgos DIMITRAKOPOULOS</u> , <u>Cem OZDEMIR</u>)
01 February 2006 - Wednesday		18h45 - 20h00	EP - BXL	Steering group 1: Provisional calendar of meetings and planning of the provisional report up to June 2006; Opening and transparency of proceedings; List of personalities/institutions to be invited; Committee delegations; Background information, specific studies, expertise
08 February 2006 - Wednesday		18h45 - 20h00	EP - BXL	Steering group 2: Agreement on a working programme to be adopted by the Committee on 13 February 2006
PLENARY - Feb (from 13 to 16)	13 February 2006 - Monday	19h00 - 21h00	EP - STR	TDIP Committee 2: <u>Franco FRATTINI</u> , Vice-President of the European Commission; Adoption of the calendar of meetings and of the TDIP working programme until 30 June 2006; presentation by <u>Giovanni Claudio FAVA</u> , rapporteur
	14 February 2006 - Tuesday	14h30 - 15h00	EP-STR	Press conference 1: <u>Carlos COELHO</u> , chairman and <u>Giovanni Claudio FAVA</u> , rapporteur: Start of the committee proceedings
23 February 2006 - Thursday		9h00 - 12h00	EP - BXL	TDIP Committee 3: <u>Joanne MARINER</u> , Human Rights Watch; <u>Anne FITZGERALD</u> , Amnesty International; <u>Tony BUNYAN</u> , Statewatch

DATE	TIME	INSTITUTION-PLACE	SUBJECT
	15h00 - 18h30		<u>Armando SPATARO</u> , Prosecutor (Milan); <u>Dick MARTY</u> , Council of Europe
6 March 2006 - Monday	15 h00 - 17h30	EP - BXL	TDIP Committee 4: <u>Generale Nicolò POLLARI</u> , Italian Intelligence and Security Services (in camera); <u>Anne-Marie LIZIN</u> , President of the Senate of Belgium; <u>Jean Claude DELEPIERE</u> , Chairman of the Permanent Committee R
	17h30 - 18h30		Steering group 3: Treatment of confidential information; Organisation of TDIP Committee work
PLENARY - March (from 13 to 16)	13 March 2006 - Monday	11h45 - 13h00	Parliamentary Assembly 2: Meeting of the Committee on Legal Affairs and Human Rights (Point 7 of the Agenda: <i>Alleged secret detentions in Council of Europe member states</i>) with the participation of <u>Giovanni Claudio FAVA</u> , rapporteur
		21h00 - 22h30	TDIP Committee 5: <u>Khaled EL MASRI</u> (German citizen), alleged victim and his lawyer, Manfred GNJIDIC
21 March 2006 - Tuesday	15h00 - 18h00	EP - BXL	TDIP Committee 6: <u>Stephen GREY</u> , journalist (free lancer); <u>Guido OLIMPIO</u> and <u>Paolo BIONDANI</u> , journalists from <i>Il corriere della sera</i> (IT)
	18h00 - 19h00		Steering group 4: Delegations to FYROM and USA; Programme of future Committee meetings; Organisation of TDIP Committee meetings
23 March 2006 - Thursday	15h00 - 18h00	EP - BXL	TDIP Committee 7: <u>Maher ARAR</u> (Canadian citizen) alleged victim and his lawyers, Lorne WALDMAN and Marlys EDWARDH; <u>Kjell JÖNSSON</u> , lawyer of Mohammed EL-ZARY (Egyptian citizen) alleged victim

DATE		TIME	INSTITUTION-PLACE	SUBJECT
PLENARY - April (from 3 to 6)	3 April 2006 - Monday	21h00 - 22h15	EP - STR	TDIP Committee 8: Preparation of the draft interim report (2006/2027 (INI))
		22h15 - 22h35		Steering group 5: Delegations to FYROM and USA; Treatment of confidential information ('Eurocontrol')
11 April 2006 - Tuesday		from 8h30	Council of Europe - STR	Parliamentary Assembly 3: Meeting of the Committee on Legal Affairs and Human Rights (Point 4 of the Agenda: <i>Alleged secret detentions in Council of Europe member states</i>) Follow-up by the TDIP secretariat
20 April 2006 - Thursday		9h30 - 12h30	EP - BXL	TDIP Committee 9: <u>Craig MURRAY</u> , former UK ambassador to Uzbekistan; <u>Gijs DE VRIES</u> , EU's Counter-Terrorism Coordinator <u>Matías VALLES</u> , journalist from "Diario de Mallorca"; <u>Edward HORGAN</u> , former UN peacekeeper and Retired Commandant of the Irish Army
		15h00 - 18h30		
25 April 2006 - Tuesday		15h00 - 18h30	EP - BXL	TDIP Committee 10: Examination of the draft interim report; <u>Stephen H. OLESKEY</u> , Counsel for Six Citizens of Bosnia and Herzegovina Imprisoned at Guantanamo Bay; <u>Srdjan DIZDAREVIC</u> , President of the Helsinki Committee for Human Rights in Bosnia and Herzegovina; <u>Michele PICARD</u> , former President of the Human Rights Chamber of Bosnia Herzegovina
26 April 2006 - Wednesday		11h00 - 12h00	EP - BXL	Press conference 2: <u>Carlos COELHO</u> , chairman and <u>Giovanni Claudio FAVA</u> , rapporteur: Presentation of the draft interim report (2006/2027 (INI))
27 April 2006 - Thursday		15h00 - 18h30	EP - BXL	TDIP Committee: (cancelled because of the delegation to Skopje)

DATE	TIME	INSTITUTION-PLACE	SUBJECT
27 April 2006 - Thursday (afternoon) / 29 April 2006 - Saturday (morning)	***	Skopje - FYROM	Delegation TDIP 1: Skopje (FYROM) (Sylvia-Yvonne KAUFMANN [acting chair], Giovanni Claudio FAVA, Wolfgang KREISSL-DÖRFLER, Raúl ROMEVA I RUEDA, Ryszard CZARNECKI) <u>Bancko CRVENKOVSKI</u> , President of the Republic; <u>Radmila SEKERINSKA</u> , Deputy Prime Minister; <u>Slobodan CASULE</u> , Member of the Parliament; <u>Siljan AVRAMOVSKI</u> , Deputy Director of the Security and counter-Intelligence Directorate; <u>Ljubomi MIHAILOVSKI</u> , Minister of Interior; <u>Ljupco JORDANOVSKI</u> , President of the Assembly; <u>Karolina RISTOVA-ASTERUD</u> , President of the Parliament's EU Affairs Committee; <u>Tenta ARIFI</u> , President of the Parliament's Foreign Affairs Committee; <u>Ganka SAMOILOVSKA CVETANOVA</u> , Member of Parliament; <u>Mirjana NAJCEVSKA</u> , President of the Macedonian Helsinki Committee; <u>Esad RAHIC</u> , President of the Parliamentary Committee for Defence and Security; <u>Stojan ANDOV</u> , President of the Human Rights Parliamentary Committee; <u>Zvonimir JANKULOVSKI</u> , Security expert
28 April 2006 - Friday	19h30 - 20h00	Skopje - FYROM	Press conference 3: <u>Sylvia-Yvonne KAUFMANN</u> , acting chairwoman and <u>Giovanni Claudio FAVA</u> , rapporteur: Outcome of the delegation to FYROM
02 May 2006 - Tuesday	14h30	EP - BXL	Informal meeting between <u>Javier SOLANA</u> and the Steering group
	15h00 - 18h30	EP - BXL	TDIP Committee 11: <u>Javier SOLANA</u> , EU High Representative for the CFSP; <u>Alvaro GIL-ROBLES</u> , Council of Europe's former Human Rights Commissioner
04 May 2006 - Thursday	9h30 - 12h30	EP - BXL	TDIP Committee 12: Exchange of views on the draft interim report (2006/2027 (INI)); <u>Manfred NOWAK</u> , United Nations Special Rapporteur on Torture
	15h00 - 18h30		<u>Mats MELIN</u> , Swedish Chief Parliamentary Ombudsman
	12h30 - 13h15	EP - BXL	Press conference 4: <u>Sylvia-Yvonne KAUFMANN</u> , acting chairwoman and <u>Giovanni Claudio FAVA</u> , rapporteur: Outcome of the delegation to FYROM

DATE	TIME	INSTITUTION-PLACE	SUBJECT
08 May 2006 - Monday (evening) / 12 May 2006 - Friday (morning)	***	Washington (USA)	Delegation TDIP 2: Washington (USA) (Carlos COELHO, Baroness Sarah LUDFORD, Cem ÖZDEMİR, Giovanni Claudio FAVA, Jas GAWRONSKI, Jose-Ingnacio SALAFRANCA SÁNCHEZ-NEYRA, Wolfgang KREISSL-DÖRFLER, Giulietto CHIESA, Jean LAMBERT, Giusto CATANIA, Konrad SZYMANSKI, Mirosław PIOTROWSKI, Roger HELMER) John BRUTON , Head of the European Commission Delegation; Scott HORTON , Chair of the committee on International Law; Margaret L. SATTERTHWAITE , Assistant Professor of Clinical Law and Faculty Director; Barbara OLSHANSKY , Director and Counsel (Guantanamo Global Justice Initiative); Elisa MASSIMINO , Director of the Washington, D.C. Office (Human Rights First); Angela COLAIUTA , Center for Victims of Torture, John BRADSHAW , Open Society Policy Center, Smita BARUAH , Physicians for Human Rights, Jumana MUSA , Advocacy Director for Domestic Human Rights and International Justice; Jonathan SIFTON , Counterterrorism Researcher, Jennifer DASKAL , US Advocacy Director; Representative Robert WEXLER (D-Florida); Dan FRIED , Assistant Secretary of State, John BELLINGER , Department of State's Legal Adviser; Steven M. WATT , Staff Attorney Ann BEESON , Associate Legal Director, Chris ANDERS , Legislative Counsel; Senator Arlen SPECTER (R) Pennsylvania; Senator Richard DURBIN (D) Illinois; Congressman Ed MARKEY (D) Massachusetts; James WOOLSEY (Former CIA Director 1993-1995); Austrian Ambassador Eva NOWOTNY
11 May 2006 - Thursday	17h30 - 18h15	Commission Delegation Washington (USA)	Press conference 5: Carlos COELHO , chairman and Giovanni Claudio FAVA , rapporteur: Outcome of the delegation to USA
PLENARY - May (from 15 to 18)	15 May 2006 - Monday	EP - STR	TDIP Committee 13: Exchange of views on the Research Note on the international law concerning the prohibition of torture presented by a representative of the Legal Service of the EP; Report on the TDIP committee delegation to USA (Washington, 8 to 12 May 2006)
	16 May 2006 - Tuesday		Deadline for <u>submission of the amendments</u> to the draft interim report (Committee's Secretariat)
	17 May 2006 - Wednesday		Press conference 6: Carlos COELHO , chairman and Giovanni Claudio FAVA , rapporteur: Outcome of the delegation to USA
30 May 2006 - Tuesday	15h00 - 18h30	EP - BXL	TDIP Committee 14: Exchange of views on the study of the EU Network of Independent Expertise; Exchange of views on the amendments to the draft interim report (2006/2027 (INI));

DATE	TIME	INSTITUTION-PLACE	SUBJECT	
01 June 2006 - Thursday		EP - BXL	TDIP Committee: (cancelled by a committee decision)	
07 June 2006 - Wednesday	from 09h00	Council of Europe - Paris	Parliamentary Assembly 4: Meeting of the Committee on Legal Affairs and Human Rights (Point 3 of the Agenda: <i>Alleged secret detentions in Council of Europe member states: Consideration of a draft report and vote on a draft resolution and a draft recommendation</i>)	
PLENARY - June (from 12 to 15)	12 June 2006 - Monday	19h00 - 20h30	EP - STR	TDIP Committee 15 Vote of the draft interim resolution in the Committee (2006/2027 (INI))
	13 June 2006 - Tuesday	15h00-15h30		Press conference 7: <u>Carlos COELHO</u> , chairman and <u>Giovanni Claudio FAVA</u> , rapporteur: Outcome of the vote on the interim resolution in the Committee
21 June 2006 - Wednesday	18h45 - 20h15	EP - BXL	Steering group 6: Informal exchange of views on eventual programme of work for the second semester of the year	
27 June 2006 - Tuesday	from 10h00	Council of Europe - Paris	Parliamentary Assembly 5: Plenary of the Parliamentary Assembly, 3rd part of 2006 Ordinary Session (Point 2 of the Agenda: <i>Alleged secret detentions in Council of Europe member states; Statement by <u>Franco FRATTINI</u>, Vice-President of the European Commission; Statement by <u>Giovanni Claudio FAVA</u>, rapporteur; vote on Legal Affairs and Human Rights Committee's report</i>)	
PLENARY - July (from 3 to 6)	03 July 2006 - Monday	21h00 - 22h30	EP - STR	TDIP Committee 16: Exchange of views with <u>Dick MARTY</u> , Council of Europe
	05/06 July 2006	to be confirmed		Plenary sitting 3: Debate(5 July) and vote(6 July) of the interim resolution (2006/2027 (INI))
			Press conference 8: <u>Carlos COELHO</u> , chairman and <u>Giovanni Claudio FAVA</u> , rapporteur: Outcome of the vote on the interim resolution in Plenary(6 July)	

MINORITY OPINION

pursuant to Rule 48(3) of the Rules of Procedure

Jas Gawronski

The majority of the Committee voted in this report points that have not been fully debated, that are assertions and generalisations without evidence to back them up. The majority refused all of our amendments aimed at inserting the word “alleged” in all instances where there is no proof of what is asserted.

Moreover the report ignores important information received by the Committee, such as the statement by Jonathan Sifton, counter terrorism researcher at Human Rights Watch that “we have suspicions but not proofs”.

The minority of the Committee is convinced that:

- the work of the Committee has revealed no new important facts and does not justify the alarming conclusion that there have been a large number of "extraordinary rendition" cases,
- the "rendition" process was not part of a systematic and deliberate violation of European, International and Human Rights law, for the express purpose of torture either in the EU or in 3rd countries.
- Mr. Solana and Mr. de Vries are correct stating that there is to date no corroborated evidence for the alleged violations of European and International law by EU Member States,
- for the above reasons the Committee's work should only be continued as long as progress is being made in establishing facts beyond reasonable doubt.

PROCEDURE

Title	The alleged use of European countries by the CIA for the transportation and illegal detention of prisoners		
Procedure number	2006/2027(INI)		
Committee responsible Date authorisation announced in plenary	TDIP 18.1.2006		
Committee(s) asked for opinion(s) Date announced in plenary			
Rapporteur(s) Date appointed	Giovanni Claudio Fava 26.1.2006		
Previous rapporteur(s)			
Discussed in committee	4.5.2006	30.5.2006	12.6.2006
Date adopted	12.6.2006		
Result of final vote	+ 25 - 14 0 7		
Members present for the final vote	Alexander Alvaro, Monika Beňová, Frieda Brepoels, Kathalijne Maria Buitenweg, Giusto Catania, Philip Claeys, Carlos Coelho, Simon Coveney, Giorgos Dimitrakopoulos, Camiel Eurlings, Giovanni Claudio Fava, Patrick Gaubert, Jas Gawronski, Toomas Hendrik Ilves, Sylvia-Yvonne Kaufmann, Ewa Klamt, Magda Kósáné Kovács, Wolfgang Kreissl-Dörfler, Stavros Lambrinidis, Sarah Ludford, Cecilia Malmström, Elena Valenciano Martínez-Orozco, Miroslav Mikolášik, Claude Moraes, Cem Özdemir, Józef Pinior, Mirosław Mariusz Piotrowski, Hubert Pirker, Bogusław Rogalski, Martine Roure, Eoin Ryan, José Ignacio Salafranca Sánchez-Neyra, György Schöpflin, Inger Segelström, Hannes Swoboda, Konrad Szymański, Charles Tannock, Jan Marinus Wiersma, Anders Wijkman		
Substitute(s) present for the final vote	Elmar Brok, Roger Helmer, Erna Hennicot-Schoepges, Jeanine Hennis-Plasschaert, Sajjad Karim, Henrik Lax, Josef Zieleniec		
Substitute(s) under Rule 178(2) present for the final vote			
Date tabled	15.6.2006		
Comments (available in one language only)			