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INFORMATION MEMORANDUM
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TO: The Secretary

FROM: L – William H. Taft, IV

SUBJECT: Follow-up from Confirmation Hearing – Detainee Transfers

During your confirmation hearing on January 19, Senator Dodd probed U.S. practices in transferring detainees from U.S. control to third country control, particularly for purposes of interrogation. He cited recent press accounts alleging the transfer of prisoners, primarily by the CIA, to countries where it is believed they were later tortured during interrogation. An article in the New Yorker this week entitled “Outsourcing Torture” details similar allegations.

During your hearing, Senator Dodd also asked your views on a legislative proposal he made last year to require the Secretary of Defense to maintain records of all transfers in order to prevent these renditions from occurring or, at least, determine how the detainees are being treated after transfer. During the hearing, you demurred on the record-keeping proposal “for now” and indicated that you would be prepared to discuss these issues later in closed session.

Attached are background papers on detainee transfers, including the Dodd Amendment and a letter on the subject dated June 25, 2003 from DoD General Counsel Haynes to Senator Leahy.

Tab A– Background on Dodd Amendment Concerning Detainee Transfers

Tab B – Background on Detainee Transfers, including Letter from DOD General Counsel William J. Haynes II dated June 25, 2003

UNITED STATES DEPARTMENT OF STATE
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**Ghost Prisoner
Two Years In Secret CIA Detention**

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Summary

When Marwan Jabour opened his eyes, after a blindfold, a mask, and other coverings were taken off him, he saw soldiers and, on the wall behind them, framed photographs of King Hussein and King Abdullah of Jordan. He was tired and disoriented from his four-hour plane flight and subsequent car trip, but when a guard confirmed that he was being held in Jordan, he felt indescribable relief. In his more than two years of secret detention, nearly all of it in US custody, this was the first time that someone had told him where he was. The date was July 31, 2006.

A few weeks later, in another first, the Jordanians allowed several of Jabour's family members to visit him. "My father cried the whole time," Jabour later remembered.

Marwan Jabour was arrested by Pakistani authorities in Lahore, Pakistan, on May 9, 2004. He was detained there briefly, then moved to the capital, Islamabad, where he was held for more than a month in a secret detention facility operated by both Pakistanis and Americans, and finally flown to a Central Intelligence Agency (CIA) prison in what he believes was Afghanistan. During his ordeal, he later told Human Rights Watch, he was tortured, beaten, forced to stay awake for days, and kept naked and chained to a wall for more than a month. Like an unknown number of Arab men arrested in Pakistan since 2001, he was "disappeared" into US custody: held in unacknowledged detention outside of the protection of the law, without court supervision, and without any contact with his family, legal counsel, or the International Committee of the Red Cross.

The secret prison program under which Jabour was held was established in the wake of the September 11, 2001 terrorist attacks, when US President George W. Bush signed a classified directive authorizing the CIA to hold and interrogate suspected terrorists. Because the entire program was run outside of US territory, it required the support and assistance of other governments, both in handing over detainees and in allowing the prisons to operate.

Pakistan's help was crucial to the program, more crucial than that of any other country. The Pakistani authorities delivered hundreds of prisoners to the United

States—some ending up in military custody, others in CIA custody—and it also allowed the United States and other countries to interrogate many of them on Pakistani soil. As the US State Department's annual human rights report for 2004 describes, security forces in Pakistan "held prisoners incommunicado and refused to provide information on their whereabouts, particularly in terrorism and national security cases." What the report does not say is that the Pakistani authorities carried out these abuses with the full knowledge and participation of American intelligence agents. Indeed, the degree of US control may have been so great, in some cases, that it constituted a form of proxy detention.

The possible use of proxy detention facilities is of especial concern now. In early September 2006, 14 detainees were transferred from secret CIA prisons to military custody at Guantanamo Bay. In a televised speech on September 6, President Bush announced that with those 14 transfers, "there are now no terrorists in the CIA program." But he said nothing about what had happened to a number of other prisoners who, up until that point, were believed to have been in the unacknowledged custody of the CIA.

One concern is that the US might have transferred some of the remaining prisoners to foreign prisons where for practical purposes they remain under CIA control. Another worrying possibility is that prisoners were transferred to places where they face a serious risk of torture: indeed, some of the missing prisoners are from Algeria, Egypt, Libya, and Syria.

In a letter to President Bush published in conjunction with this report, Human Rights Watch has provided a list of 16 people who were believed to have been held at one time in secret CIA prisons, and whose whereabouts are currently unknown. Jabour saw or spoke to a number of those people while he was held. The letter also includes a list of 22 people who were possibly held in such prisons, and whose whereabouts are similarly unknown. A copy of the letter is included as an appendix to this report.

Human Rights Watch has called upon the Bush administration to provide a full accounting of every person that the CIA has held since 2001, including their names,

GHOST PRISONER

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the dates that they left US custody, and their current locations, if they are being held in proxy detention in a third country, the US government should either transfer them to the United States for prosecution in US courts, or order their release.

To leave these men in hidden limbo violates fundamental human rights norms. It is also extraordinarily cruel to their families. The wife of a man who has not been seen since he was believed to have been taken into CIA custody told Human Rights Watch that she has had to lie to her four children about her husband's absence. She explained that she could not bear telling them that she did not know where he was: "What I'm hoping is if they find out their father has been detained, that I'll at least be able to tell them what country he's being held in, and in what conditions."¹

The fate of the missing detainees is one of the main unanswered questions about the CIA's secret prison program, but it is not the only one. Much is still unknown about the scope of the program, the precise locations of the detention facilities, the treatment of detainees, and the cooperation and complicity of other governments. Although confidential sources, including CIA personnel, have described some aspects of the program to journalists, and a small number of former detainees have recounted their experiences, many details of the program remain hidden.

What follows is the most comprehensive account to date of life in a secret CIA prison. Human Rights Watch interviewed Marwan Jabour over several days in December 2006, less than a month after he regained his freedom. He spoke clearly, precisely and in great detail about his experiences, although it was evident that he found some memories upsetting. His testimony is extremely valuable both in describing his own experience of secret detention and in providing information about others who were held with him.

Jabour was arrested in Lahore, he believes by the Pakistani intelligence services, and the worst physical abuses he endured took place while he was in their custody. He alleges that they beat him severely, burnt him with a red hot iron, and tied a tight rubber string around his penis, causing enormous pain. On this third day in Pakistani custody, three people he believes were Americans questioned him; the

¹ Communication to Human Rights Watch, January 28, 2007.

following day he was transferred to a secret facility in Islamabad. This facility had both US and Pakistani personnel, but the Americans seemed to be in charge.

Both in the Lahore facility and in Islamabad, Jabour endured many days of forced sleeplessness and forced standing, with little respite. Twice he collapsed, falling unconscious.

After a month in Islamabad he was flown to a secret prison, which he believes was in Afghanistan, where all of the personnel (except possibly the interpreters) were American. There, he was held completely naked for a month and a half, filmed naked, and interrogated naked. He was chained tightly to the wall of his small cell so he could not stand up, placed in painful stress positions so that he had difficulty breathing, and warned that if he did not cooperate he would be put in a suffocating "dog box."

As the months went by, some aspects of Jabour's treatment improved: his clothes were slowly returned; the physical mistreatment ended; he was placed in a larger cell; he got better food. Other aspects, however, changed slowly or not at all. He spent nearly all of his time alone in a windowless cell. He went a year and a half without a glimpse of sunlight. He wore leg irons for a year and a half. Worst of all, he spent more than two years with almost no contact with any human being besides his captors. Although he worried incessantly about his wife and three young daughters, he was not even allowed to send them a letter to reassure them that he was alive.

Jabour acknowledges that in 1998 he trained in a militant camp in Afghanistan in the hope of fighting in Chechnya, and in 2003 he helped Arab militants and others who had fled Afghanistan for Pakistan. But whether he violated the law should have been a matter for the courts; it was not a justification for abuse.

International human rights law prohibits enforced disappearance: basically, the holding of persons in unacknowledged, incommunicado detention. Such persons, who remain "disappeared" until their fate or whereabouts become known, are also more likely to be subjected to torture and other cruel, inhuman or degrading treatment.

The US government has long condemned these abusive practices in its policy statements and annual human rights reports; its own use of them severely undermines its moral authority on human rights. Even in wholly practical terms, its reliance on secret detention and abusive interrogation is wrong. The use of these techniques taints any testimony obtained from the persons held, making it difficult to prosecute the perpetrators of terrorist acts in fair proceedings, and to provide the public accounting of these crimes that the victims of terrorism deserve.

Key Recommendations

The US government should:

- Repudiate the use of secret detention and coercive interrogation as counterterrorism tactics and permanently discontinue the CIA's detention and interrogation program;
- Disclose the identities, fate and whereabouts of all detainees previously held at facilities operated or controlled by the CIA since 2001.

Other governments should:

- Refuse to assist or cooperate in any way with CIA detention, interrogation and rendition operations, and disclose any information that they may have about such operations.

The Case of Marwan Jabour

Marwan Ibrahim Ali al-Jabour is a 30-year-old Palestinian who was born in Amman, Jordan, and grew up in Saudi Arabia. In 1994, he moved to Pakistan to continue his studies, and in 1999 he got married. He and his wife have three young daughters.

Detention in Lahore

The beatings were difficult, but they weren't the worst part [The worst] was the fear that I would never see my family.

—Marwan Jabour, describing how he felt when he was taken into detention

Jabour was arrested after having dinner in Lahore, Pakistan, at the home of a friend, a professor at a university in Lahore, on May 9, 2004. At about 9 p.m., when he was pulling his car out of his friend's garage, a man on the street asked him about his friend. As Jabour responded, he was suddenly surrounded by a large group of Pakistani men in civilian clothing. The men grabbed him and cuffed his hands. They put him in a car and tried to put a sack over his head, but he fought back and they left the sack off.

They also arrested the friend whose house he was visiting, and another friend who was there. All three men were taken to what Jabour believes to be a Lahore station of Pakistan's Inter Services Intelligence (ISI), the country's powerful military intelligence agency; the station was close to the Panorama Centre.²

Jabour said that as soon as the men got him inside the station, they started beating him badly. "There were seven or eight officers in the room with me," Jabour told Human Rights Watch. "If I said I didn't know anything, they beat me; they slapped me, kicked me, and hit me with a stick. They insulted and threatened me. They kept me awake all night long."

² Panorama Centre is a well-known market in Lahore.

Jabour said that the men also used an electric prod on him, continually questioning him about the whereabouts of suspected terrorists.

At about 6 a.m., he said, they sent him to a cell, leaving him there with shackles on his legs. There were three small cells in a row together. Jabour was alone in his cell, and his two friends were in the other cells. "They had been beaten too, but not as badly as I was," Jabour said. "I was bruised from the beating."

From the questions that Jabour was asked, he knew that his contacts with Arab militants had aroused official interest. Jabour told Human Rights Watch that he had trained in a militant camp in Afghanistan for three months in 1998, had returned to Afghanistan for a couple of weeks after the American bombing campaign started, and in 2003 had assisted Arabs and others who had fled Afghanistan for Pakistan. Because he had lived in Pakistan since 1994 and had studied at a university there, he spoke Urdu fluently and had local contacts. His knowledge of the local environment meant that he was able to arrange for people to get medical care and stay in local homes. Jabour claims that he assisted "unaffiliated mujahideen"—those who did not belong to al Qaeda or other armed groups—and that he was never a member of a terrorist group or in any way involved in terrorist activities.²

When the interrogators returned to his cell an hour or two later, they wanted the details of Jabour's activities, including the names of militants he had met, and the addresses where those who had fled Afghanistan were staying. They had already found his cell phone and a diary with phone numbers. They took Jabour back to the interrogation room, where an interrogator was waiting for him. They told him to start making phone calls for them. The police began shouting and beating him. They threatened to arrest his wife. Jabour said: "They told me: 'We'll keep her on her knees in front of you.'" He described the scene:

We were in a specially made room with iron rings on the wall, and they chained my hands to the ceiling. They also tied a rubber string on my penis that didn't allow me to pee. They left it on the whole time I was

² Although Human Rights Watch cannot corroborate these statements, the fact that it took the US authorities released Jabour without charge suggests that they did not believe he was implicated in acts of terrorism.

with them, except sometimes they would briefly undo it. It was terribly painful.

Jabour said that because he was kept from urinating for nearly four days, except for few brief moments of respite, he now has a problem with his kidneys. He has to urinate frequently, and sometimes there is blood in his urine.

Early in the morning on his third day of detention in Lahore, Jabour said, three people who he believes were Americans came to interrogate him: two women and a man. He was blindfolded the whole time they interrogated him, but he said that their American accents were unmistakable. (They interrogated him in English.) "They told me, 'Marwan, you're at a crossroads: you could spend the rest of your life in prison, or you could cooperate with us against the terrorists. You could be a rich man.'"

Jabour said that nobody physically abused him while the Americans were present, although sometimes he was made to kneel on the floor while he was being questioned. When the Americans once asked him about the bruises on his face, caused from his beating by the Pakistani police, he told them sarcastically, "Oh, we spent a very nice night together, your friends and I."

During the interrogation, the two women did most of the talking. One was friendly, and made some suggestive comments to him; the other was very angry and swore a lot. The angry woman told him that there was a huge American man waiting for him in prison.

The Americans stayed at the police station until about midnight. After the Americans had left, the Pakistani police removed his clothes and showed him a red hot metal rod.

One of them asked me: "Where do you want to be hit with it?" I begged him not to. He burnt my left arm, just above the elbow, and my left leg. I got no medical care for the burns, which bubbled up. They took a month or so to heal. But this seemed minor compared to all the other things in my life at the time.³

³ A Human Rights Watch researcher was shown the light scars on Jabour's arm and leg when she interviewed him in December 2006.

labour said that on the morning of the fourth day, the Pakistanis transferred him by car to another facility. He had been kept awake nearly the whole time he was detained in Lahore. He estimated that he was allowed a total of about three to four hours' sleep during the nearly four days he was held.⁵

Islamabad: Proxy Detention

I think it had once been a private home. It was a place of secret detention . . . it seemed to me that this place was controlled by Americans. They were in charge.

—Marwan Jabour, recalling his detention in Islamabad.

labour described the detention facility he was transferred to as a "villa": a large private compound that had been renovated to hold prisoners.⁶ He was blindfolded when he arrived so he did not see it from the outside, but he heard the Pakistanis who were in the car with him say that they were going to Islamabad.⁷ The drive from Lahore took three-and-a-half to four hours.⁸

⁵ Moazzam Begg, a British citizen who was imprisoned for two years at Guantanamo, described how when he was in ISI detention in early 2002, he witnessed other prisoners being beaten and deprived of sleep for days. Moazzam Begg, *Enemy Combatant: A British Muslim's Journey to Guantanamo and Back* (London: The Free Press, 2006), pp. 13-17.

⁶ He was held on the ground floor, but he was under the impression that the building had a second story.

⁷ The other prisoners who Jabour met in the facility confirmed that it was in Islamabad. Moreover, there are many other accounts of "disappeared" prisoners have been held in Islamabad or brought there for questioning. For example, a recent letter describing people released from secret detention in Pakistan states that among the detention centres where people were held was "a house near Islamabad Airport." Letter from Amina Masood, Defense of Human Rights, to the U.K. Home Office, 10/10/06. The House of Lords also noted that the CIA was "operating a secret detention facility in Islamabad (U.K.) March 27, 2003" (Dhillon) and that a Moroccan student in America was moved to the city of Islamabad for questioning after he was captured in a raid⁹, and "a sister to Osama Yousef arrested," *Asia Times* (Pakistan), August 12, 2002 ("Sources also said Osama Bin Yousef had been taken to Islamabad where a foreign investigation team would see him").

Abdullah Qasbi, a Canadian citizen arrested in Pakistan in October 2002, states that he too was held in secret detention in Islamabad, and was interrogated by both American and Pakistani personnel. See *Al-Jarrah v. United States v. Khatir*, Action No. E2007/05, Superior Court of Justice, Toronto, 2006, pp. 25-27.

⁸ Moazzam Begg states that immediately after being arrested in early 2002 he was held in a house in Islamabad. He described it as a "very grand" house, the house of a wealthy person, in which he thought was the Gao district of the city. Although he was held in a room, he saw several cells in another part of the house. Moazzam Begg, *Enemy Combatant*, pp. 6-7.

⁹ Finally, at least one detainee who is currently being held at Guantanamo stated in an administrative hearing that after being arrested he and a few others were brought to Lahore, interrogated there by American citizens, and then brought to Islamabad, where they spent two months in detention before being transported to Bagram air base in Afghanistan. Fahim Ahmed (USA 001), *Consistent Status Review* (Human Rights Center, US Department of Defense, 2004), p. 43-46 (revised March 3, 2005). Ahmed was arrested some time after February 2002. It is unclear when.

¹⁰ This is roughly the time it takes to make the trip using the Lahore-Islamabad motorway.

The forced sleeplessness that Jabour endured in Lahore continued in Islamabad. Jabour told Human Rights Watch that during his first seven days in Islamabad his captors did not allow him to sleep, except for the occasional hour-long doze. "It was a continuous investigation," he said.

"The Americans were almost always around," he told Human Rights Watch. "I wasn't wearing a blindfold after I arrived there, so I could see them. I saw three American women and a man, plus about five or six Pakistanis." Speaking of the Americans, he said: "I think it was the same man who questioned me in Lahore, and at least one different woman." Jabour said that the Americans were dressed in regular Western clothes, and one of the women said that her name was Mary. They did not say what government agency they were from.

Jabour said that the Americans appeared to be in charge of the facility. They would question him during the day, sometimes showing him photos of suspected militants, and after midnight the Pakistanis would take over. At first labour was held alone in a cell that was like a room, and was attached to the wall by a chain about two meters long.

"The Pakistanis beat me almost every night," he said. "Once they threatened to pull out my fingernails. Other times they would be friendly, and promise to release me if I talked." He was forced to stand for long periods.

The Americans did not beat Jabour, but they made him stay awake. "They would say: 'If you cooperate, we'll let you sleep.' And: 'If you work with us, we'll make you really rich.' They never threatened to take me to Guantanamo, but they did say that I'd be taken away somewhere and would never see my children again. I was thinking that my life was finished."

"I was thinking about my oldest daughter the whole time," he said. "I thought that I'd never see her again. I was afraid that I'd be sent to Guantanamo."

Jabour told Human Rights Watch that all of the Americans he saw at the facility were relatively young, in their late twenties or early thirties. He said that the man who questioned him was about age 28-30, with thinning hair, and the woman who called

herself Mary was tall, with medium length, light colored hair. Another woman was always angry and swore a lot. (Jabour believes this is the same woman who swore at him in Lahore.) Once, in Arabic, she told Jabour "Fuck Allah in the ass."

Jabour collapsed twice during this first week in Islamabad; he believes that he had two heart attacks. The first time was on his fourth day of detention; the second time was at the end of seven days. "I fell unconscious both times, with my heart pounding out of my chest," he said. The doctor, a Pakistani, checked his heart and gave him something called "glivet."

After Jabour's first collapse, they moved him to a cell with another prisoner, an Algerian named Adnan, who took care of him. (Jabour knew him as Adnan "al-Jazeera," or Adnan the Algerian.) Jabour was in such bad shape that he could not walk or feed himself. He was allowed to sleep for about four hours.

After his second collapse, three days later, he was allowed an entire day's rest. "After the second collapse, I was hysterical," he said.

A number of other prisoners were held in the cell block with him, which he described as a new addition to the main house. The cell block was stiflingly hot and the air was stale. There were two facing rows of three cells, each of which had a barred door facing the corridor. In front of the barred doors were wooden doors, but they were almost always left open. When the prisoners were walked down the corridor to use the toilet, they could see each other.

Jabour said that one cell held a 16-year-old boy named Khalid. Khalid, who was Egyptian, said that he had been arrested six months previously during military operations in Waziristan, in northwest Pakistan bordering Afghanistan. He was apparently badly injured during his arrest, and Jabour could hear him crying and moaning in pain at night. "He was suffering badly," Jabour recalled. Another 16-year-old who was held in the facility was an Iraqi named Tha'er, who said that he had been arrested in mid-2003. Tha'er told Jabour that he had an Australian travel document, and that the Australians had visited him the previous year, interrogating

him and making a video of the interrogation. Tha'er also said that Abu Zubaydah and members of his group had been held in this same facility.⁹

The facility also held a Yemeni detainee who had been arrested in late 2003; a Libyan named Ayoub who had been arrested in early 2004; an Afghan known as Mohammed al Afghani, who was born in Saudi Arabia, and a Palestinian who had been arrested in early 2004. The latter two prisoners had been transferred from Peshawar prison to Islamabad the same day that Jabour had arrived. There were also three Pakistani men who were accused of involvement in the attempted kidnapping of an ISI general; they said that they had been held for a year without being charged. A fourth Pakistani was also held there; he was released a few days after Jabour arrived. Jabour said that this fourth man had been badly tortured: "you can't imagine how much they were hurting him."

Jabour said that the Pakistani prisoners told him that a Pakistani named Majid Khan had previously been held there with them.¹⁰

Jabour was held in the Islamabad facility for more than a month. He was never brought before a judge, charged with any offense, or allowed to see a lawyer. While he was there, another prisoner, the Yemeni, was moved from the facility, supposedly for Yemen. The day before Jabour was transferred, three other prisoners—the two 16-year-old boys, and the Algerian man—were taken away.

⁹ Zine-Abd al-Din, aka Abu Zubaydah, is currently incarcerated at Guantanamo. He was among the 24 detainees transferred from CIA custody in early September 2006. It is believed that he was badly tortured during his detention. See, for example, Ron Suskind, *The One Percent Doctrine: Deep Inside America's Pursuit of Its Enemies Since 9/11* (New York: Simon & Schuster, 2006), pp. 119-21.

¹⁰ Majid Khan is currently incarcerated at Guantanamo. He was among the 14 detainees transferred from CIA custody in early September 2006.

Secret CIA Detention

It was a grave.

—Manwan Jabour, recalling his two years in secret CIA detention.

Jabour was transferred out of the Islamabad facility on the evening of June 16, 2004. The Pakistanis brought Jabour and three other prisoners (the Palestinian, the Afghan, and the Libyan) to the airport. The prisoners were blindfolded; their hands were cuffed, and their legs shackled. Jabour said that the drive to the airport took less than 20 minutes.

Before he was put on the plane, Jabour was led to the bathroom, where the Americans took off his blindfold. "I saw Americans in front of me, talking in sign language. A doctor was there, and he took my blood pressure and gave me an injection. I knew it was the end of my life." Then the Americans put a sack over his head and changed his handcuffs. The injection made him a bit woozy, but he did not pass out.

Jabour said everyone entered the plane through the back, using what seemed like the door of a military plane. The plane seemed fairly small, like it could hold perhaps 20 to 30 people. The prisoners were on one side, with a seat between them. Their hands were cuffed behind their backs, and their legs were cuffed and shackled to the floor. There were four prisoners and about a dozen other people on the plane:

Jabour believes that the secret prison facility he was brought to was located in Afghanistan. He enumerated several reasons for this belief. First, the time spent flying: the flight lasted a maximum of two hours.⁹ Second, the food served at the prison: during the Eid al-Fitr holiday,¹⁰ the prisoners were given typical Afghan food, and near the end of his stay they were fed typical Afghan bread with regular meals. Third, facts gleaned from his captors: an officer at the prison once let slip that after

⁹ This is more than enough time to get to Kabul from Islamabad.

¹⁰ The Muslim holiday of Eid al-Fitr (the Festival of Fast-Breaking) is a three-day celebration at the end of Ramadan.

the earthquake in Pakistan relief supplies were flown "from here" to Pakistan.⁹ Fourth, the weather: it was extremely cold in the winter (colder than in most parts of Pakistan); one wall of his cell would be freezing to the touch. Fifth, the languages: the first director of the prison spoke fluent Farsi (Persian), suggesting that the prison was in a region where such language skills were useful.¹⁴

Jabour said he thinks that everyone at the prison was American—the guards, interrogators, prison directors, and medical personnel—except possibly the Arabic-speaking translators. Not only did the prison staff say they were American—informing Jabour that he was in U.S. custody—they spoke American-accented English.

The First Six Months

After the plane landed, the transfer team put Jabour and another prisoner in the back of a jeep, handling them roughly. The jeep then drove down an unpaved road to the prison.

When the group reached the prison, two guards brought Jabour inside. After they put him in a cell, by himself, they cut off all his clothes, leaving him naked. They released one of his hands from the handcuffs, and cuffed the other hand to a ring in the cell wall. It wasn't possible for him to stand because the ring was near the floor, and he was attached to it via a short chain.

The cell was just over 1 meter wide by almost 2 meters long. It was roughly the size of a single mattress, but it did not have a mattress. The only objects inside the cell were a bucket and two coarse blankets.

The cell had two video cameras near the ceiling, too high for a standing person to reach. There were also speakers and a listening device built into the wall.

⁹ The US military sent relief flights from Afghanistan to assist people affected by the 2005 earthquake in Pakistan. See Embassy of the United States in Islamabad, Press Release, "500 Relief Flights Unloaded by the U.S. Military," November 29, 2005.

¹⁴ Ford said clearly related languages are spoken in much of Afghanistan. In addition to Iran.

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This cell, as well as other cells that Jabour saw later, had double steel doors that were very close to each other. (In other words, to exit the cell it was necessary to go through one door and then the next.) The door that opened into the cell had a small glass window (about 40 cm by 30 cm) and a food slot below. Except for the door, the cell had no windows, but the lights were left on all the time, including at night.

Jabour said that he thought the structure of the building was old, but the cells were new and modern. Everything was metal and seemed very new.

The guards let Jabour sleep the first night (or let him try to sleep) and returned early in the morning. No one said a word to him, but they shaved his head, and also shaved off his beard and moustache. Then, without giving him any clothes to wear, they took him to an interrogation room. In retrospect, Jabour finds it hard to believe that he was paraded around naked in front of a group of men and women, but at the time he was so disoriented and upset that his lack of clothing seemed relatively minor.

The interrogation room was a relatively big room and it held about ten people, including guards and people who appeared to be doctors. Some members of the group were women. They put him a chair, shackling his hands and legs to the chair. A doctor came and another person made a video recording of Jabour's body.

A bearded man, whom Jabour had seen at the airport in Islamabad, began to talk in American-accented English. He said he was the "emir" (director) of the facility. He said Jabour had only one option: to cooperate. He promised that if Jabour cooperated, he would be treated well.

During this interrogation and countless future interrogations, his questioners asked about Jabour's activities in Pakistan, the people he had met, and his knowledge of terrorist groups. He was shown many hundreds of photos, some of people who were obviously in detention (they were wearing prison jumpsuits and showing a plaque with numbers).

During the first six months that Jabour was being interrogated, a huge, muscular man whom Jabour called a "Marine" because of his build would sometimes stand

behind the interrogator and act intimidating. Jabour was also frightened by an object that the interrogators called the "dog box." It was a wooden box, about a meter by 1 meter in size, and the Americans told him that they put people inside it. "They said that KSM [Khalid Sheikh Mohammed] had spent some time in the dog box and then he talked. They kept threatening me: 'We could do this to you.'"¹⁵

Jabour said that he was slapped a few times at the beginning of his stay, but was not beaten while held in the secret facility. Instead, when the interrogators felt he was not cooperating, they would chain him up in extremely uncomfortable positions, which would become painful over time.¹⁶ His hands would be attached to his ankles, and to the floor, and he would be left like that for a half hour to an hour. "At times it was difficult to breathe," he explained. In all, he estimates that he was put in these stress positions a total of 15 to 20 times.

Jabour said that during the first six months he was held at the secret prison they would sometimes play rock music at ear-blasting levels, which could last an hour, a day, a few days, or even a week. "It was loud, awful music," he said, "like the soundtrack from a horror movie."

Besides the music, there was also a constant, low-level, white noise; Jabour said that it sounded like a generator. Jabour thinks that one of the main reasons for the noise was to prevent prisoners from communicating with each other.

Two weeks after Jabour arrived at the prison, he was provided with a Koran. After three-and-a-half months, he was given a prayer mat.

Jabour said that the food was awful. It was almost all canned food (often tuna or sardines); uncooked, very bland and bad-smelling. "It was like dog food," he

¹⁵ KSM is a shorthand used by US officials for Khalid Sheikh Mohammed, alleged to be the architect of the September 11 attacks. Mohammed was held in secret CIA custody for three-and-a-half years. He was among the 14 detainees transferred from CIA custody to Guantanamo in early September 2006.

¹⁶ Numerous detainees at Guantanamo and elsewhere have reported being put in "stress positions" as punishment. In December 2003, Secretary of Defense Donald Rumsfeld issued new interrogation rules for Guantanamo, authorizing "stress positions," removal of clothing, prolonged isolation, sensory deprivation, and forced propping (like forced shoving of facial hair), among other interrogation techniques. In September 2003, Army Lt. Gen. Ricardo Sanchez authorized new interrogation techniques for use in Iraq, including the use of stress positions. Memorandum from Lt. Gen. Ricardo Sanchez to Commanders, US Central Command, regarding "MCTF-7 Interrogation and Counter-Resistance Policy," September 14, 2003.

On December 18, 2004, Jabour was moved to a large cell in a separate building. When the guards moved him to that building, they took him outside; he estimates that the second building was 70 meters from the first one. His new cell number was B1.¹⁷ Like his first cell, it had no windows and no natural light.

While he stayed in the second building, he was allowed to shower once a week, on Saturdays.

Not long after he was moved into the second building he was given a watch, a calendar and a prayer schedule. He remembers that in summer the dawn prayers would be held as early as 3:25 a.m., whereas in winter the dawn prayers would be as late as 5:15 or 5:25 a.m.; times that correspond to prayer times in Afghanistan.¹⁸

Except for interrogations, solo exercise, and his weekly shower, Jabour spent all his time confined within the four walls of his cell. With nothing else to occupy his mind, Jabour poured his energy into decorating his cell. After a year had gone by, the Americans gave him a map of the world, and later they gave him pictures of fish and animals. "I had asked them for a plant, which they didn't give me, so I drew a big tree, with leaves colored on it," he remembered. "I cut it out and taped it up on the wall." He also made grass out of strips of paper. "I drew flowers, and I stood on my chair and stuck them to the ceiling." Sometimes the Americans would take photos of his cell.

A year into his detention, the Americans started allowing Jabour to watch a movie once a week. The facility had a list of 200-250 films, including big-budget Hollywood films, documentaries, cartoons, sports, horror movies, and wrestling.

After a year and a half, an officer taught Jabour how to play chess. Jabour drew a chess board and made chess pieces out of paper. He also played checkers and cards with some of the women interrogators. About four months before he left, he was given a computer chess set, and a small video game.

¹⁷ He was never told the cell number of his first cell.

¹⁸ See Islamic Finder (<http://www.islamicfinder.org/>) [providing prayer times around the world].

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remembered. During his first several months at the prison, his weight dropped considerably. Whereas he had previously weighed 93 kilograms, his weight fell to 58 kilograms. (They weighed him every week.) "I felt weak, dizzy, unbalanced all the time, like I was on a ship."

Jabour received his clothes back piece by piece over time. First, after a month and a half at the prison, he was given a pair of pants. Then, after about three-and-a-half months, he was given a tee-shirt. Finally, after about eight months, he was given a pair of shoes.

Jabour told Human Rights Watch that his legs were left shackled to each other for one and a half years. During the time his legs were shackled, he could only take small steps; the chain running from one of his ankles to the other was about 75 centimeters long. Whenever he was taken out of the cell and brought to another room for interrogation, he was blindfolded.

The Remaining 19 Months

Jabour's treatment improved considerably after the initial six-month period of detention, and continued improving in stages after that. The first major change was a transfer to a much larger cell.

To bring Jabour to the new cell, the guards blindfolded him and walked him around a long, complicated route, in and out of different rooms, confusing his sense of direction. When they reached the cell and removed his blindfold, Jabour found himself in a room that was about 5 meters by 7 meters in size, with a mattress, a pillow, a sink, some books of Koranic interpretation, and some strawberries. The big cell was also quieter than his previous, small cell, and the lights were turned off from 11 p.m. to 4 a.m.

Jabour was kept in the new cell for three days, then he was sent back briefly to his previous cell. "They told me I could take one thing with me," Jabour recalled. "I wanted both the mattress and a book, but I chose the book."

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Jabour spent much of his time reading. The prison had a big library with hundreds of books and finally, by the time he left, more than a thousand books in a variety of languages. The majority were in Arabic, but there were also books in languages such as Urdu, Persian, Indonesian and English.

One of the most momentous occasions for Jabour was when he was allowed to see sunlight. He had spent a year and a half in captivity without even a glimpse of natural light. One day the Americans opened up a skylight in his building. "They brought me a chair and let me sit under the skylight," he remembered. "I was so happy. I joked with them, pretending to call outside, 'Help! Someone help me! Let me out!'"

The second building he was held in had an exercise area, about 5 by 6 meters in size, in which Jabour was allowed to kick a soccer ball by himself. Near the very end of Jabour's captivity, he was allowed to use a large gymnastics room: about 8 by 15 meters in size. The ceiling of the room was quite high up, and for a short while one of the prison subdirectors uncovered windows on the ceiling, through which Jabour could see sunlight and the sky. Jabour expressed warm feelings for the person who instituted these improvements, describing him as "a very good man."

The food also improved toward the end of his more than two-year confinement. He started receiving Afghan bread with his meals, and toward the very end his meal would arrive heated. He was also very occasionally given Western food like pizza and hamburgers, as well as cookies and candy.¹⁹

Jabour was never permitted to contact his family, the hope for which never left him. "I told the kind 'emir' [a prison subdirector] that I was worried about my family," Jabour recalled. "He said, 'There's some things we can do, but some things we can't do.' He said he couldn't allow me to contact them."

¹⁹ He remembers receiving chocolate bars like Snickers, Twix, Bounty, and Kit-Kat.

Secret Prison Staff

Jabour estimates that in the more than two years he was held at the prison, he saw a total of about 70 staff, consisting of some 25 guards and 45 civilian staff, including interrogators, supervisory staff, three or four doctors, and a few psychologists. He said everyone was American except for the translators, who he said were mostly Arabs. (They could have been Arab-Americans.) He said there was an Iraqi translator, three Egyptians, and a Lebanese woman.

The prison had three "emirs," or directors, during this period. The first was a bearded man, who Jabour estimates was about 40 years old; the second was a man with a shaved head who was about 38 years old (with whom Jabour played chess on occasion); and the third was an older man, about 55, who arrived in May 2006. There were also five people who seemed to have the position of subdirector. Two of them called themselves Mr. Charlie and Mr. Warren.

Jabour said that every few months he would see a psychologist. One was a man about 50 years old. Another was a woman about 55 years old; Jabour said that he spent an hour with her on one occasion.

The translators, the doctors, and the interrogators all wore normal civilian clothing. The guards, who were all men, wore black uniforms and gloves, and had black plastic masks covering their eyes. They did not carry weapons and they did not speak, except at the very end of Jabour's imprisonment, when they spoke to him in American-accented English.

Other Prisoners

Given the size of the prison where he was held, Jabour estimates that it had a capacity of 30-35 detainees. His estimate is further supported by the hundreds of books and videos in the prison library, and the large number of personnel who worked there.

Nearly all of Jabour's contact with other prisoners occurred in the first month of his captivity. He estimates that there were about 12-15 detainees held in the same area

transferred to the large cell, he found an inscription below the cell's sink. It said: "Majid Khan, 15 December 2004, American-Pakistani." He also received a book in May 2006 from the prison library that may have been meant for Khan. He had not requested the book, and believes it was given him by accident; inside it had a note written in good English that said: "I'm feeling depressed and upset. I want to go home to Pakistan. And I want the newspaper every day."

Cell B1, where Jabour was held for about a year and a half, was on a corridor with two other cells. For nearly a year, Jabour said—from December 2004 until late the following year—two Somalis were held in the cells next to his. He could sometimes hear them speaking to each other in Somali. When the two Somalis were moved, at least one other prisoner replaced them, but that prisoner never spoke and Jabour does not know who he was.

Twice when he was confined in that cell he heard a prisoner yelling, sounding very upset.²³ Jabour believes that both times it was a prisoner who was being led down the corridor; the sound approached and then it receded.

Jabour saw only a single other prisoner during his entire time at the secret prison. The circumstances of his meeting were surprising. At the end of February 2006, the prison subdirector, whom Jabour liked, told Jabour that he had good news. "He said they'd let me sit with another brother," Jabour recalled. "I said I don't believe you. He asked me who did I want to sit with: Someone religious? Someone funny? I said I wanted a funny guy who likes to joke. He said they had just the guy for me, a good guy: Yassir al-Jazeera."²⁴

He met al-Jazeera the next day. Al-Jazeera told Jabour that he had arrived at the prison in April 2004. "I think he was part of the group of six prisoners who were transferred with Marwan al-Azani," said Jabour. Al-Jazeera told Jabour that he had been in a place where they beat him badly, doing permanent damage to his arm. Once they

²³ He remembers that one of those instances was in February or March 2006.

²⁴ Yassir al-Jazeera was among the 16 people on Human Rights Watch's November 2005 list of "ghost prisoners" believed to be in CIA custody. Human Rights Watch, "List of 'Ghost Prisoners' Possibly in CIA Custody," November 30, 2005 (<http://hrw.org/english/docs/2005/11/30/usb051130p.htm>).

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as him during that time. "They used to bang hard on our cell doors when they brought our meals," he said. "At the beginning, they knocked on about 12-15 doors."

Jabour found a name written on the wall in his cell: Marwan al-Azani. He also heard what he described as "terrible shouting"—"someone saying 'Help! Help!'"—during the first three days. On the third day, in a brief moment when the white noise had stopped (Jabour believes that it was a break between two generators), Jabour heard someone call out to him in Arabic: "Who are you? Don't be afraid, talk." Although Jabour had been warned not to talk to anyone, he conversed with this prisoner whenever the generator was quiet. The man said his name was Marwan al-Azani, and that he had been held there for two months. He said that he had been arrested the previous year, and that the Americans had kept him in a secret prison that had Russian guards.²⁵ He said that he and six other prisoners had been brought together from that prison to the present one.

Jabour said that the two of them spoke every day for three days, until a guard came and punished them: he left Jabour shackled for an hour in a painful stress position. Jabour never spoke to Marwan al-Azani again, but a year later, he found his name written on a mattress, and once he found his name written on a shirt. Also, during an interrogation when Jabour was first in custody, an interrogator showed him a photo that he said was of al-Azani.²⁶

Jabour also heard other prisoners talking during this time, again in the brief moment when it seemed like the generators were being switched. Several people gave their names, including Hudalifa, Adnan, Abdul Basit, and Abu Yassir al-Jazeera. And once, during that first month, Jabour heard Ayoub al-Libi (whom he had been held with in Pakistan) calling him.

Another prisoner with whom Jabour had more indirect contact was Majid Khan, currently incarcerated at Guantanamo.²⁷ On December 18, 2004, the day Jabour was

²⁵ It should be noted that unless the prisoners spoke Russian themselves, they might have mistaken a related language for Russian. Also, there could be Russian-speaking guards in certain countries in Central Asia.

²⁶ Human Rights Watch has not found other sources with information about this prisoner.

²⁷ See discussion above.

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played loud music for four months straight.⁵³ He said that the guards were Russian but the interrogators were American. He also said that there were a lot of prisoners at that prison, and the prisoners could speak to each other.

Jabour was allowed to sit and talk to Yassir al-Jazeera about eight times, sometimes once a week, sometime once a month. Once their meetings were suspended for a month after al-Jazeera told Jabour that some Americans had entered his room at 3 a.m. to show him photos of Abu MUSAAB al-ZARQAWI, who was dead.⁵⁴ The two were not supposed to talk about such things. The last time Jabour spoke to al-Jazeera was in July 2006, a week before Jabour left the facility.

Jabour also learned of other detainees in US custody via his interrogations. An interrogator showed him a photo of a Somali man whom Jabour had known previously; the photo had been taken in Jabour's cell (the first small cell). Also in US custody was an African man named Speen Ghui; the Americans showed Jabour photos of him both before and after his arrest. Other detainees that Jabour remembers seeing photos of were two men named Reitha al-Tunisi and Talaha.⁵⁵

One photo that surprised Jabour was of a boy named Talha, who appeared to be nine or ten years old.⁵⁶ His father was said to be Hamza al-Jofi, a militant leader in Waziristan.⁵⁷ When Jabour saw the photo of Talha, who was apparently in custody, he expressed amazement that the United States was holding someone so young.

⁵³ Al-Jazeera also reportedly told Jabour that once, when a Lebanese interrogator visited that prison, they played Arab music for a full day.

⁵⁴ Abu MUSAAB al-ZARQAWI was the Jordanian who led Al-Qaeda to Iraq until his death in June 2006.

⁵⁵ From Jabour's description of Talaha, it seems very likely that he is Mohammed Nasser Hour Khan, also known as Abu Talha. Jabour said that Talaha was in his mid-to-late 20s, that he was a Palestinian but had lived in Bosnia; that he was quite tall, and likely spoke Arabic, English, and Arabic; and that he was originally from Saudi. He also said that he thought Talaha was a member of the al-Qaeda network. The name of the father of Hour Khan, who was on Human Rights Watch's November 2005 list of those characterized as being in CIA custody. More than two-and-a-half years after his arrest, Hour Khan's whereabouts are still unknown. His father has filed suit in Pakistan demanding information about what happened to him.

⁵⁶ This is a different person from the man named Talaha, mentioned above.

⁵⁷ American interrogators allegedly questioned Abdullah Khair about al-Jofi while Khair was being held in secret detention in Islamabad in October 2004. See Affidavit of Abdullah Khair, United States v. Dink, Action No. E00077/04, Superior Court of Justice, Toronto, 2004, pp. 25-27. Human Rights Watch has no information about his son.

Release

As the months and years passed, Jabour lost all hope of leaving prison. But on the evening of July 30, 2006, without warning, the subdirector of the prison informed Jabour that Jabour would be leaving the following day. Notably, this announcement came just one month after the US Supreme Court's landmark ruling in *Hamdan v. Rumsfeld*, in which the Court held that detainees held as enemy combatants were protected under the Geneva Conventions.⁵⁸

Transfer to Jordan

The prison subdirector said he knew where Jabour was going to be sent, but that he could not tell him. He said there was no toilet in the plane so Jabour would have to wear diapers, and that they would make a video of his naked body to show that his body had not been harmed. He told Jabour to be ready to leave at 6 p.m.

The transfer team picked him up the next evening. They put cotton over his eyes, cotton in his ears, and rubber over that. Then they put a band around his head, a mask over his face, and head phones over his ears. His hands were cuffed in front and his legs were shackled. A belt was put around his legs, above the knees, and his handcuffs were attached to it. "I felt like a mummy," Jabour said.

They brought Jabour outside to a car, and laid him down in it. Jabour is fairly certain that another prisoner was next to him. The car drove for about an hour.

Jabour was brought outside and put in a chair, and he heard three shots. "I was afraid," he said. "I thought they were shooting people." The team was very aggressive with him, increasing his fear.

Suddenly they removed all of his wrappings and took off all his clothes. When his eyes opened, he saw a man pointing a video camera at him. Then the transfer team put a diaper on him, and put the same outfit back on, except this time they used plastic handcuffs.

⁵⁸ *Hamdan v. Rumsfeld*, 126 S. Ct. 3749 (2006).

He could only feel the airplane; he could not see it, but it seemed to him to be a small civilian jet. The seats faced forward, as in a normal passenger aircraft. In the plane, during the flight, a doctor took his blood pressure. The flight lasted about three-and-a-half to four hours.

Detention in Jordan and Israel

After the plane landed, Jabour was driven in a car for about 40 minutes and then brought inside a building. His handlers sat him down and began taking off the wrappings that covered him. Someone said to him in Arabic, "Keep your eyes closed. Now open them slowly."

When Jabour opened his eyes he saw uniformed soldiers as well as men in civilian clothing. He could also see framed photos of King Hussein and King Abdullah, and he guessed that he was in Jordan. After questioning, he was sent to a cell, where a guard finally told him that he was in Amman, Jordan. Jabour later found out that he was being held at the headquarters of the Jordanian intelligence services.

A couple of weeks later, on about August 14, he was visited by a representative of the International Committee of the Red Cross (ICRC). The ICRC representative was the first independent monitor that Jabour had seen in two-and-a-half years of imprisonment. "He was very surprised by my story," Jabour said. Jabour gave the ICRC representative the contact information for relatives who lived in Jordan. Two weeks later, a group of Jabour's family members, some of whom had flown in from abroad, came to the detention facility on visiting day and were allowed to speak to Jabour for a short while. "I was overjoyed to see them," Jabour later told Human Rights Watch.

While in Jordanian custody, Jabour was also allowed to send letters to his wife and children, his first contact with them in more than two years.

On September 18, 2006, the Jordanians transferred Jabour to Israeli custody. That morning, they told Jabour that he was being released. "They said congratulations, I was free," Jabour said. "But I was still in handcuffs. And then they took me to a car and drove me to the King Hussein Bridge [on the border of Jordan and the Israeli-

occupied West Bank]." Israeli agents were waiting for Jabour at the bridge, and the Jordanians handed him over to them.

A few days after his transfer to Israel, Jabour was allowed to see a lawyer, and soon after that he was brought before a judge. After six weeks in Israeli custody, he was released into Gaza, where some of his family members lived. Two-and-a-half years after he was first arrested, he was finally able to speak to his wife and children on the phone.

on our country. But I can say the procedures were tough, and they were safe, and lawful, and necessary."²³

As discussed below, interrogation methods reportedly used in CIA secret prisons included torture and other cruel and inhuman treatment—and were anything but lawful.

Discovering the Program

President Bush's speech was the most important official acknowledgement of the CIA's detention program, but it was not the first time that information about secret CIA detention had been made public. Indeed, reports that suspected al Qaeda operatives were being held by the CIA in "undisclosed locations abroad" began circulating in 2002.²⁴

The first official acknowledgement that such reports were true came with the federal prosecution of Zacarias Moussaoui for the September 11 attacks.²⁵ In February 2003, the federal district judge hearing the Moussaoui case ruled that the government had to allow Moussaoui's lawyers to question Ramzi bin al-Shibh, who was allegedly a key figure in the September 11 attacks, and who had information that tended to exculpate Moussaoui from responsibility in the attacks. Because defendants have a constitutional right of access to exculpatory witnesses in the government's custody, the government had to admit that it was holding bin al-Shibh in a secret location overseas. The government argued, however, that allowing Moussaoui's counsel to question bin al-Shibh would seriously interfere with bin al-Shibh's interrogation. Although the district court rejected the government's claim, ruling that questioning via closed-circuit video should be allowed, the Court of Appeals for the Fourth Circuit

²³ White House, Office of the Press Secretary, "President Discusses Creation of Military Commissions to Try Suspected Terrorists," September 6, 2006.

²⁴ See, for example, "Getting al Qaeda to Talk," CNN.com, September 17, 2002 (discussing the detention of Ramzi bin al-Shibh and Omar al-Faruq); "Appropriate Pressure Being Put on al Qaeda Leader," CNN.com, March 3, 2003 (stating that CIA had brought Khalid Sheikh Mohammed, who was arrested in Pakistan, to an undisclosed location outside of the United States).

²⁵ Moussaoui, a French citizen of Moroccan descent, was indicted in December 2002 on charges of conspiring with other members of al Qaeda to hijack planes and fly them into the World Trade Center and the Pentagon. He later pleaded guilty and was sentenced to life in prison.

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The CIA's Secret Detention Program

The detention and interrogation program in which labour was held was operated by the US Central Intelligence Agency (CIA). It was authorized under a classified September 17, 2001 presidential directive, and operated in close secrecy for nearly five years.²⁶

As Jabour's case illustrates, prisoners in the CIA program have been "disappeared," held in acknowledged detention in secret facilities, and barred from communicating with family members, legal counsel, or anyone outside. Although the International Committee of the Red Cross has repeatedly expressed concern about being denied access to detainees in CIA custody, the US government has refused to allow them to visit such facilities.²⁷

In a televised speech in September 2006, just before the anniversary of the September 11 terrorist attacks, President George W. Bush publicly acknowledged that the CIA had been secretly detaining suspected terrorists in facilities outside of the United States. The president said that he could not reveal "the specifics of this program, including where these detainees have been held and the details of their confinement." Instead, he dedicated most of the speech to lauding the program's accomplishments. While making the increasingly hollow claim that "the United States does not use torture," he described several cases where the CIA used "an alternative set of procedures" to obtain information from detainees who were resisting interrogation. Bush said: "I cannot describe the specific methods used—I think you understand why—if I did, it would help the terrorists learn how to resist questioning, and to keep information from us that we need to prevent new attacks

²⁶ In response to a lawsuit filed by the American Civil Liberties Union (ACLU), the US government recently acknowledged the existence of the September 17 directive, after having for several years refused to confirm or deny that such a document existed. See ACLU, "CIA Finally Acknowledges Existence of Presidential Order on Detention Facilities Abroad," November 14, 2006. It has refused to make the document public, however, or even provide it to members of Congress. See "Leahy Pushed Off on Secret Terror Docs," UPI, January 3, 2007.

²⁷ See "US Bars Access to Terror Suspects," BBC News, December 15, 2005; KOC, "Developments in US Policy and Legislation towards Detainees: the KOC Position," October 19, 2006 (CIC; President Jacob Kellenberger stating that "the KOC had repeatedly expressed concern about detainees in undisclosed detention and had requested access to them").

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later reversed the district court's decision and barred all access to bin al-Shibh.³⁶ A similar issue later arose in the federal prosecution of Uzaïr Paracha.³⁷

More detailed and direct accounts of the CIA's secret detention and interrogation program emerged in 2004 and 2005 from former detainees. Most notably, in June 2004, Khaled el-Masri, a German citizen of Lebanese descent, told German police about his kidnapping, abuse, and secret detention. El-Masri was arrested by Macedonian agents on December 31, 2003, on the Serbia-Macedonia border, held secretly for nearly a month in a hotel in Skopje, then picked up by US agents and flown to Afghanistan, where he spent four months in unacknowledged detention. At the time the story was made public, el-Masri's lawyer said that he believed el-Masri had been held by the CIA. When journalists interviewed CIA officials regarding el-Masri's claims, the officials refused to either confirm or deny that he had been held.³⁸

Later in 2005, three Yemeni former detainees told Amnesty International about their experiences in CIA detention, and a number of Guantanamo detainees told their legal counsel that prior to their transfer to Guantanamo they had been held in a secret "dark prison" in Kabul, Afghanistan.³⁹ All of these accounts had certain common characteristics, including descriptions of interrogators and prison directors who spoke American-accented English, black uniformed and masked guards, flights in which the detainee was placed in diapers and wrapped up like a package, and various forms of physical and mental abuse.

³⁶ The access restriction previously involved several other suspected members of al Qaeda (including Khalid Sheikh Mohamed and English al-Sayid), all of whom were transferred to Guantanamo in September 2002. The US government was so worried that the courts might grant Moussaoui's counsel some form of access to these detainees that it cited the Moussaoui case as a reason for denying detainee access to the 9/11 Commission. See Thomas H. Mean and Lee H. Hamilton, *Without Precedent: The Inside Story of the 9/11 Commission* (New York: Alfred A. Knopf, 2006), p. 121.

³⁷ In the Paracha prosecution, the defendant sought access to Magdi Khari and James al-Shehhi, both of whom were transferred to Guantanamo in September 2002. The defendant was convicted in November 2005 of providing material support to al Qaeda.

³⁸ Don Van Matra Jr. and Soudat Mehdizadeh, "German's Claim of Kidnapping Rite get Investigation of US Link," *New York Times*, January 9, 2005.

³⁹ Amnesty International issued a series of reports based on the Yemenis' description of their experiences. See, for example, Amnesty International, "CIA/Yemeni Secret Detention in CIA 'Dark Sites,'" AMR 51/177/2005 (November 2005). And Human Rights Watch issued a press release about the "dark prison," Human Rights Watch, "US Operated Secret 'Dark Prison' in Kabul," December 19, 2005.

Relying on flight logs and information from plane spotters (people who watch aircraft arrivals and departures at airports), journalists and human rights investigators were able to trace a number of the flights by which the CIA allegedly transported prisoners.⁴⁰

Yet, despite mounting evidence of the CIA's secret prison program, the Bush administration refused to discuss its operations. Indeed, it was reported that the administration did not describe the program in any real detail to the congressional intelligence committees tasked with providing oversight of the CIA's activities.⁴¹ Even when the *Washington Post* published a front-page news story describing the history and scope of the detention program in November 2005, a piece reportedly based on accounts by current and former intelligence officials—not a single administration official spoke about the program on the record.⁴²

According to the *Washington Post*, the secret detention program had at various times included sites in eight countries, including Thailand, Afghanistan and several democracies in Eastern Europe. Although at the request of the US government the *Washington Post* did not name the Eastern European countries where the prisons were located, Human Rights Watch released information pointing to Poland and Romania as among the sites of detention facilities.⁴³ A few weeks later, ABC News reported that at least 11 "High Value Targets" had been held in CIA custody in Poland.⁴⁴

Based on information from current and former intelligence sources, a number of journalists have described the interrogation methods used in CIA facilities. These

⁴⁰ The plane that brought al-Masri from Skopje to Kabul, for example, was a Boeing Business Jet whose registration number was N337P. For detailed accounts of how the CIA used civilian jets to transport prisoners both to its own prisons and to foreign prisons, see Stephen Gray, *Ghost Plane: The True Story of the CIA Torture Program* (New York: St. Martin's Press, 2006), and Trevor Pagten and A.C. Thompson, *Torture Tact: On the Trail of the CIA's Rendition Flights* (Boston, MA: Little House Publishing, 2006).

⁴¹ Congressional intelligence committees were reportedly briefed about the existence of the CIA detention program, but they were not, for example, informed of the locations of the prisons. "Bush defends secret prisons, harsh interrogations," *Ashville Global Report*, September 14, 2006. Notably, in response to President Bush's September 6, 2006 speech, Senator John D. Rockefeller IV, vice-chairman of the Senate Intelligence Committee, complained that Bush had "withheld details of the CIA detention and interrogation program from the congressional intelligence committee." Press Statement, Rockefeller Responds to President's Decision to Bring Captured Al-Qaeda Terrorists to Trial, September 6, 2006.

⁴² Jane Priest, "CIA Holds Terror Suspects in Secret Prisons," *Washington Post*, November 2, 2005. Priest later won a Pulitzer prize for her reporting on the CIA's secret prison program.

⁴³ Human Rights Watch, "Statement on US Secret Detention Facilities in Europe," November 7, 2005.

⁴⁴ See "List of 12 Operatives Held in CIA Prisons," ABC News, December 5, 2005 (listing that, among others, Khalid Sheikh Mohammed, Hassan Ghul, and Mohammed Omar Abd-El-Bahman were held in Poland).

custody.⁵⁵ Family members have filed suit in the Pakistani courts in some cases, but without knowing whether their relatives remain in Pakistani custody, are in US custody, or are being held elsewhere.⁵⁷

"enhanced interrogation techniques," as the CIA reportedly called them, included extended sleep deprivation combined with forced standing, as well as exposure to extreme cold.⁵⁸ The CIA also reportedly employed waterboarding, a torture method by which the prisoner is strapped to a board and made to feel like he is drowning. It is believed that several of the 14 prisoners transferred to Guantanamo in September were subject to waterboarding.⁵⁹

The Pakistan Connection

Jabour's experience of arrest in Pakistan and subsequent "disappearance" into CIA custody was far from unique. Indeed, it appears that a large majority of the prisoners held by the CIA were originally arrested in Pakistan, often during joint U.S.-Pakistani operations. Of the 14 high-level CIA detainees transferred to Guantanamo in September 2006, for example, nine were picked up in Pakistan.⁶⁰ And most of the other people who are thought to have been in CIA custody were arrested in Pakistan.

The Pakistani authorities have made no secret of the fact that they have handed over several hundred terrorism suspects to the United States, boasting of the arrests and transfers as proof of Pakistan's cooperation in US counterterrorism efforts.⁶¹ While the majority of these detainees were transferred into US military custody in Afghanistan or at Guantanamo,⁶² or were transported to third countries via the CIA's rendition program,⁶³ some substantial number of them disappeared into CIA

⁵⁵ See Peter Ross and Richard Espinosa, "CIA's Harsh Interrogation Techniques Described," ABC News, November 16, 2005. ABC News reported that these techniques were first authorized in mid-March 2002.
⁵⁶ See John S. Siskind, *The One Percent Doctrine*, p. 113.
⁵⁷ They are: Zahir Uddin Khan (aka Abu Zubaydah), Ramzan bin al-Shikh, Mustafa Ahmad al-Hawari, Khalid Sheikh Mohammed, Majid Khan, Ali Abd al-Aziz Ali (aka Anwar al-Awlaki), Walid bin Attash (aka Khalid), Ahmed Osman Ghannim, and Abu Fawz al-Ubbi.
⁵⁸ Available information indicates that somewhere between 400 and 500 people were transferred from Pakistani to US custody between late 2002 and the end of 2003. See, for example, South Asia Terrorism Portal, "400 Al Qaeda suspects handed over to US," January 7, 2005; Dr. Shauib Siddiqi, Director General, National Police Bureau of Pakistan, "Fighting International Terrorism: The Role of Pakistan as a Powerhouse," February 23-24, 2006. President Pervez Musharraf himself has acknowledged that Pakistan handed over 369 detainees. Pervez Musharraf, *In the Line of Fire* (New York: Free Press, 2002).
⁵⁹ According to one study, at least 36 percent of the detainees brought to Guantanamo (that is, 270 people) were arrested in Pakistan, and possibly as many as half (i.e., 380 or more people) were arrested there. Mark Deshaux and Joshua Denbeaux, "Report on Guantanamo Detainees," Secretariat Public Law Research Paper No. 46, February 2006, p. 14.
⁶⁰ Much has been written about the CIA's rendition program (the program of detaining detainees without legal process to countries where they often face torture), which is closely related to the secret prison program. See, for example, Stephen Gray, *Ghost Plane* (New Meyer). Outstanding factors: The secret history of America's extraordinary rendition program," *New Yorker*,

February 14, 2005; Amnesty International, "Below the radar: Secret fights to torture end 'disappearance,'" *AMN*, 5/10/05/2006, April 5, 2006; Editorial, "Fortune by Proxy," *New York Times*, March 8, 2005.
⁶¹ Human Rights Watch has the names of dozens of people who were arrested in Pakistan and may have been handed over to the CIA.
⁶² Some cases have involved more than one missing person, including people who were believed to have "disappeared" into CIA custody, at least 100, people in Pakistani custody, and people who have since turned up in various parts of the world. In the case of Aziz Ali, however, Mustafa Anwar (aka Abdul Karim Mahmood) and other family members. The first two men are now known to be at Guantanamo, after having spent years in CIA custody. Anwar's whereabouts are unknown, although it is thought that he was in CIA detention for a time. See "Interior ministry not aware of Khalid Sheikh's whereabouts," *The Mirror* (Pakistan), January 26, 2007.

these prisoners (and obviously the one who was released) would not be considered major suspects.

Similarly, prisoners such as Marwan Jabour and the three Yemeni former detainees interviewed in 2005 by Amnesty International were far from top suspects—they were eventually released without charge. Yet they too were held in prisons that seemed to have only American staff, as well as the extreme high-security arrangements characteristic of the CIA.

Missing Detainees

There is no comprehensive accounting of CIA detainees. But based on detainee testimony, press articles, and other sources, Human Rights Watch has put together a list of 16 people whom we believe were once held in CIA prisons and whose current whereabouts are unknown. We have also compiled a separate list of 22 people who were possibly once held in CIA prisons and whose current whereabouts are unknown.³⁷

The people listed below—by name, nationality, and presumed place and date of arrest—are believed to have once been held in secret CIA prisons:

1. Ibn al-Shaykh al-Libi (Libyan) (Pakistan, 11/03)³⁸
2. Mohammed Omar Abdel-Rahman (aka Asadallah) (Egyptian) (Quetta, Pakistan, 2/03)
3. Yassir al-Jazeezi (Algerian) (Lahore, Pakistan, 3/03)
4. Suleiman Abdalla Salim (Kenyan) (Mogadishu, Somalia, 3/03)
5. Marwan al-Adeni (Yemeni) (arrested in approximately 5/03)
6. Ali Abd al-Rahman al-Faqasi al-Ghamdi (aka Abu Bakr al-Azdi) (Saudi) (Medina, Saudi Arabia, 6/03)
7. Hassan Ghul (Pakistani) (northern Iraq, 1/04)
8. Ayoub al-Libi (Libyan) (Peshawar, Pakistan, 1/04)
9. Mohammed al-Aghani (Afghan born in Saudi Arabia) (Peshawar, Pakistan, 5/04)
10. Abdul Basit (probably Saudi or Yemeni) (arrested before 6/04)

³⁷ It should be emphasized that the level of secrecy surrounding the CIA's prison program remains extremely high, and the obstacles to obtaining this type of information are daunting. In short, there may well be many other former CIA detainees of whose existence nobody outside the program knows.

³⁸ It is believed that al-Libi was transferred from CIA custody to Libya in early 2006, but this has not been confirmed.

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Former Detainees: Where Are They Now?

It is not known precisely how many detainees had been held in the CIA's secret prison program at some point prior to September 2006, but it is certain that there were many more than 14 of them.

Estimates of the number of detainees held by the CIA over the course of the program vary. The *Washington Post* described a two-tier system of detention, with some 30 "major terrorism suspects" being held at high-security prisons operated exclusively by CIA personnel, and an additional 70 less important suspects being transferred to prisons run by other countries' intelligence services.³⁹ The major suspects, also known as "High Value Targets," were alleged top al-Qaeda leaders, not "foot soldiers."⁴⁰

The picture emerging from detainee accounts, however, suggests that these numbers are understated, and that the true picture is more complex. For example, at the prison in Afghanistan where Khalid al-Masri was held, the guards were Afghan, but the interrogators, the main director, and the people in charge of prisoner transport appeared to be CIA.⁴¹ So while the prisoners had daily contact with Afghan personnel, all of the important decisions regarding detention, treatment, and release were made by Americans.

And at the so-called Dark Prison in Afghanistan, which appears to have been operated solely by CIA personnel, there were a substantial number of detainees who were not top terrorism suspects. Human Rights Watch knows of some 20 prisoners previously held at that facility who are currently held at Guantanamo, as well as a former detainee who was released from Guantanamo in 2004.⁴² The majority of

³⁹ Stephen Grey estimates that hundreds of detainees were handed over to other countries, which "less than three dozen at any time" were held in CIA prisons. *Ghost PRISON*, p. 230.

⁴⁰ High Value Target (HVT) is a US military term. The loss of High-Value Targets "would be expected to seriously degrade important enemy functions throughout the friendly commander's area of interest." Defense Technical Information Center (website) (available at: <http://www.dtic.mil/>). Most of this 34 detainees in CIA custody who were transferred to Guantanamo in September 2006 had been deemed High Value Targets.

⁴¹ Human Rights Watch interviewed Khalid al-Masri, Urm, Germany, May 16, 2006.

⁴² This group includes Mohammed Naji Yalaya Khuzaf (who is about 60 years old), Abd al-Salam al-Hilla, Munsab Omar Ali Al-Mudhawi, and Basim Rashid Ali Al-Muradali, among others.

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The crucial, unanswered question is: where are all these detainees now? One concern is that the US may have transferred some of them to foreign prisons where for practical purposes they remain under CIA control. Another worrying possibility is that prisoners were transferred from CIA custody to places where they face a serious risk of torture, in violation of the fundamental prohibition on returns to torture. On the latter question, it is worth noting that some of the missing prisoners are from Algeria, Egypt, Libya, and Syria, countries where the torture of terrorism suspects is common.

11. Adnan (arrested before 6/04)
12. Hudeifa (arrested before 6/04)
13. Mohammed Naeem Noor Khan (aka Abu Talaha) (Pakistan) (Lahore, Pakistan, 7/04)
14. Muhammad Setman Naser (Syrian/Spanish) (Quetta, Pakistan, 11/05)
15. Unnamed Somali (possibly Shoeab as-Somali or Reihwan as-Somali)
16. Unnamed Somali (possibly Shoeab as-Somali or Reihwan as-Somali)

In addition, the following people may have once been held in secret CIA prisons:

1. Abd al-Hadi al-Iraqi (presumably Iraqi) (1/02)
2. Anas al-Liby (Libyan) (Khartoum, Sudan, 2/02)
3. Retha al-Tunisi (Tunisian) (Karachi, Pakistan, early to mid-2002)
4. Sheikh Ahmed Salim (aka Swedan) (Tanzanian) (Kharadar, Pakistan, 7/02)
5. Saif al-Islam el Masry (Egyptian) (Pankisi Gorge, Georgia, 9/02)
6. Amin al-Yafia (Yemeni) (Iran, 2002)
7. -- al-Rubaia (Iraqi) (Iran, 2002)
8. Aafia Siddiqui (Pakistan) (Karachi, Pakistan, 3/03)
9. Jawad al-Bashar (Egyptian) (Vindher, Balochistan, Pakistan, 5/03)
10. Safwan al-Hasham (aka Hafsan al-Hasham) (Saudi) (Hyderabad, Pakistan, 5/03)
11. Abu Naeem (Tunisian) (Peshawar, Pakistan, 6/03)
12. Walid bin Azmi (unknown nationality) (Karachi, Pakistan, 1/04)
13. Ibad Al-Yaquti al-Sheikh al-Sufiyani (Saudi) (Karachi, Pakistan, 1/04)
14. Amir Hussein Abdullah al-Misri (aka Fazel Mohammad Abdullah al-Misri) (Egyptian) (Karachi, Pakistan, 1/04)
15. Khalid al-Zawahiri (Egyptian) (South Waziristan, Pakistan, 2/04)
16. Musab Aruchi (aka al-Baluchi) (Pakistan) (Karachi, Pakistan, 6/04)
17. Qari Saifullah Akhtar (Pakistan) (arrested in the UAE, 8/04)
18. Mustafa Mohamed Fadhil (Kenyan/Egyptian) (eastern Punjab, Pakistan, 8/04)
19. Sherif al-Masri (Egyptian) (Pakistan border, 8/04)
20. Osama Nazir (Pakistan) (Faisalabad, Pakistan, 11/04)
21. Osama bin Yousaf (Pakistan) (Faisalabad, Pakistan, 8/05)
22. Speen Ghul (from Africa) (Pakistan)

The CIA Program and Human Rights Violations

In his September 6, 2006 speech, President Bush stated that the CIA's detention and interrogation program had been "subject to multiple legal reviews by the Department of Justice and CIA lawyers," and had "received strict oversight by the CIA's Inspector General." But if the CIA program passed scrutiny, as the President suggested, then that raises serious questions about the legal review provided by the responsible government agencies on matters of national and international consequence. By international human right or humanitarian law standards, the CIA program was illegal to its core.

In secretly detaining and abusing prisoners like Marwan Jabour, the US government violated a host of fundamental human rights norms. Enforced disappearance—encompassing arbitrary, secret and incommunicado detention—and torture and other cruel, inhuman and degrading treatment are all prohibited under international human rights law.

Enforced Disappearance

The International Convention for the Protection of All Persons from Enforced Disappearance (the Convention on Enforced Disappearance) defines "enforced disappearance" as:

the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.⁴⁵

⁴⁵ International Convention for the Protection of All Persons from Enforced Disappearance, adopted by the U.N. General Assembly on December 18, 2006, opened for signature on February 6, 2007, art. 1. The treaty will enter into force 30 days after 30 states have ratified it.

Although the newly adopted convention has yet to enter into force, its definition of enforced disappearance is consistent with definitions contained in a number of earlier international instruments.⁴⁶

When the Convention on Enforced Disappearance was opened for signature on February 6, 2007, 57 countries signed immediately. Yet, although it had actively participated in the drafting of the convention, the United States was not among the signatories. State Department spokesman Sean McCormack said that the United States had not signed because the convention as adopted "was not one that met our needs and expectations," but he did not further elaborate.⁴⁷

International law bans "disappearances" in all circumstances. The Convention on Enforced Disappearance states that, "No exceptional circumstances whatsoever, whether a state of war or a threat of war . . . or any other public emergency, may be invoked as a justification for enforced disappearance." The convention bans secret detention and requires states parties to hold all detainees in officially recognized places of detention, maintain detailed official records of all detainees, authorize detainees to communicate with their families and legal counsel, and give competent authorities access to detainees.

The practice of enforced disappearance constitutes a grave threat to a number of human rights, including the right to life, the prohibition on torture and cruel, inhuman, and degrading treatment, the right to liberty and security of the person, and the right to a fair and public trial.⁴⁸ The UN Working Group on Enforced

⁴⁶ See "Report Submitted by Mr. Manfred Nowak, Independent Expert Charged with Examining the Existing International Criminal and Human Rights Framework for the Protection of Persons from Enforced or Involuntary Disappearances, pursuant to Paragraph 13 of Commission Resolution 2002/46" (Geneva: United Nations, 2002) E/CN.4/2002/71. For example, the Declaration on the Protection of All Persons from Enforced Disappearance, adopted by the U.N. General Assembly in 1992, states that enforced disappearances occur when:

persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law.

⁴⁷ US State Department, Daily Press Briefing, February 6, 2007.

⁴⁸ See International Covenant on Civil and Political Rights, articles 6(1), 7, 9, and 10(1). For a detailed discussion of the human rights violations committed by "disappearances," see United Nations Commission on Human Rights, "Report submitted January 8, 2002, by Mr. Manfred Nowak, Independent expert charged with examining the existing international criminal and human rights framework for the protection of persons from enforced or involuntary disappearance, pursuant to paragraph 13 of Commission resolution 2002/46," E/CN.4/2002/71, p. 36.

Disappearances has long recognized that the crime of enforced disappearance "is a continuous crime until the fate or whereabouts of the disappeared person becomes known."⁶⁵ Therefore, persons "disappeared" in US custody who have since been transferred elsewhere remain the legal obligation of the United States so long as their fate or whereabouts remain unknown.

Moreover, enforced disappearance not only violates the basic rights of the "disappeared" person, it inflicts severe mental pain and suffering on members of that person's family.⁶⁶ Besides harming labour himself, his secret detention meant that his three children were left not knowing whether they still had a father, and his wife not knowing whether she still had a husband. This uncertainty compounds the impact of the loss.

Notably, the UN Working Group on Arbitrary Detention has expressed grave concern about the US government's use of secret prisons to hold suspected terrorists, concluding that detention under such conditions is "a serious denial of [the detainees'] basic human rights and is incompatible with both international humanitarian law and human rights law."⁶⁷

To help guarantee their protection from abuse, detainees should be held in officially recognized places of detention. The prisoners' names and the place of their detention, as well as the names of the persons responsible for their detention, should be kept in registers readily available and accessible to concerned persons, including relatives and friends. In addition, "accurate information on [the prisoners'] custody and whereabouts, including transfers, [should be] made promptly available to their relatives and lawyers or other persons of confidence."⁶⁸ Finally, the time and place of all interrogations should

⁶⁵ See, for example, Report of the Working Group on Enforced or Involuntary Disappearances, Commission on Human Rights, E/CN.HR/Subcom.2/1996/12, December 27, 2000, para. 10.

⁶⁶ For this reason, the Human Rights Committee, the U.N. body charged with monitoring the implementation of the International Covenant on Civil and Political Rights (ICCPR), has found that arbitrary disappearance violates article 7 of the ICCPR, which prohibits torture and cruel, inhuman or degrading treatment or punishment. See, for example, *Uzunov v. Bulgaria*, Communication No. 277/1988, para. 24 (July 24, 1988). Similarly, the European Court of Human Rights found that the extreme pain and suffering experienced by the mother of a "disappeared" person constituted a violation of article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which prohibits torture and inhuman or degrading treatment. *Kozor v. Turkey* (Judgment, Eur. Ct. Hum. Rts. Case No. 32/1997/1991/1002), para. 334 (May 25, 1998).

⁶⁷ Report of the Working Group on Arbitrary Detention, UN Doc. E/CN.HR/Subcom.2/2005/12, December 23, 2005.

⁶⁸ Principle 6 of the U.N. Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.

be recorded, together with the names of all those present, and this information should be available for purposes of judicial or administrative proceedings.⁶⁷

International law also bars incommunicado detention, even when it does not constitute "disappearance."⁶⁸ And according to the Restatement (Third) of Foreign Relations Law of the United States, a state violates international law if, as a matter of state policy, it practices, encourages, or condones prolonged arbitrary detention.⁶⁹

Torture and Other Ill-Treatment

International human rights law prohibits torture and other mistreatment of persons in custody in all circumstances, during wartime as well as peacetime. Among the relevant treaties are the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), both of which the United States has ratified.

Prohibitions on torture and other ill-treatment are also found in other international documents, such as the Universal Declaration of Human Rights, the U.N. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and the UN Standard Minimum Rules for the Treatment of Prisoners.

International humanitarian law (the laws of war) also prohibits torture and coerced interrogations at all times during armed conflict. This prohibition, which is found in the Geneva Conventions⁷⁰ as well as customary laws of war,⁷¹ is reflected in US military field manuals and training manuals.⁷²

⁶⁷ "ICCPR General Comment 20 (Forty-fourth Session, 1992); Article 7: Replaces General Comment 7 Concerning Prohibition of Torture and Cruel Treatment or Punishment," A/47/40 (1992) 193, para. 31.

⁶⁸ "ICCPR General Comment 20 (Forty-fourth Session, 1992); Article 7: Replaces General Comment 7 Concerning Prohibition of Torture and Cruel Treatment or Punishment," A/47/40 (1992) 193, para. 31.

⁶⁹ Restatement (Third) of Foreign Relations Law, § 704, comment d.

⁷⁰ See, for example, Common Article 3 to the Geneva Conventions of 1949.

⁷¹ See International Committee of the Red Cross, *Customary International Humanitarian Law* (Cambridge: Cambridge Univ. Press, 2003), title 90.

⁷² See, for example, US Army Field Manual 27-10, Law of Land Warfare (1956), secs. 11 and 502.

anywhere in the world. And in June 2006, the Supreme Court ruled in *Hamdan v. Rumsfeld* that the US government was required to treat al Qaeda detainees humanely in accordance with the provisions of Common Article 3 to the Geneva Conventions.

The Defense Department then ordered the military to ensure that all its practices complied with these standards and announced new rules repudiating many abusive interrogation methods, including "waterboarding," painful stress positions, and prolonged sleep deprivation or exposure to cold. However, the Bush administration simultaneously proposed legislation effectively rewriting the humane treatment standards of Common Article 3 to permit the CIA to continue using the abusive interrogation techniques now banned by the Pentagon. Congress ultimately rejected the administration's proposal, but with mixed results. In the Military Commissions Act of 2006, Congress retained most of the War Crimes Act of 1996, which exposes interrogators to criminal prosecution for torture and "cruel and inhuman treatment" (defined as conduct that causes serious physical or mental pain or suffering). However, the law narrowed prosecutable offenses under the War Crimes Act by creating a higher threshold for inflicting serious physical pain or suffering, preventing prosecution of interrogators for non-prolonged mental abuse occurring prior to the new law.

Notably, even though the US authorities have claimed that detainees in CIA custody were treated in accordance with the law, they have been taking aggressive steps to ensure that the details of their treatment are not disclosed. The government has, to date, barred legal access to Majid Khan, one of the 14 detainees transferred to Guantanamo last September, claiming that because he was previously in CIA custody he may have "come into possession of [classified] information, including locations of detention, conditions of detention, and alternative interrogation techniques."⁷⁴ Similarly, the Military Commissions Act of 2006 and its Rules of Evidence and Procedure contain a number of provisions meant to protect the CIA's "methods and activities" from disclosure: methods and activities that are known to include "disappearance," torture, and other abuses.

⁷⁴ In other words, the government is claiming that because Khan was held in a secret detention center, and "alternative" interrogation techniques were used on him, he should be barred from telling his lawyer about his experiences.

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On December 2, 2002, Secretary of Defense Donald Rumsfeld approved 16 methods for use in interrogations at Guantanamo Bay, including "stress positions," hooding, isolation, stripping, deprivation of light, removal of religious items, forced grooming (shaving of facial hair), and use of dogs. On January 15, 2003, following criticism from the Navy general counsel, Rumsfeld rescinded the December 2 guidelines, stating that the harsher techniques in those guidelines could be used only with his approval. Rumsfeld then established a working group to examine which interrogation techniques should be allowed for prisoners in Guantanamo. This study led to Rumsfeld's promulgation, on April 16, 2003, of a memo outlining techniques that could only be applied to interrogations of "unlawful combatants" held at Guantanamo. Stress positions, stripping and the use of dogs were no longer authorized.⁷⁵

These interrogation techniques "migrated"—in the words of the Schlesinger report—to Iraq and Afghanistan, where they were regularly applied by US personnel to detainees.⁷⁶ After the Abu Ghraib photos were made public in April 2004, the Bush administration repudiated and eventually replaced the August 1, 2002 Department of Justice memo that had provided the legal rationale for the approved interrogation methods.

Nevertheless, such restrictions on interrogation methods apparently did not apply to the CIA. The Bush administration and the Justice Department reportedly gave the CIA the authority to use additional techniques, including "waterboarding" (mock drowning).⁷⁷ In January 2005, Attorney General-designate Alberto Gonzales claimed in a written response during confirmation hearings that the international legal prohibition on cruel, inhuman or degrading (CID) treatment did not apply to US personnel in the treatment of non-citizens abroad, indicating that no law would prohibit the CIA from engaging in CID treatment when it interrogates non-Americans outside the United States.

In December 2005 Congress enacted—over the Bush administration's objections—the Detainee Treatment Act, which included the "McCain amendment" that prohibits the use of cruel, inhuman, or degrading treatment by any US official operating

⁷⁵ See generally, Human Rights Watch, "Getting Away with Torture?," vol. 17, no. 1 (01), pp. 11-19.

⁷⁶ James B. Schlesinger, Harold Brown, Willie K. Fowler, Gen. Charles A. Horner, and Dr. James A. Mahoney, Jr., *Major Report of the Independent Panel to Review 2002 Detention Operations* (Schlesinger report), August 2004, p. 7.

⁷⁷ Dennis Pitts, "CIA Uses Harsh Tactics on Hosts," *The Washington Post*, June 27, 2004; James Rosen, David Johnston and Neil A. Lewis, "Islam: CIA Methods Cited in Top Qaeda Interrogations," *The New York Times*, May 19, 2006.

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Conclusion

When President Bush announced in September 2006 that, as of that moment, there were no prisoners in CIA custody, he did not say that the CIA's prison program was closing permanently. Indeed, the apparent purpose of his speech was the opposite: he argued that "as more high-ranking terrorists are captured, the need to obtain intelligence from them will remain critical--and having a CIA program for questioning terrorists will continue to be crucial to getting life-saving information."⁷⁷ And when he signed the Military Commissions Act into law a few weeks later, he asserted that the legislation would "allow the Central Intelligence Agency to continue its program for questioning key terrorist leaders and operatives."⁷⁸

President Bush is wrong on the law. Under any reasonable reading of the Detainee Treatment Act and the Military Commissions Act, the abusive treatment of detainees that characterized the CIA's detention and interrogation program is illegal. But perhaps as worrying as the President's misinterpretation of legal standards is his disregard of basic principles.

The CIA program--and the civilian leaders who created it--have inflicted tremendous harm on the reputation, moral standing, and integrity of the United States. It is time, now, to repudiate that program, and to take steps to repair the damage it has caused.

⁷⁷ The White House, "President Discusses Creation of Military Commission to Try Suspected Terrorists," September 6, 2006.
⁷⁸ Office of the Press Secretary, The White House, "President Bush Signs Military Commissions Act of 2006," October 17, 2006.
 The President also said: "What I proposed this legislation, I explained that I would have one test for the bill Congress produced: will it allow the CIA program to continue? This bill meets that test."

Recommendations

The US government should:

- Repudiate the use of secret detention and coercive interrogation as tactics in fighting terrorism, and announce that the CIA's detention and interrogation program is being permanently discontinued;
- Disclose the location and current status of the detention facilities where Marwan al-Buhari was held, as well as the location and current status of all other secret detention facilities used by the CIA since 2001;
- Disclose the identities, fate, and current whereabouts of all prisoners held for any period of time at facilities operated or controlled by the CIA since 2001, and, for prisoners transferred to the custody of another government, disclose the date and location of the transfer;
- Order the release of any prisoner held in another country's prisons at the behest of the United States, or, if evidence exists of a prisoner's involvement in criminal offenses, transfer the prisoner to the United States for prosecution in US courts in accordance with internationally recognized fair trial standards;
- Hold terrorist suspects only in officially recognized places of detention where they are registered and have access to family members, lawyers, and courts; treat them in accordance with international standards on the treatment of prisoners, and either charge them promptly or release them;
- Acknowledge publicly that US domestic law (including the Detainee Treatment Act, the Military Commissions Act, and the *Hamdan* decision) bans the use of abusive interrogation techniques such as

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"waterboarding," extended sleep deprivation, and forced exposure to extremes of heat and cold;

- Sign and ratify the International Convention for the Protection of All Persons from Enforced Disappearance;
- Ratify the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, which establishes a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other mistreatment.

The US Congress should:

- Hold hearings to investigate the CIA's secret detention program, with the goal of ascertaining the scope of the program, the manner in which detainees were treated (including the interrogation methods employed on them), and the fate and current whereabouts of every person ever held in the program;
- Compel the White House to provide the House and Senate Intelligence committees with the September 17, 2001, presidential finding that authorized the CIA to initiate its program of secret detention and interrogation;
- Repeat the Military Commissions Act of 2006 or, at a minimum, amend it to:

- ensure that all detainees in US custody, whether held on US territory or abroad, are guaranteed the right to habeas corpus;
- reform the law's protections on classified "methods and activities" so that these provisions cannot be used to protect the CIA's coercive interrogation methods against disclosure;

- bar the use of statements obtained as result of coercion from military commission trials.
- Pass legislation to ensure that all secret detention centers are shut down permanently and that no one is forcibly disappeared into US custody or otherwise held incommunicado;
- Pass legislation to prohibit the return or transfer of persons to countries where they are at risk of torture or other abusive treatment, and to bar the government from relying on "diplomatic assurances" to justify such transfers;
- Press the Department of Justice to vigorously prosecute civilians—including those at high levels of authority—who are responsible for engaging in, authorizing or condoning the mistreatment of detainees.

The government of Pakistan should:

- Close any secret detention facilities that may be operating in Pakistan, register all prisoners in Pakistani custody (including those in the custody of the Intelligence services), and ensure that all prisoners are brought before a judge within a short time of their arrest;
- Transfer prisoners to the US authorities in accordance with Pakistani law and only after obtaining written assurances that the prisoners will be brought before US courts, promptly charged or released, and will not be placed in indefinite detention at Guantanamo or elsewhere;
- Initiate a parliamentary investigation of the government's role in supporting and assisting CIA abuses in Pakistan.

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L Press Guidance
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IRAQ: TRANSFER OF DETAINEES

Q: What role did the State Department play in determining the DOJ legal opinion that certain detainees in Iraq are not covered by the Geneva Conventions?

A:

- **THE STATE DEPARTMENT REVIEWED THE MEMORANDUM DISCUSSED IN TODAY'S ARTICLE AND PROVIDED COMMENTS TO THE JUSTICE DEPARTMENT.**
- **WE REFER YOU TO THE DEPARTMENT OF JUSTICE FOR ANY FURTHER QUESTIONS REGARDING THAT MEMORANDUM.**

Background: The Washington Post reported on Sunday that DOJ's Office of Legal Counsel had drafted a confidential memo authorizing the CIA to transfer certain detainees out of Iraq for interrogation purposes. The article indicates that the CIA relied on the legal authority in this draft memo to transport up to twelve detainees out of Iraq for questioning.

The New York Times reported today on another memorandum that DOJ issued on the same topic, and which was finalized. The Times reports that the second memorandum concluded that some individuals located in Iraq—specifically, non-Iraqis who are suspected to be members of Al Qaeda or other terrorist organizations and who traveled to Iraq after the U.S. invasion to engage in terrorism—were not “protected persons” and therefore would not fall within the protections of the Fourth Geneva Convention. Article 49 of the Fourth Geneva Convention prohibits “individual or mass forcible transfers, as well as deportations

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of protected persons from occupied territory,” regardless of the motive for the transfer.

Given the sensitive nature of the two memoranda at issue and the fact that DOJ produced the memos, DOJ is in the best position to answer any questions about them.

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Drafted: L/PM: A Deeks x77177

Cleared: L: J Thessin *or*

L/PM: J Dorosin *or*

S/WCI: R Miller *or*

PRM/MCE: C Santos *or*

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SENSITIVE

DEPT FOR EUR/AGS, EUR/ERA, EUR/RPM

E.O. 12958: N/A

TAGS: NATO, PTER, COE, AF, GM

SUBJECT: RUMORS OF SECRET DETENTION FACILITIES TO BE
RAISED AT NATO-PA AND COUNCIL OF EUROPE MEETINGS:

1. (SBU) ACCORDING TO THE SOCIAL DEMOCRATIC PARTY (SPD)
STAFFER RESPONSIBLE FOR NATO PARLIAMENTARY ASSEMBLY (PA)
ISSUES, THE GERMAN DELEGATION TO THE PA IS LIKELY TO
RAISE THE ISSUE OF RUMORS OF SECRET DETENTION FACILITIES
IN EASTERN EUROPE AT THE UPCOMING NOVEMBER 11-15 PA

UNITED STATES DEPARTMENT OF STATE
REVIEW AUTHORITY: ARCHIE M BOLSTER
DATE/CASE ID: 06 AUG 2009 200706444

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MEETING IN COPENHAGEN. THE STAFFER, WHO IS CLOSE TO GERMAN PA DELEGATION HEAD BUNDESTAG MEMBER MARKUS MECKEL, PREDICTS THAT THE ISSUE WILL BE HIGHLY CONTROVERSIAL, ESPECIALLY IN THE CONTEXT OF PA DISAPPOINTMENTS/FRUSTRATION OVER CONGRESSMAN HEFLEY'S INABILITY TO FULFILL A PRIOR PROMISE TO ARRANGE A PA VISIT TO GUANTANAMO. (THE STAFFER BELIEVES THAT THE PENTAGON REFUSED TO AUTHORIZE THE PA VISIT.) THE STAFFER ALSO PREDICTS A HEFTY DEBATE ON THE ISSUE AT THE NOVEMBER 25 MEETING OF THE COUNCIL OF EUROPE, AND OPINED THAT - IF PRESS REPORTS ARE PROVEN ACCURATE - IT WOULD CONSTITUTE A MAJOR VIOLATION OF COUNCIL OF EUROPE REGULATIONS AGAINST ALLOWING SUCH INSTALLATIONS ON THE TERRITORY OF MEMBER STATES.

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POL/D: BTURNER
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AMEMBASSY PARIS
SECSTATE WASHDC IMMEDIATE
INFO EUROPEAN POLITICAL COLLECTIVE PRIORITY
AMCONSUL STRASBOURG PRIORITY

E.O. 12958: N/A
TAGS: PREL, PINR, PINS, FR
SUBJECT: ACTION REQUEST: GUIDANCE ON RESPONSE TO COE
INVESTIGATION

1. (U) This is an action request. See para 3.
2. (U) Amb. Stapleton received by fax a letter (full text para 4) from Dick Marty, whom the Council of Europe Parliamentary Assembly has appointed to investigate the allegations of CIA secret detention centers in CoE member countries. The key phrase reads, "I would very much appreciate receiving from your authorities any pertinent information they may be able to provide me with on this subject."
3. (U) ACTION REQUEST: Please provide authorized language for use by Ambassador and Strasbourg consulate in response to COE requests.
4. (U) Text of Marty letter:

Parliamentary Assembly
The Council of Europe
Committee on Legal Affairs and Human Rights
The Chairperson

14 November 2005

Dear Mr. Roberts Stapleton,

I address this letter to you in your capacity as Permanent Observer of the United States of America to the Council of Europe.

UNITED STATES DEPARTMENT OF STATE
REVIEW AUTHORITY: ARCHIE M BOLSTER
DATE/CASE ID: 05 SEP 2008 200706444

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As you are no doubt aware, I have recently been instructed by the Parliamentary Assembly's Committee on Legal Affairs and Human Rights to collect information on "alleged secret detention centres in Council of Europe member states" as a result of communications received on this subject from a number of sources, especially Human Rights Watch.

With this in mind, and in particular the existence of serious allegations concerning your country's involvement in such activities in Council of Europe member States as of 2001, I would very much appreciate receiving from your authorities any pertinent information they may be able to provide me with on this subject.

I look forward to receiving a reply to my request at your earliest convenience and thank you for your cooperation.

Yours Sincerely,

Dick Marty

END LETTER TEXT

Please visit Paris' Classified Website at:
<http://www.state.sgov.gov/p/eur/paris/index.cfm>
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Parliamentary Assembly
Assemblée parlementaire



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AS/Jur (2006) 03 rev
22 January 2006
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Committee on Legal Affairs and Human Rights

Alleged secret detentions in Council of Europe member states

Information Memorandum II

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

- A. Introduction
- B. Steps taken to date
- C. Criminal investigations and other reactions
 - a. Council of Europe member countries
 - i. Overview
 - ii. The more detailed cases of Italy and Switzerland
 - Italy
 - Switzerland
 - b. Debate in North America
- D. Reminder: anti-terrorist action must respect human rights
- E. Preliminary analysis of the information already obtained
 - a. Awareness of Council of Europe member states?
 - b. *Extraordinary rendition* and torture - a link known and accepted?
 - c. Secret detention centres
 - d. Kosovo and Chechnya
- F. Looking ahead to the continuing investigation

APPENDICES

Appendix I: Alleged secret detentions in Council of Europe member states: Background information

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

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

Appendix IV: Communication of 21 November 2005 from the Secretary General of the Council of Europe to the Contracting Parties to the European Convention on Human Rights

F-67075 Strasbourg Cedex, tel: +33 3 88 41 20 00, fax: +33 3 88 41 27 02, <http://assembly.coe.int>, e-mail: assembly@coe.int

A. Introduction

1. First of all, it is necessary to set this work in context in terms of both facts and chronology (the latter being of some significance in this affair). I would stress that the allegations that are now receiving media coverage worldwide were already known and were condemned by the Council of Europe Parliamentary Assembly in a report on the "Lawfulness of detentions by the United States in Guantánamo Bay" presented by my colleague Kevin McNamara, to which I shall refer in this memorandum¹. In his report he condemned the illegal practice of "extraordinary rendition" and recommended that Council of Europe member states "ensure that their territory and facilities [were] not used in connection with practices of secret detention or rendition in possible violation of international human rights law"².

2. At the time, the issue did not elicit the same media coverage as it is now receiving. We may well ask why it is only now that the allegations concerning secret detention centres in Europe are triggering a proper debate and public shock and indignation at the reports of ill-treatment and even torture in this connection. In countries that pride themselves in being long-standing democracies that protect human rights, the revelation of these allegations should have sparked off reactions and categorical condemnation several months ago, and yet this was not the case, with a few exceptions, such as the article by the writer and journalist Stephen Grey ("United States: trade in torture", *Le Monde diplomatique*, April 2005) and the articles by Guido Olimpio in the *Corriere della Sera* and his book *Operazione Hotel California* (Feltrinelli, October 2005).

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

4. Whereas *The Washington Post* did not mention any countries by name (further to an agreement entered into with the United States Government, which, to my mind, suggests that the reports are true), HRW expressly mentioned Poland and Romania. The press reports also quote denials by officials from Poland³ and Romania, but also Latvia, the Czech Republic, Georgia, Armenia and Bulgaria.

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

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

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

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

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

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

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

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

10. On 3 November Mr Friso Roscam Abbing, spokesman for Franco Frattini, Vice-President of the European Commission and Commissioner for Justice, Freedom and Security, said that the Commission would be seeking further information, on the grounds that such secret detention centres would be a violation of the founding principles of the European Union. On 4 November he said that the Commission had no reason to doubt the denials by the Polish and Romanian Governments. On 14 November Mr Frattini told the European Parliament that he welcomed the investigation initiated by the Council of Europe and that his departments would be following it closely. On 7 December 2005 Mr Frattini wrote to his colleagues Jacques Barrot and Benita Ferrero-Waldner asking them to support the requests the Committee on Legal Affairs and Human Rights of the Council of Europe Parliamentary Assembly had submitted to Eurocontrol and the European Union Satellite Centre (EUSC). On 28 November 2005 the British Foreign Secretary, Jack Straw, asked the American authorities, on behalf of the European Union, for explanations of the alleged stopovers in Europe of aircraft chartered by the CIA.

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

12. The same day, the President of the Parliamentary Assembly, René van der Linden, asked the Committee on Legal Affairs and Human Rights, in a press release, to look into the allegations, stating that, if such detention centres did in fact exist, it would be a violation of the principles of both the European Convention on Human Rights and the European Convention for the Prevention of Torture.

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

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

15. In November and December 2005 the Committee on Legal Affairs and Human Rights was particularly active in connection with this affair. At its meeting on 7 November 2005, following President van der Linden's request, it discussed the matter, including the possibility of inviting the Secretary General of the Council of Europe to ask all Contracting Parties to the European Convention on Human Rights for information about the allegations, in accordance with the procedure provided for in Article 52 of the Convention. At the next meeting, on 22 November, I presented the information I had been able to obtain and my preliminary conclusions⁴. At its meeting on 13 December 2005 the committee:

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

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

B. Steps taken to date

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

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

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

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

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

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

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

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

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

C. Criminal investigations and other reactions

a. Council of Europe member countries

i. Overview

25. In two countries (**Italy** and **Germany**) judicial investigations have begun into "abduction" of persons subsequently transported to Guantánamo, Afghanistan and other detention centres by means of aircraft belonging to entities with hidden direct or indirect links to the CIA. The Italian prosecution service has even issued arrest warrants against CIA agents after the violent abduction of a Muslim, Abu Omar, in a Milan street in February 2003. The German judicial authorities are taking part in the investigation and have themselves begun investigating the case of a German citizen of Lebanese origin, Khaled al Masri. After being arrested by mistake in Macedonia he was reportedly taken to Kabul for interrogation⁵. Lastly, a **Spanish** judge is enquiring into whether the CIA used Son Sant Joan airport in Majorca as a base for transport of Muslim suspects, as announced by the Spanish minister of internal affairs, José Antonio Alonso, on 15 November 2005. The same aircraft as transported Abu Omar landed at least three times in Spain (and in other European countries).

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

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

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

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

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

misgivings in some political circles about setting up a committee that might undermine the operational capacity of the BND.

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

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

32. With regard to **Bosnia and Herzegovina**, their American lawyer⁶ has sent me a detailed account of the case of six Bosnians abducted by American agents on Bosnian soil and taken to Guantánamo Bay, despite a Bosnia and Herzegovina Federal Supreme Court judgment ordering their release after police investigation had failed to uncover the slightest evidence against them. I shall be following developments in the case as part of my further investigations.

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

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

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

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

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

38. The head of the **Irish** delegation to the Parliamentary Assembly informed me of the many questions to the government in the Irish Parliament, and of the replies received. In substance, the government expressed total condemnation of the practice of "extraordinary renditions" and stated that it had never authorised any overflights of Irish territory by chartered aircraft for that purpose.

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

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

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

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

• **Italy**

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

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

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

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

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

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

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

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

• **Switzerland**

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

49. In May 2002 an American citizen, José Padilla, was placed under close surveillance by the Swiss federal police and US agents when he flew into Zurich from Pakistan. Padilla was suspected of wanting to introduce a "dirty" bomb into the United States and explode it. Apparently the Swiss police even questioned him before he flew on to Chicago, where he was arrested. Since then Padilla has been in detention without any detailed charges being brought against him and is considered an "enemy combatant". It was only quite recently that he was handed over to the civil justice authorities to avoid the Supreme Court's ordering his release. Visiting Switzerland in June 2002, the United States justice minister, John Ashcroft, warmly congratulated the Swiss authorities on the valuable part they had played in Padilla's arrest. However, the case has sparked controversy in Switzerland, to such an extent that a parliamentary committee has begun an enquiry, for it would seem that the police co-operated closely with the American services without notifying the competent judge, or at any rate informed him after the event, when Padilla had already been arrested in the United States. If notification had been made in time – as procedure requires – Padilla would most likely have been arrested and handed over to the American authorities in accordance with the procedure laid down and with the safeguards which operate in cases of judicial assistance and extradition (which are not applied to so-called "enemy combatants"). My request to consult the parliamentary committee's report was refused on the justice ministry's advice, on the ground that the file contained material "concerning third parties and potentially harmful to relations with another country".

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

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

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

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

B. Debate in North America

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

55. The CIA action programme set up after 11 September 2001 and known as the "GST programme", gives the CIA greatly enhanced powers (apparently comparable to those which existed during the cold war). It allows the CIA to arrest suspects with the help of foreign internal security services, hold them captive abroad, employ interrogation techniques (some of which are very widely regarded as possibly contravening the United States' international undertakings regarding prohibition of torture) and fly prisoners between countries⁸.

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

57. Several prominent figures have openly condemned the practices in question. One can but welcome the perseverance shown by Senator John McCain, who was himself a torture victim in Vietnam and who was responsible for an amendment to the 2006 defence expenditure bill expressly prohibiting cruel, inhuman and degrading treatment of foreign prisoners, whether in CIA hands, in the United States or abroad. The amendment is extremely significant in the context of my report, implying that such treatment was not hitherto prohibited by American law in the circumstances referred to. It also strikes me as fairly revealing that Vice-President Dick Cheney fought, unsuccessfully, to have the McCain amendment not apply to the CIA. However, we cannot be altogether confident of the effects the amendment will have – the press reports that President Bush seems to reserve the right to disregard the amendment in certain circumstances⁹.

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

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

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

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

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

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

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

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

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

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

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

E. Preliminary analysis of the information already obtained**a. Awareness of Council of Europe member states?**

66. "Rendition" affecting Europe seems to have concerned more than a hundred persons in recent years¹³. Hundreds of CIA-chartered flights have passed through numerous European countries¹⁴. It is highly unlikely that European governments, or at least their intelligence services, were unaware. And a number of revelations have already been published by the press, especially in America, over the past few years. It is, to say the least, curious that media interest, especially in Europe, suddenly surged after the article in *The Washington Post* in early November 2005.

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

¹¹ *Idem*, §8.x.

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

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

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

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

68. In the case of Abu Omar it was obvious that the CIA acted without informing the Italian judicial and police authorities. The Milan public prosecutors explicitly state that the action taken by the American service, which they consider constituted a criminal offence, prevented them from competing investigations which they were conducting against Omar and which was on the verge of identifying a network of activists considered potentially dangerous. The Italians' meticulous and highly professional work had thus been undone by the unexpected intervention by CIA agents who, by abducting Abu Omar, had sabotaged a major anti-terrorist operation. This "rendition" is a glaring illustration of the fact that such actions, which infringe the principles of the rule of law, are not only unacceptable from the legal and ethical point of view but also ineffective, or indeed damaging to the fight against terrorism. This lack of co-operation with and confidence in the authorities officially mandated to fight crime is bound to have very serious consequences, challenging the very functioning of the law-based State and its democratic foundation. Similarly, we might add that the American authorities in Ramstein are refusing to co-operate with the German prosecutor responsible for the German strand of the Abu Omar case, on Washington's orders. It is difficult to believe that such an approach to relations between authorities in different countries can provide any valid basis for genuine co-operation among States endeavouring together to combat the worst threats facing us in modern times.

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

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

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

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

¹⁵ *Die Zeit*, 29 December 2005.

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

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

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

74. Mr Vincent Cannistraro, former head of counter-espionage in the CIA is reported to have said that a Guantánamo detainee suspected of belonging to Al-Qaeda and who was refusing to co-operate provided better information after being "rendered" to Egypt: "They promptly tore his fingernails out and he started to tell things"¹⁹. Mr Cannistraro also reportedly said that Egyptian prisons were full of men without finger and toenails. "It's crude, but highly effective, although we could never condone it publicly. The Egyptians and Jordanians are not that squeamish"²⁰. Lastly, he also said that only someone "deaf, dumb and blind" could believe that the Syrians did not use torture, despite their claims to the contrary²¹.

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

76. "If you don't violate someone's human rights some of the time, you probably aren't doing your job": this was allegedly said by one official who had supervised the capture and transfer of alleged terrorists²³.

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

¹⁷ Ibid.

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

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

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

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

²² Dana Priest and Barton Gellman, "U.S. Decries Abuse but Defends Interrogations", *The Washington Post*, 26 December 2002, available at <http://www.washingtonpost.com/ac2/wp-dyn/A37943 - 2002Dec25?language=printer>; also see Doc. 10497, report of the Committee on Legal Affairs and Human Rights on the lawfulness of detentions by the United States in Guantánamo Bay, rapporteur Kevin McNamara.

²³ Ibid.

²⁴ Ibid.

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

79. Another case of rendition concerns a so-called Muslim militant in Canada, called Arar. Some American officials speaking on condition of anonymity are reported to have said that there was strong evidence that Mr. Arar had long been associated with suspected Islamist militants in Canada. They reported that he had confessed under torture in Syria that he had received terrorist training in Afghanistan, and had given the names of his instructors and other details²⁶.

80. Others reportedly told *Time* that no American had been in the room in which the Syrians interrogated Mr. Zammar. American officials in Damascus gave written questions to the Syrians, who passed back Zammar's answers. State Department officials appreciated this arrangement, which kept the American government out of any torture that the Syrians might use against him. Some State Department officials suspected that he had indeed been tortured²⁷.

81. In an interview with Dana Priest (*The Washington Post*) published in March 2005, another CIA official involved in "renditions" described other countries' "assurances" as "a farce"²⁸, and admitted that it was widely understood that interrogation practices that would be illegal in the United States were being used²⁹. In the same interview, he said that "They say they are not abusing them, and that satisfies the legal requirement, but we all know they do"³⁰.

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

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

84. Another case concerning a certain Mr. Mahdoud Habib, Australian citizen arrested in Pakistan in October 2002, is prompting debate in Australia, highlighting the legal difficulties arising out of the use of torture: "After promising for more than three years that it would charge Mr. Habib, the Bush administration told the Australians in January that it would not prosecute him because the C.I.A. did not want the evidence about Mr. Habib being taken to Egypt, and his allegations of torture, raised in court", Australian officials reportedly said³².

²⁵ *Ibid.*

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

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

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

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ *Ibid.*

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

85. Drawing on all this concordant information and evidence we can say that there is a great deal of coherent, convergent evidence pointing to the existence of a system of "relocation" or "outsourcing" of torture. Acts of torture, or severe violations of detainees' dignity through the administration of inhuman or degrading treatment, are carried out outside national territory and beyond the authority of the national intelligence services. Does this mean that torture is so easy to use in this day and age? Is it enough for one's own secret services not to be physically present at the place of interrogation and to pretend to have no official knowledge of this practice to state that the law is not being broken? In this context, the statements made by Mr Schäuble, Germany's new Minister for the Interior, appear at the very least highly debatable, if not alarming. He seems to consider that the use of information obtained by dubious means is acceptable, provided that the German services were not perpetrating acts of torture themselves³³.

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

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

88. With specific reference to the awareness among member states' authorities of torture committed by their "partners" in the context of the fight against terrorism, we shall hear a personal account at our Committee's meeting of 24 January 2006 from Mr Craig Murray, former British Ambassador to Uzbekistan. The documents that he has already forwarded to me, and which led me to invite him to give his evidence, appear to be damning for the UK authorities, which seem to have knowingly continued to make use of information obtained under torture and supplied by the Uzbek intelligence services, thereby encouraging the practice of torture. Mr Murray was unable to persuade his authorities to cease doing so, and therefore resigned.³⁴

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

c. Secret detention centres

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

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

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

d. Kosovo and Chechnya

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

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

F. Looking ahead to the continuing investigation

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

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

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

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

97. Similarly, the legal opinion requested from the Venice Commission will be very important for the conclusions of the final report, particularly in terms of the Council of Europe member States' obligations under the European Convention on Human Rights in order to ensure that their territory, and even their airspace, are not misused, even by friendly and allied third states, for the purposes of human rights violations. National procedures for parliamentary supervision of intelligence services will have to be analysed and, where necessary, improved, in order to ensure that abuse cannot be perpetrated on the pretext of the confidentiality of current procedures. Parliamentarians must also analyse the repeated

recourse by executives authorities to the concepts of "State secrecy" and "higher interests" in withholding information.

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

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

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

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

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

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

* * *

Update: 23.01.06

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

RELEASED IN FULL

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APPENDIX I

**Alleged secret detentions in Council of Europe member states:
Background information**

Rapporteur of the Committee on Legal Affairs and Human Rights (AS/Jur): Mr Dick Marty, Switzerland, ALDE (appointed 13.12.2005)
Rapporteur for opinion of the Political Affairs Committee: Mr Peter Schieder, Austria, SOC

- Mandate: Doc 10748, Reference 3153 of 25.11.2005
- Expiry date for adoption of the report: 25.11.2007

AS/Jur meeting on 7.11.2005:

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

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

17.11.2005: Reply from Romanian PACE Delegation

AS/Jur meeting on 22.11.2005:

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

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

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

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

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

9.12.2005: Interim provisional reply from EU Satellite Centre

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

AS/Jur meeting on 3.12.2005:

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

- 14.12.2005: Letter to Mr Brian Ross, Journalist ABC
 14.12.2005: Letter to Mr Lenn Downie, Editor, Washington Post
 14.12.2005: Letter from Mr Frank Asbeck, EU Satellite Centre, informing that the provision of satellite images is not part of the Centre's mission
 15.12.2005: Letter sent to the Venice Commission requesting a legal opinion (see Appendix III)
 16.12.2005: "Information Notice" (reply) from Polish Delegation
 16.12.2005: Letter sent to the President of the Assembly proposing an urgent procedure debate
 19.12.2005: Letters sent all PACE delegations, enclosing questions which MPs could put to their governments and a list of alleged flight patterns (see Appendix II)
 21.12.2005: Letter from Washington Post (Mr Downie), informing that it was not possible to disclose their sources
 21.12.2005: Follow-up letter to Mr Iwinski, Head of Polish PACE Delegation
 22.12.2005: Letter sent to Mr Javier Solana, SG of the Council of the European Union, asking him to authorise EU Satellite Centre cooperation
 10.01.2006: Letter from Venice Commission: adoption of its opinion foreseen on 17-18.03.2005
 11.01.2006: Reminder letter to Mr Victor Aguado, Director General of Eurocontrol + reminder e-mail from AS/Jur secretariat to Mr Solana's secretariat
 16.01.2005: Reminder messages sent to Mr Iwinski and Mr Ross (ABC)
 19.01.2006: Letter from ABC (on behalf of Mr Brian Ross) informing that it was not possible to disclose their sources, but that they could provide the video recording of the report of 5 December 2005 (to which Mr Marty replied that he would indeed appreciate receiving the video recording)
 23.01.2006: Information received from the EU Satellite Center and Eurocontrol

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APPENDIX II

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

...

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

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

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

Thanking you in advance for your cooperation, I remain,

...

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

Appendix to the letter:**Questions which members of the Parliamentary Assembly might put to their respective governments in their national parliament:****Secret services:**

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

Secret detention centres:

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

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

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

APPENDIX III

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

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

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

1. An assessment of the legality of secret detention in the light of Council of Europe member States' international law obligations, in particular the European Convention on Human Rights and the European Convention for the Prevention of Torture. In particular, to what extent is a State responsible if - actively or passively - it permits illegal detention or abduction by a third State or an agent thereof?
2. What are the legal obligations of Council of Europe member States, under human rights and general international law, regarding the transport of detainees by other States through their territory, including their airspace? What is the relationship between such obligations and possible countervailing obligations which derive from other treaties, including treaties concluded with non-member States?

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

APPENDIX IV**Communication of 21 November 2005 from the Secretary General of the Council of Europe to the Contracting Parties to the ECHR****Request for an explanation in accordance with Article 52 of the European Convention on Human Rights**

The Secretary General of the Council of Europe,

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

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

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

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

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

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

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

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

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notably in the context of deprivation of liberty, resulting from the conduct of officials of foreign agencies. In particular, explanation of the availability of effective investigations that are prompt, independent and capable of leading to the identification and sanctioning of those responsible for any illegal acts, including those responsible for aiding or assisting in the commission of such acts, and the payment of adequate compensation to victims;

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

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

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OFFICE OF THE LEGAL ADVISER TASKER

L Control No.: 2006-027

Date: 2/3/06

Due Date: 2/8/06

FOIA/PA:

Blue/Red Border: 200602123

Other:

DOJ Doc Req:

SUBJECT: Allegations heard by UK's Andrew Rossie that the U.S. has come out extraordinary conditions

<u>ACTION</u>	<i>cc: Kernl.</i>	<u>INFO</u>	<u>TASKING DETAILS</u>
_____	L/ACV	L/AF	<input checked="" type="checkbox"/> Direct Reply (copy to Staff Assist)
_____	L/BA	L/CA	_____ Action Memo w/Letter for _____ sign
_____	L/CID	L/DL	_____ Briefing Memo/Checklist
_____	L/EAP	L/EB	_____ Information Memo
_____	L/EMP	<u>L/EUR</u>	_____ Issue Paper
_____	L/EX	L/HRR	_____ Q&As
<input checked="" type="checkbox"/>	<u>L/ET</u>	L/LM	_____ Background Paper
_____	L/NESA	L/NP	_____ Hofmann Memo: _____
_____	L/OES	L/PD	_____ Questions for the Record
<input checked="" type="checkbox"/>	L/PIL	<u>L/PM</u>	_____ Building Blocks
_____	L/T	L/UNA	<input checked="" type="checkbox"/> For Appropriate Handling
_____	L/WHA	L/FO	(if respond, provide copy)
			_____ Document Search/Review
			_____ Cong Mand Reporting Req

SPECIAL NOTES/INSTRUCTIONS:

emailed each office;
also to note: copy of drafts response
EUR/UBI UK case - R

ALL TASKERS MUST HAVE:

1. Email document to the Staff Assistant if going to 7th Floor Principals (D, S, P, etc).
2. If red border, type S/ES number on original in the upper right hand corner.
3. Clearance page with drafter's name spelled out in full and signed.
4. Clearance page should have date and document number.
5. DO NOT TYPE DATE. Date will be added after signature.
6. If direct reply on behalf of POTUS, fill out Executive Secretariat Transmittal Form.

#92619 v.11.

Department of State Correspondence



EXECUTIVE SECRETARIAT
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Classification / Downgrader

Date: 2-3-06

DATE DUE 2-8-06
in S/ES:

S/ES #: 200602123

X-Ref: L126A
(if any)

ACTION Assigned To: L

ACTION REQUESTED:

HIGH PRIORITY

- RECOMMENDATION FOR _____ UNDER COVER OF AN ACTION MEMO
- WITH REPLY ATTACHED: LETTER FORMAT _____ CABLE FORMAT _____
- OR a written reason why bureau recommends against a reply (E-mail address: SES-CR)
- REPLY FOR SIGNATURE BY _____ (no action memo)
- DIRECT REPLY ON BEHALF OF S. appropriate RETURN TO S/ES-CR AN INFO COPY OF THE SIGNED / DATED DIRECT REPLY.
- REGRET BY PHONE and PROVIDE A WRITTEN CONFIRMATION TO S/ES-CR (E-mail address: SES-CR)
- OTHER (see "REMARKS / SPECIAL INSTRUCTIONS")
- FOR APPROPRIATE HANDLING _____ FOR YOUR INFORMATION

REMARKS / SPECIAL INSTRUCTIONS:

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CLEAR WITH:

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ANGELA BARBER-WILSON

FROM:
EXECUTIVE SECRETARIAT
EXT: 7-0645

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HUMAN RIGHTS WATCH

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List of "Ghost Prisoners" Possibly in CIA Custody

List of Detainees Published by Human Rights Watch

The following is a list of persons believed to be in U.S. custody as "ghost detainees" -- detainees who are not given any legal rights or access to counsel, and who are likely not reported to or seen by the International Committee of the Red Cross. The list is compiled from media reports, public statements by government officials, and from other information obtained by Human Rights Watch. Human Rights Watch does not consider this list to be complete: there are likely other "ghost detainees" held by the United States.

Under international law, enforced disappearances occur when persons are deprived of their liberty, and the detaining authority refuses to disclose their fate or whereabouts, or refuses to acknowledge their detention, which places the detainees outside the protection of the law. International treaties ratified by the United States prohibit incommunicado detention of persons in secret locations.

Many of the detainees listed below are suspected of involvement in serious crimes, including the September 11, 2001 attacks; the 1998 U.S. Embassy bombings in Kenya and Tanzania; and the 2002 bombing at two nightclubs in Bali, Indonesia. (One of the listed, No. 25, Ahmed Khalfan Ghailani, was indicted in U.S. federal court for his role in the 1998 attacks.) Yet none on this list has been arraigned or criminally charged, and government officials, speaking anonymously to journalists, have suggested that some detainees have been tortured or seriously mistreated in custody.

The current location of these prisoners is unknown.

List, as of December 1, 2005:

1. Ibn Al-Shaykh al-Libi

Reportedly arrested on **November 11, 2001**, Pakistan.
Libyan, suspected commander at al-Qaeda training camp.
Previously listed as "disappeared" by Human Rights Watch.

2. Abu Faisal

Reportedly arrested on **December 12, 2001**
Nationality unknown. See next entry.

3. Abdul Aziz

Reportedly arrested on **December 14, 2001**
Nationality unknown. In early January 2001, Kenton Keith, a spokesman at the U.S. Embassy in Islamabad, produced a chart with the names of senior al-Qaeda members listed as killed in action, detained, or on the run. Faisal and Aziz were listed as detained on Dec. 12 and 14, 2001. See: Andrea Stone, "Path to bin Laden may lie behind bars; US interrogates al-Qaeda, Taliban prisoners in hope of nailing down war on terror's prime targets," USA Today, January 8, 2002; Bradley Graham and Walter Pincus, "Al-Qaeda Trainer in U.S. Hands," The Washington Post, January 5, 2002.

4. Abu Zubaydah (also known as Zain al-Abidin Muhahhad Husain)

Reportedly arrested in **March 2002**, Faisalabad, Pakistan.

Palestinian (born in Saudi Arabia), suspected senior al-Qaeda operational planner. Listed as captured in "George W. Bush: Record of Achievement, Waging and Winning the War on Terror." available on the White House website. Previously listed as "disappeared" by Human Rights Watch.

5. Abdul Rahim al-Sharqawi (aka Riyadh the facilitator)

Reportedly arrested in **January 2002**

Possibly Yemeni, suspected al-Qaeda member (possibly transferred to Guantanamo). Previously listed as "disappeared" by Human Rights Watch (see note 27).

6. Abd al-Hadi al-Iraqi

Reportedly arrested in **January 2002**

Nationality unknown, presumably Iraqi, suspected commander of al-Qaeda training camp. U.S. officials told Associated Press on January 8, 2002 and March 30, 2002, of al-Iraqi's capture. See e.g., "Raid May Have Nabbed Bin Laden Lieutenant," Associated Press, March 30, 2002. Previously listed as "disappeared" by Human Rights Watch (see note 27).

7. Muhammed al-Darbi

Reportedly arrested in **August 2002**

Yemeni, suspected al-Qaeda member. The Washington Post reported on October 18, 2002: "U.S. officials learned from interviews with Muhammad Darbi, an al Qaeda member captured in Yemen in August, that a Yemen cell was planning an attack on a Western oil tanker, sources said." On December 26, 2002, citing "U.S. intelligence and national security officials," the Washington Post reports that al-Darbi, as well as Ramzi Binalshibh [see below], Omar al-Faruq [reportedly escaped from U.S. custody in July 2005], and Abd al-Rahim al-Nashiri [see below] all "remain under CIA control."

8. Ramzi bin al-Shibh

Reportedly arrested on **September 13, 2002**

Yemeni, suspected al-Qaeda conspirator in Sept. 11 attacks (former roommate of one of the hijackers). Listed in "George W. Bush: Record of Achievement, Waging and Winning the War on Terror." available on the White House website. Previously listed as "disappeared" by Human Rights Watch.

9. Abd al-Rahim al-Nashiri (or Abdulrahim Mohammad Abda al-Nasheri, aka Abu Bilal al-Makki or Mullah Ahmad Belal)

Reportedly arrested in November 2002, United Arab Emirates.

Saudi or Yemeni, suspected al-Qaeda chief of operations in the Persian Gulf, and suspected planner of the USS Cole bombing, and attack on the French oil tanker, Limburg. Listed in "George W. Bush: Record of Achievement, Waging and Winning the War on Terror." available on the White House website. Previously listed as "disappeared" by Human Rights Watch.

10. Mohammed Omar Abdel-Rahman (aka Asadullah)

Reportedly arrested in **February 2003**, Quetta, Pakistan.

Egyptian, son of the Sheikh Omar Abdel-Rahman, who was convicted in the United States of involvement in terrorist plots in New York. See Agence France Presse, March 4, 2003: "Pakistani and US agents captured the son of blind Egyptian cleric Omar Abdel Rahman. . . a US official said Tuesday. Muhamad Abdel Rahman

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was arrested in Quetta, Pakistan, the official said, speaking on condition of anonymity." David Johnston, New York Times, March 4, 2003: "On Feb. 13, when Pakistani authorities raided an apartment in Quetta, they got the break they needed. They had hoped to find Mr. [Khalid Sheikh] Mohammed, but he had fled the apartment, eluding the authorities, as he had on numerous occasions. Instead, they found and arrested Muhammad Abdel Rahman, a son of Sheik Omar Abdel Rahman, the blind Egyptian cleric. . ."

11. Mustafa al-Hawsawi (aka al-Hisawi)

Reportedly arrested on **March 1, 2003** (together with Khalid Sheikh Mohammad), Pakistani. Saudi, suspected al-Qaeda financier. Previously listed as "disappeared" by Human Rights Watch.

12. Khalid Sheikh Mohammed

Reportedly arrested on **March 1, 2003**, Rawalpindi, Pakistan.

Kuwaiti (Pakistani parents), suspected al-Qaeda, alleged to have "masterminded" Sept. 11 attacks, killing of Daniel Pearl, and USS Cole attack in 2000. Listed in "George W. Bush: Record of Achievement, Waging and Winning the War on Terror," available on the White House website. Previously listed as "disappeared" by Human Rights Watch.

13. Majid Khan

Reportedly arrested on **March-April 2003**, Pakistan.

Pakistani, alleged link to Khalid Sheikh Mohammad, alleged involvement in plot to blow up gas stations in the United States. Details about Khan's arrest were revealed in several media reports, especially in Newsweek: Evan Thomas, "Al Qaeda in America: The Enemy Within," Newsweek, June 23, 2003. U.S. prosecutors provided evidence that Majid Khan was in U.S. custody during the trial of 24-year-old Uzair Paracha, who was convicted in November 2005 of conspiracy charges, and of providing material support to terrorist organizations.

14. Yassir al-Jazeera (aka al-Jaziri)

Reportedly arrested on **March 15, 2003**, Pakistan.

Possibly Moroccan, Algerian, or Palestinian, suspected al-Qaeda member, linked to Khalid Sheikh Mohammed. Details of arrest reported: Alex Spillius, "FBI Questions al-Qaeda Man in Pakistan," Daily Telegraph, March 17, 2003; Paul Haven, "Al-Qaida suspect begins cooperating with authorities, Pakistani security officials say," Associated Press, March 17, 2003.

15. Ali Abdul Aziz Ali (aka Ammar al Baluchi)

Reportedly arrested on **April 29, 2003**, Karachi, Pakistan.

A Pakistani, he is alleged to have funneled money to September 11 hijackers, and alleged to have been involved with the Jakarta Marriot bombing and in handling Jose Padilla's travel to the United States. U.S. Judge Sidney Stein ruled that defense attorneys for Uzair Paracha could introduce statements Baluchi made to U.S. interrogators, proving that he was in U.S. custody. Former Deputy Attorney General James Comey also mentioned Baluchi during remarks to the media about the case of Jose Padilla on June 1, 2004

16. Waleed Mohammed bin Attash (aka Tawfiq bin Attash or Tawfiq Attash Khallad)

Reportedly arrested on **April 29, 2003**, Karachi, Pakistan.

Saudi (of Yemeni descent), suspected of involvement in the bombing of the USS Cole in 2000, and the Sept. 11 attacks. See Afzal Nadeem, "Pakistan Arrests Six Terror Suspects, including Planner of Sept. 11 and USS Cole Bombing," Associated Press, April 30, 2003. His brother, Hassan Bin Attash, is currently held in Guantanamo. Previously listed as "disappeared" by Human Rights Watch.

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President Bush described his arrest as a "major, significant find" in the war against terrorism: "He's a killer. He was one of the top al-Qaeda operatives. . . . He was right below Khalid Shaikh Mohammad on the organizational chart of al-Qaeda. He is one less person that people who love freedom have to worry about." David Ensor and Syed Mohsin Naqvi, "Bush Hails Capture of Top al Qaeda Operative," CNN.com, May 1, 2003.

17. Adil al-Jazeera

Reportedly arrested on **June 17, 2003** outside Peshawar, Pakistan. Algerian, suspected al-Qaeda and longtime resident of Afghanistan, alleged "leading member" and "longtime aide to bin Laden." (Possibly transferred to Guantanamo.) Previously listed as "disappeared" by Human Rights Watch.

18. Hambali (aka Riduan Isamuddin)

Reportedly arrested on **August 11, 2003**, Thailand. Indonesian, involved in Jemaah Islamiyah and al-Qaeda, alleged involvement in organizing and financing the Bali nightclub bombings, the Jakarta Marriot Hotel bombing, and preparations for the September 11 attacks. Listed in "George W. Bush: Record of Achievement, Waging and Winning the War on Terror," available on the White House website. Previously listed as "disappeared" by Human Rights Watch.

19. Mohamad Nazir bin Lep (aka Lillie, or Li-Li)

Reportedly arrested in **August 2003**, Bangkok, Thailand. Malaysian, alleged link to Hambali. See next entry.

20. Mohamad Farik Amin (aka Zubair)

Reportedly arrested in **June 2003**, Thailand. Malaysian, alleged link to Hambali. For more information on the arrest of Mohammad Farik Amin and Mohamad Nazir bin Lep, see: Kimina Lyall, "Hambali Talks Under Grilling—Slaughter of Innocents," *The Australian*, August 21, 2003; Kimina Lyall, "Hambali Moved JI Front Line to Bangladesh, Pakistan," *The Weekend Australian*, September 27, 2003; Simon Elegant and Andrew Perrin, "Asia's Terror Threat," *Time Asia Magazine*, October 6, 2003; Simon Elegant, "The Terrorist Talks," *Time*, October 13, 2003.

21. Tariq Mahmood

Reportedly arrested in **October 2003**, Islamabad, Pakistan. Dual British and Pakistani nationality, alleged to have ties to al-Qaeda. See "Pakistan grills detained British al-Qaeda suspect," *Agence-France Presse*, November 10, 2005; Sean O'Neill, "Five still held without help or hope; Guantanamo," *The Times*, January 12, 2005.

22. Hassan Ghul

Reportedly arrested on **January 23, 2004**, in Kurdish highlands, Iraq. Pakistani, alleged to be Zarqawi's courier to bin Laden; alleged ties to Khalid Sheikh Mohammad. President Bush described Hassan Ghul's arrest on January 26, 2004, in comments to the press, Little Rock, Arkansas: "Just last week we made further progress in making America more secure when a fellow named Hassan Ghul was captured in Iraq. Hassan Ghul reported directly to Khalid Sheik Mohammad, who was the mastermind of the September 11 attacks. . . . He was captured in Iraq, where he was helping al Qaeda to put pressure on our troops."

23. Musaad Aruchi (aka Musab al-Baluchi, al-Balochi, al-Baloshi)

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Reportedly arrested in Karachi on **June 12, 2004**, in a "CIA-supervised operation."

Presumably Pakistani. Pakistani intelligence officials told journalists Aruchi was held by Pakistani authorities at an airbase for three days, before being handed over to the U.S., and then flown in an unmarked CIA plane to an undisclosed location. Anwar Iqbal, "Pakistan Hands Over 1998 Bomber to US," United Press International, August 3, 2004. See also, reports cited in next entry, and Zahid Hussain, "Pakistan Intensifies Effort Against al Qaeda," The Asian Wall Street Journal, August 5, 2004; Bill Powell, "Target: America," Time Magazine, August 16, 2004, Vol. 164, Issue 7; "Pakistani Aidés: Al-Qaida Arrest in June Opened Leads," Dow Jones International News, August 3, 2004; "CIA-supervised arrest in Pak opened valuable leads: Report," The Press Trust of India, August 3, 2004.

24. Mohammed Naeem Noor Khan (aka Abu Talaha)

Reportedly arrested on **July 13, 2004**, Pakistan.

Pakistani, computer engineer, was held by Pakistani authorities, and likely transferred to U.S. custody. (Possibly in joint U.S.-Pakistani custody.) See Douglas Jehl and David Rohde, "Captured Qaeda Figure Led Way To Information Behind Warning," New York Times, August 2, 2004. Kamran Khan, "Al Qaeda Arrest In June Opened Valuable Leads," Washington Post, August 3, 2004; Kamran Khan and Dana Priest, "Pakistan Pressures Al Qaeda; Military Operation Results In Terror Alert and Arrests," Washington Post, August 5, 2004; "Pakistan questioning almost 20 Al-Qaeda suspects," Agence-France Presse, August 5, 2005; Robert Block and Gary Fields, "Al Qaeda's Data on U.S. Targets Aren't New: Surveillance of Listed Sites In Eastern Cities Took Place Over Time, Perhaps Years," The Asian Wall Street Journal, August 7, 2004; Adrian Levy and Cathy Scott-Clark, "One Huge U.S. Jail," The Guardian, March 19, 2005.

25. Ahmed Khalfan Ghailani

Reportedly arrested on **July 24, 2004**, Pakistan

Tanzanian, reportedly indicted in the United States for 1998 embassy bombings. U.S. and Pakistani intelligence officials told UPI that Ghailani was transferred to "CIA custody" in early August. See Anwar Iqbal, "Pakistan Hands Over 1998 Bomber to US," United Press International, August 3, 2004. Pakistani security officials told AFP and Reuters in January 2005, that Ghailani was handed over to the United States "several months ago." See e.g., "Pakistan hands Tanzanian Al-Qaeda bombing suspect to US," Agence France Presse, January 25, 2005. Listed as captured in "George W. Bush: Record of Achievement, Waging and Winning the War on Terror," available on the White House website.

26. Abu Faraj al-Libi

Reportedly arrested on **May 4, 2005**, North Western Frontier Province, Pakistan.

Libyan, suspected al-Qaeda leader of operations, alleged mastermind of two assassination attempts on Musharraf. Col. James Yonts, a U.S. military spokesman in Afghanistan, "said in an email to The Associated Press that al-Libbi was taken directly from Pakistan to the U.S. and was not brought to Afghanistan."

From: <http://hrw.org/english/docs/2005/11/30/usdom12109.htm>

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http://hrw.org/english/docs/2005/11/30/usdom12109_txt.htm

4/13/2006

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L135

Deeks, Ashley S

From: Filippatos, James
Sent: Friday, May 05, 2006 9:34 AM
To: Deeks, Ashley S; Brancato, Gilda M; Hill, Steven R; Pelofsky, Eric J; Johnson, Darin E; Dorosin, Joshua L; Legal-All-Deputies
Subject: FW: USEU Media Transcript for Clearance

RELEASED IN FULL

FYI.

Jim
 7-7970

From: Gianfranceschi, Robert E(Brussels)
Sent: Friday, May 05, 2006 4:31 AM
To: Filippatos, James
Subject: FW: USEU Media Transcript for Clearance

Jim,

John Bellinger asked that I send him directly the transcript for clearance, which I did yesterday afternoon. Sending you a copy to follow up with any changes and clearance, for posting on USEU website. Thanks for your help on this – and for your preliminary advice on press events.

Rob

Robert Gianfranceschi
 Press Officer - USEU
 Tel. +32 (0)2 508-2779
 Fax. +32 (0)2 512-5720
 email. gianfranceschire@state.gov

From: Gianfranceschi, Robert E
Sent: Thursday, May 04, 2006 6:01 PM
To: Bellinger, John B(Legal)
Subject: USEU Media Transcript for Clearance

John,

Here's the draft transcript from this morning's media roundtable – for your clearance. Our intention, with your approval, is to post the cleared transcript on USEU website.

Le Monde expects the story based on the Stroobants interview to run in the edition out Friday early afternoon (and dated Saturday, May 6).

Robert Gianfranceschi
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JOHN B. BELLINGER, III
 Legal Adviser, U.S. Department of State

Media Roundtable
USEU – Brussels
May 4, 2006

UNITED STATES DEPARTMENT OF STATE
 REVIEW AUTHORITY: SHARON E AHMAD
 DATE/CASE ID: 12 AUG 2009 200706444

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Mr. Bellinger: Thank you all for coming out this morning early. As you know, I'm John Bellinger, the Legal Adviser at the State Department. I am passing through Brussels briefly right now, largely just for bilateral consultations with EU officials, with Belgian officials, with NATO officials, primarily on my way this afternoon to Geneva where I will head the U.S. delegation presenting our defense of our report to the Committee Against Torture under the Convention Against Torture. We make our presentation tomorrow in Geneva.

It's actually an amusing process in terms of the process. We will make a presentation, then the Committee will give us questions, and then we have a take-home assignment. We go home over the weekend and work out our answers to the questions, and then we come back on Monday in Geneva and provide our answers.

We'll have quite a large delegation, between 25 and 30 people, from all U.S. agencies. We've worked very hard to answer the Committee's questions and have taken the process extremely seriously.

The Convention Against Torture requires a report every four years and it was time for the U.S. report. We have provided quite a voluminous one, and in addition have prepared a number of answers to the Committee's questions.

Obviously, this is a difficult time for the United States with numerous allegations that have been made, but we don't shrink away from answering the questions and we have brought, as I say, a large delegation of people to demonstrate that we take the process very seriously, that we take our obligations to provide a report very seriously, and have come prepared to answer the Committee's questions.

I have, during the last year including my time in Brussels, tried to meet with journalists and with officials in all of the European capitals that I have been through to address questions that have been raised about the U.S. commitment to its international obligations, including with respect to detainees and international criminal justice. This is something that Secretary Rice takes extremely seriously. During her transition from the White House to the Department of State, when I was the co-manager of her transition team, this was an issue that we identified was of particular concern in Europe. You'll recall at the time she was confirmed she emphasized that now is the time for diplomacy, meaning that after the two wars during the previous four years that it was important to emphasize our diplomatic activities and a sub-part of that was emphasizing U.S. commitment to our international obligations and to rule of law.

You will have seen, if you follow closely, that Secretary Rice has mentioned this theme regularly in her presentations. Just two weeks ago she addressed the American Society of International Law, at its centennial in Washington, and made further significant remarks on international law and rule of law, and I, as the Legal Adviser to the State Department, have tried to go through European capitals and to answer questions on these issues and emphasize our commitment to our obligations and to answer the questions people have that we know are out there.

So I'll just stop with that and start taking your questions.

Q: I have been following the CIA inquiries in the European Parliament. One of the allegations made by the former British Ambassador to Uzbekistan is that the CIA has been effectively subcontracting torture, using the Uzbeks to do this. The argument put forward by the British Foreign Secretary Jack Straw was that was in line with the Convention on Torture because you're not instigating the torture yourselves. Is that also the American administration's reading of the Convention?

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Mr. Bellinger: I won't comment on what Mr. Straw said because I haven't seen it. We've made very clear that, contrary to allegations, we do not outsource torture. We are against torture ourselves. We take our obligation under the Convention Against Torture seriously. We have criminal statutes against torture. The President has made clear that we do not condone torture. We will not transfer people to other countries expecting that they will be tortured.

We have said, as you know, in Secretary Rice's statement last December, we have defended as a useful tool in fighting terrorism the practice of rendition in certain rare circumstances where an individual would otherwise not be able to be brought to justice or would otherwise be able to escape and avoid capture, that we have defended the practice in terms of transferring a person to another country of his nationality or where the person may be wanted. But in all circumstances we do not transfer the person with the expectation that the person would be tortured or would be mistreated.

Q: The U.S. is evidently in a campaign here, a public relations campaign, as you said earlier in your statement, to alleviate fears in the international community on this. Do you not think it is really time to take into account what the international community is telling you, basically the Europeans - that it's time to really do something about Guantanamo, which I'm no legal person, but it seems to me it does not abide by international law. That would be a huge step in easing fears and making the situation better. [Inaudible] So what are you going to do?

Mr. Bellinger: We are acutely aware of the concerns that have been raised both in Europe and around the world about Guantanamo. We don't want to keep Guantanamo open any longer than is necessary. As you know, we have been reducing the numbers. We do not want to be the world's jailers.

A great difficulty is - what is the alternative? There have been a number of voices recently who have called for the closure of Guantanamo, but none of those who have called for the closure of Guantanamo have suggested an alternative. So we know there are a large number of people in Guantanamo who have trained in al-Qaida training camps, trained in terrorist techniques, in bomb making, in chemical weapons manufacture, and the question is what should be done with those people?

We don't have many other countries in the world who are stepping up to say this is a problem for the international community. The United States should not have to shoulder this burden alone. So we are happy to take these individuals.

I would dispute your suggestion that it's a violation of international law. We're clearly aware of the concerns people have raised. One of the things that I have tried to do because I think the U.S. perhaps has not been sufficiently clear to explain our legal basis and to address the legal concerns that have been raised over the last few years about Guantanamo, to go out and address those concerns.

I think it's both ironic and telling that critics criticize us for essentially diametrically opposed violations of international law. Half the critics tell us that the people in Guantanamo should be treated as criminals and need to be prosecuted under criminal laws or released. The other half of the people say they should be treated under international humanitarian law or the laws of war and need to be treated as POWs or released. That's just simply a quick summary. There are hundreds of different statements that people tell us about the way they think the legal framework ought to work, and the fact that there seem to be so many different views reflects, I think, an understandable, uncomfortableness that perhaps we all have about the holding of this category of al-Qaida people. But the fact is the legal framework for holding people like this was simply not a very well developed framework and not well developed to hold people like this.

So I don't think it's a violation of international law. We think we are acting completely consistently with our international obligations. But we do know those questions are out there and that's one of the reasons that I've tried to come out and to address the concerns that people have.

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Q: You said that there has been the practice of rendition. Now the Council of Europe has said in a preliminary report that there have been thousands of CIA flights over Europe. Can you confirm that the rendition taking place has been in Europe or above the EU, and could you give any figures?

Mr. Bellinger: Thanks very much for that question. The last time I was in Europe, about two months ago, the suggestion was that there were 400 flights. We're now up to 1,000 flights. I think the next time I'll be here it will probably be about 10,000 flights.

These allegations that there have been thousands of flights with the implication that they all have got detainees on them, and worse, detainees bound for mistreatment, is simply absurd. And the suggestion in fact that these flights are in fact leading up to anything that is improper or nefarious is also, I think, a dangerous suggestion.

There have not been thousands of flights. There have been, as we have said, a very few cases of rendition. We have made clear that we are not going to comment on specific details. But the suggestion that there have been large numbers or that this allegedly large number of flights have had detainees on them is simply an absurd allegation.

It's dangerous in the following way: in that the suggestion that flights themselves, intelligence flights are somehow engaged in illegal activity really undermines the cooperation between the United States and Europe. Many of these flights that have occurred may simply be carrying analysts for intelligence agencies to cooperate with one another, or other officials who are engaged in counter-terrorism cooperation. They may be carrying forensic evidence that will be shared with European partners so that Europeans can look at the evidence that we have collected.

So it's very dangerous to suggest that these instances of flights like this are somehow always engaged in illegal activity.

Q: To follow up on that. I think the reference was to about a thousand, not thousands. Do you still say that that figure is absurd?

Mr. Bellinger: I don't have the details on, one, I'm not sure what the latest allegation is. My point is that it seems to be growing. I don't have the information on exactly how many flights there have been.

What I am suggesting is that the unchallenged allegation or implication that all of these flights have got detainees on them is really just absurd. Someone needs to challenge that. It's not possible for the United States to prove a negative, but responsible European governments or responsible European officials simply need to say this has gotten out of hand. There is no evidence for the suggestion or implication that however many flights there have been, that they have all got detainees on them or that an intelligence flight is in fact engaged in some sort of improper activity. In fact, just the opposite.

The implication ought to be that if there are flights, no matter how many of them there have been, that this is in fact a manifestation of cooperation amongst our governments.

The best way to prevent terrorist attacks against any of our countries is through effective intelligence cooperation, and intelligence activities really in this global environment can't be done by one country alone. It can only be done through cooperation.

So the fact that there are two flights or a thousand flights, and I really don't have the details on how many there have been, I'm making a more general point, really is a sign of cooperation and not of anything that's improper.

Q: So are you saying that European governments did know about these flights?

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Mr. Bellinger: No, I'm not saying that at all. I am saying, you'll recall Secretary Rice said previously that we have conducted renditions prior to September 11. In those cases the United States brought people back to justice prior to September 11^h. In cases since September 11,^t there have been cases where we have transferred an individual to another government of their nationality, or otherwise to face justice, and that in doing that we comply with our international obligations. We assume that other governments are complying with their international obligations. And we respect the sovereignty of the governments involved.

Q: So the flights are continuing? Continuing if and when they're necessary?

Mr. Bellinger: I wouldn't necessarily assume that at all. I would note that at least despite a good deal of digging by every journalist in Europe that the last allegation of a rendition was something like three years ago.

Q: And this inquiry, can it affect transatlantic intelligence sharing between the U.S. and EU?

Mr. Bellinger: That's a good question. I think it can be. That's really the point that I am trying to make here, is that this furor over renditions and really now just the furor over flights alone and the suggestion that flights alone are somehow improper I think can ultimately and already is undermining intelligence cooperation by suggesting that there should not even be people flying from one country to another or information being shared. This is the way we cooperate with one another. To suggest that the mere fact alone that a flight is somehow improper I think is a dangerous idea.

Q: You are saying those flights were done in cooperation, and so can I, do you suggest that those flights are continuing now without detainees? Or if there is no flights at the moment does that mean there is no cooperation going on?

Mr. Bellinger: The idea about intelligence activities is that one does not confirm or deny them.

I will tell you we looked very closely, at the time of Secretary Rice's trip in December, at the individual allegations because so many - not only in their breadth but also the individual allegations of a rendition here or a flight there - so many of the individual allegations were incorrect, that the U.S. government thought very seriously about trying to deny the individual allegations because so many of them were wrong. But we ultimately concluded, as I think all governments have concluded, that it's simply not possible to get into the business of confirming or denying specifics.

The result, unfortunately, has been damage to the reputation of the United States because people have assumed a number of things that are simply not happening. But I cannot comment on the specifics. I simply say that people should not assume that the fact alone of a flight is in fact something improper.

Q: But sir, the problem there is that we take your word for it, but you know just as well as I do precisely that the activities of the CIA and others tend to be secret. So you have a problem here. You can say as much as you want that there are no detainees on these flights and what have you, but it is your word against others. What is a little bit strange in your argument is that you are admitting that there are a whole bunch of flights. You are telling us that we should not assume there are detainees on all these flights, but you cannot exclude it either.

Mr. Bellinger: That's why it's a very difficult situation for the United States.

I think that any reasonable person looking at the facts that are actually out there would conclude that these allegations or a suggestion that these flights have all got detainees on them, or really, that any more than an extremely small number from a number of years back have been involved in renditions. I think any reasonable

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person looking at those facts would conclude that the allegations to the contrary are just simply overblown.

But you're exactly right. It's very difficult for us to try to combat these suggestions. That's why we have asked for responsible voices to simply try to calm things down a little bit. It's very difficult to try to prove a negative.

People have periodically asked us, well, prove to us what is on every single flight. Come up with a list of every flight, tell us what was involved. Well, I think by my merely stating that, I think you will realize that's just not possible to do. Intelligence activities by their nature are simply carried out in secret. That's because you don't want to tell the al-Qaida people that you may have captured their material or that you are engaged in cooperation. That's simply something we cannot carry out publicly.

Q: Will you cooperate with the European Parliament's inquiry into this, will officials actually....?

Mr. Bellinger: Yes, I will meet with them myself, as will other senior officials at the State Department. Of course, we will do it on an unofficial basis. There's not any official jurisdiction by the committee over the United States, but we recognize that the questions are out there. We are not trying to dodge the questions. We recognize that they're there. We are limited in what we can say for the reasons that I've explained, but we'll be happy to meet with them when they're in Washington.

Q: You are saying that renditions serve a useful purpose. Why is there a need to send detainees to Egypt or Syria or Uzbekistan to be interrogated? What is the added value in that?

Mr. Bellinger: Thank you for that question. I've certainly regularly heard "what possible reason could there be for a rendition except to send someone off to be tortured." That's an unfortunate statement.

One, as I've said I think clearly, renditions can be used to bring someone back to justice correctly as the United States has done, as European governments have done, and those have been upheld by the European Court of Human Rights. But in other cases let's assume a country finds a member of al-Qaida who is trying to cross into that country, cross their borders. They picked them up for an immigration violation and they're prepared to expel them, but they notify other countries such as the United States that they have picked this person up and we find that they're in fact a national of some third country and that third country says "that is one of our nationals, we are prepared to take that individual back." They may be wanted in connection with a terrorist act. They may be a suspect as part of a terrorist cell. They say we're prepared to take that person back but we don't have an extradition treaty with the first country, and moreover, we don't have any way ourselves of bringing that person back.

The question then becomes really for the international community, is it better to simply let a person suspected of terrorism who has been picked up somewhere around the world, simply disappear to perhaps commit a terrorist act again? Or in terms of the overall fight against terrorism, is it better to have the person returned to the country of their nationality or to a country in which they're wanted?

For better or worse the United States is the country that has got the resources to be able to move people from one country to another, but that's the reason why, why a rendition may be a useful tool in fighting terrorists.

Q: Why can't the CIA interrogate them itself? If you bring them to Guantanamo Bay, there are not Americans in Guantanamo Bay, so why do you send others to Syria and Uzbekistan?

Mr. Bellinger: To ask the question is to answer it. As you know, we're not looking to have more people in Guantanamo Bay. And in a number of these cases, they may not have actually committed a crime against the United States. It may be that we find that it is a member of al-Qaida who is wanted in some other country. Another country may have notified us that an individual is wanted in connection with a terrorist act or

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a part of a terrorist cell. So, no, the United States would not want to bring yet another person to Guantanamo Bay or to bring them into the United States.

Q: But some of the renditions have involved people who are, in the case of Maher Arar, for example, he was a Canadian citizen. He was flown off to Syria. The case of Khalid al Masri, which is still being investigated, he was a German citizen. How can you justify that? If they are wanted, why can't they be returned to the country where they are naturalized and the country where they are living?

Mr. Bellinger: I can't comment on all of the specific cases. I think in the Arar case you should check the facts. I think he was simply expelled, actually, for an immigration violation from the United States and --

Q: But he was taken to Syria and tortured.

Mr. Bellinger: That's what he says. I don't know what the facts are in that case. He was expelled from the United States. I think a rendition in that context would be a mischaracterization.

Q: You said intelligence sharing is very important with your European partners. How come that some of your European partners actually deny that there have been CIA flights? Like NATO Secretary General de Hoop Scheffer, EU Terrorism Coordinator de Vries recently at the European Parliament.

Mr. Bellinger: Well, I don't know what he has said specifically. Overall, obviously there is cooperation that may involve flights carrying an analyst or forensic information from one country to another. In some cases people may take commercial flights, but in other cases if one has a private airplane, that's a much more efficient way to carry U.S. or foreign officials or information around than using a commercial aircraft.

Again, my point is the mere fact of an airplane operated by an intelligence service is no different from a military aircraft or a law enforcement aircraft. The suggestion that an intelligence flight is somehow improper is, I think, a wrong suggestion.

Q: But they actually denied that there had been any CIA flights, whereas you admit this.

Mr. Bellinger: I'm not aware of what they've said. I have not seen anybody deny that there have been any CIA flights.

Q: Can I go back to the allegations; the latest allegations from the Parliament are that there have been flights with a police mission that have not been declared to international security authorities. Now I don't know how it works, but in their eyes it seems like a serious breach of rules. Can you clarify how this works? If there's a CIA-operated plane, what does it have to do to be able to land in any country?

Mr. Bellinger: The laws governing air travel get to be quite complex. But we certainly are complying with our international obligations with respect to flights.

Q: If a plane lands at a military base, an American military base, does it have to be declared?

Mr. Bellinger: I think the facts may be, it may vary from country to country in terms of practice and whether it's a state flight or a civilian flight. As I said, rules can be quite complex, but we comply with our international obligations and as Secretary Rice has said, we respect the sovereignty of our European partners.

Q: Have you given any specific guarantees to any governments in the EU that rendition hasn't taken place on their territory?

Mr. Bellinger: We obviously get questions about renditions, both publicly and privately all the time, and we do

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what we can to answer the questions. We don't publicly confirm or deny intelligence flights, but we are obviously in regular conversation with European governments.

Q: Can I ask a question on the definition of torture? Because Amnesty says that the American Administration policy is that sleep deprivation, making people stand up for long periods of time, and pouring water over them to simulate drowning sensations, that these are not forms of torture. Is that your viewpoint, the American Administration's viewpoint?

Mr. Bellinger: Well, two things. One, I'm not going to comment on specific techniques. We've made clear that we don't comment on specific techniques. The definition of torture, though, is something that is defined in both the Torture Convention and in our criminal laws and we abide by those definitions and the definition is conduct that's intended to inflict severe physical or mental pain. We abide by that definition.

In addition, as you know, we recently had enacted the Detainee Treatment Act, also known as the McCain Amendment, which also prohibits a lesser form of activity which would be anything that would inflict cruel, inhuman, or degrading treatment.

Q: But don't you think, until you give concrete examples that you can just simply say: "well, we don't agree with torture," but you never really define what kind of things are acceptable and what aren't. That's the big problem. Because, surely, are you almost implicitly admitting you do practice these techniques because you're refusing to deny that these are torture?

Mr. Bellinger: We have, again, thought hard about trying to address specific allegations and concluded, despite the difficulties that you mentioned, that it's just simply not appropriate to go confirming, denying, or analyzing specific techniques.

We do expect that in the next several weeks that the Defense Department will be releasing the revised field manual on interrogation techniques. This is the one that's referred to in the McCain amendment and we expect that that will be out sometime shortly.

Q: What is it not appropriate to comment on specific techniques? I'm not a lawyer, but isn't that what the law is about, about practice?

Mr. Bellinger: Surely you can understand that if we state precisely what it is that the interrogation techniques are that would be used against members of al-Qaida then they would train against them. And so our military has concluded that it's just simply not appropriate to provide a road map for the techniques that are being used.

At the same time we also think that it's not appropriate to confirm or deny and get into the specific business of saying yes, we do this but no, we don't do that.

Q: If there has been such a fuss about this whole issue. Assuming that your assumption is that most of these flights are not for rendition, wouldn't it be more sensible just to say, transparently, that X percentage of these 1,000 flights would involve rendition or only eight or nine cases and that's it, because, like it or not, the impression has got about, the statement of Dick Marty of "gangster tactics" by the CIA. Wouldn't transparency, in this case, be the best course?

Mr. Bellinger: We've been trying to do that as best we can. One of our purposes in trying to dampen this really hyperbolic speculation about flights is to say exactly what you've just said which is that while we have said that we conduct, have conducted renditions on a periodic basis, the suggestion that there have been large numbers is just simply incorrect, but we just can't get into the business of providing exact numbers.

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Q: You said early some allegations were dangerous. Can you elaborate on what you mean by dangerous?

Mr. Bellinger: By dangerous I mean in order to fight terrorism, which we all know that al-Qaida has conducted and is planning additional attacks against all of our countries; the best way to prevent those attacks is for there to be cooperation amongst all of our countries. No country can do it by itself. It's important for information to be shared between Europe and the United States and vice versa. And the suggestion that a mere fact of a flight alone, which in fact may simply be bringing people to talk to one another or to share evidence, and to suggest that the mere fact of a flight is improper will certainly dampen that sort of cooperation.

It may be that next time the United States will be reluctant to bring people to Europe or to share information if the suggestion is that any flight is engaged in improper activity, so that's what I mean by dangerous. Dangerous to the extent that it may undermine public support for the intelligence cooperation that really is necessary to protect all of our societies.

Q: Do you feel like your policies are working? You have referred to concerns Europeans have, and others, regarding Guantanamo Bay, these rendition flights. Are you winning the war against terror? [inaudible]?

Mr. Bellinger: We collect, because we have very good intelligence services, we share an enormous amount of information with Europe. We do not obviously talk about the specific information that we collect and that we share, but certainly information that is collected does, we think, thwart further intelligence attacks.

Are we being successful in addressing these concerns? These are very difficult issues. We understand, as I said, we're acutely aware of the concerns that have been raised both about Guantanamo and about renditions, and part of what we're doing is simply trying to answer the questions as best we can. We understand that unless one can provide details that it may not be satisfying, but that's simply the nature of intelligence activities.

Q: You mentioned earlier the discussion of the status of prisoners at Guantanamo. Can you explain why is it that they are not treated as prisoners of war? And what is their status?

Mr. Bellinger: Their status is, as you know we refer to them as "unlawful combatant" which is not, and this is really quite important and one of the reasons that I try to do roundtables like this. The term "unlawful combatant" is not a term that was invented by the Bush administration. It's a term that's been around for 40 or 50 years, widely acknowledged in all of the treatises on the laws of war and about prisoners of war. It refers to individuals who engage in combat but do it in an illegal way. So this is an accepted term.

One problem overall in this whole area is that there are very, very few people who are knowledgeable about international humanitarian law or about the laws of war. Most lawyers and others in our societies have grown up, because none of us have really been at war for 50 years, grown up in a civil or criminal law system, so they're used to those systems. But in fact the term "unlawful combatant" is one that's been regularly used in the academic literature.

Why are they not treated as a prisoner of war? Under the Geneva Conventions it's quite clear. The Geneva Conventions apply, it says in Article 2 of the Convention, between High Contracting Parties to the Convention. The Geneva Convention is essentially a contract amongst states that says if we go to war with one another and we have signed the Convention, we will treat each other in a particular way, assuming that we've signed the Convention and that we meet the terms of the Convention.

Al-Qaida, obviously, is not a signatory to the Convention and so it's not a beneficiary of the Convention because it's not a High Contracting Party.

Furthermore, the term "prisoner of war" is actually a defined term in the Convention. People accuse us of

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violations of international law, but actually if one simply reads the terms of the Geneva Convention it says a "prisoner of war" is a member of a national army who carries arms openly, wears a uniform recognizable at a distance, and respects the laws and customs of war.

Al-Qaida, in addition to not being a party to the Geneva Convention, doesn't fit any of those definitions.

Members of the Afghan army or the Taliban, Afghanistan was a signatory to the Geneva Convention, but they still didn't fit the definitions of a "prisoner of war", so they don't fit the definitions of the treaty.

Q: If they don't fit the definition, what are the implications for your treatment?

Mr. Bellinger: What are the implications for treatment? Then that they are not entitled to the privileges of being a "prisoner of war". Those privileges are provided to people whose countries are party to the Convention and who have followed the Convention. What the United States has said, because we are absolutely committed to the Geneva Conventions, we certainly want, we have applied them, for example, in Iraq, which is a more traditional war. We expect our forces, if captured by a Contracting Party to the Geneva Conventions, to be treated in accordance with the Geneva Convention.

So we have said that we will treat the detainees consistent with the principles of the Geneva Convention, but there are numerous things in the Convention that say that prisoners of war are entitled to that we think would not be appropriate for members of al-Qaida, such as, normally, as you know I think from watching television, that in a normal prisoner of war camp people are allowed to continue to organize themselves hierarchically, to wear their uniforms, and we think that would not be appropriate for members of al-Qaida.

Q: You mentioned people talking about alternatives to Guantanamo. What alternatives do you see?

Mr. Bellinger: Thank you. It's a good question.

We really are aware of these concerns. We have been looking for good alternatives. We welcome the assistance of the international community in trying to see this as a common problem.

The United States certainly sees that in detaining individuals who were picked up by coalition forces, who had been trained in al-Qaida training camps, that we are doing not just a service for the United States, but for all countries who might have been subject to attack by these same individuals. So we have not seen other countries volunteering to be helpful, but certainly we could appreciate assistance rather than simply calling for the closure of Guantanamo.

What we have been trying to do is to reduce the numbers by releasing people who we think would not return to the fight. Now as you've heard us say before, about ten percent of the people who have been just released outright have gone right back to fighting again. Others we have transferred to other governments for further detention. As you know we've reached agreements recently with Afghanistan to return a large number to Afghanistan, but we are trying very hard to reduce the numbers.

People say, well why can't you prosecute them criminally? The United States on September 11th did not have criminal laws that exerted jurisdiction in most cases over foreign nationals who were simply training in a training camp in Afghanistan. We had jurisdiction over our own nationals. We had jurisdiction over people who were planning specifically to commit crimes against the United States. But people very glibly say, well if you think these people have done something wrong, why don't you try them in your federal courts? But remember, there has to have been a criminal statute.

This is what actually Europeans themselves are finding. When we have returned the dozen or so detainees to

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European countries, none of them found that they actually had violated specific criminal statutes because none of our countries really had a well developed criminal framework that —

Now since September 11, more criminal laws have been put on the books to combat this sort of behavior, but in most of these cases people who are not U.S. nationals or who are not plotting particular crimes against the United States had not violated U.S. criminal laws.

For those who were generally part of a criminal conspiracy of being part of al-Qaida or were fighting us on the battlefield and committed war crimes, people like that may be tried in our military commissions. But to answer your question, the alternatives are really very, very difficult. We would welcome good suggestions from other countries as to what should be done with these individuals rather than to simply say "Guantanamo should be closed."

Mr. Bellinger: Thank you all for coming.

####

LETTERS TO THE EDITOR

U.S. Renditions of Terrorists Are Legal, Vital

Council of Europe Secretary General Terry Davis's June 27 editorial-page commentary "Unlawful Rendition" suggests that renditions of terrorist suspects conducted by the U.S. are fundamentally different from the 1994 "capture" in Sudan by French authorities of Illich Ramirez Sanchez, also known as Carlos the Jackal, which subsequently was upheld by the European Commission on Human Rights. The U.S. government is well aware that Carlos was rendered in order to face criminal prosecution in France. The U.S. itself has rendered a number of suspected terrorists to stand trial in the U.S., including Ramzi Yousef, who helped plan the first attack on the World Trade Center, and Mir Aimal Kansi, who gunned down several officials in front of CIA headquarters in Langley, Va.

But renditions of suspects to stand trial are not the only situations in which renditions are appropriate. Renditions are an important way to transfer terrorist suspects to their home countries, or to countries where they can be questioned, held or brought to justice for their suspected terrorist acts or other crimes. Sometimes such transfers cannot be done through extraditions or other "standard" processes, either because an extradition treaty is not in place or because the formal extradition process is not feasible in a particular case.

The Council of Europe's Venice Commission, which Swiss Senator Dick Mar-

ty's recent report cites as the "European point of view," asserts that there are only four legal ways to transfer a prisoner to foreign authorities: deportation, extradition, transit, and transfer of a sentenced person to serve that sentence in his country of origin. Thus, under the Venice guidelines, even the French rendition of Carlos would have been improper.

We disagree with the Venice Commission's conclusion. As the European Commission on Human Rights found, renditions are not per se unlawful, though important principles must be protected. Renditions should not be used to transfer terrorist suspects to face torture, and the U.S. does not transport anyone, and will not transport anyone, for this purpose. We believe, however, that the international community must continue to be able to use renditions not only to bring terrorists to justice but also to prevent terrorist suspects from remaining at large to plan future attacks.

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Washington

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September 06, 2006

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TAGS: PHUM, PREL
Captions: None
Subject: PRESIDENTIAL SPEECH ON DETAINEES IN THE WAR ON TERROR
Ref: None

1. (U) This is an action request. Please see paragraph 6.

2. (U) On September 6, President Bush delivered a major speech addressing the issue of detainees in the war on terrorism. In his remarks, the President announced that 14 leaders and operatives of al Qaeda have been moved from classified locations, where they were being held and questioned by CIA, to DOD custody where they can be brought to justice for their crimes. The ICRC has been notified and will have access to them at Guantanamo. No detainees remain in CIA custody. This group included those believed to have orchestrated the 9/11 attacks and the attack on the U.S.S. Cole, and those believed to have been involved in the bombings of our embassies in East Africa.

3. (U) The President explained that we are working with the U.S. Congress on legislation that we hope will soon allow us to bring these individuals to trial before military commissions. He described the need after September 11 to take the offensive to deny terrorists safe haven and kill or capture al Qaeda members; explained the CIA program created after September 11 to detain and interrogate the most dangerous terrorists captured by the United States during the ongoing armed conflict with al Qaeda, who had unparalleled knowledge about terrorist networks and their plans for new attacks; and demonstrated the critical ways that this program has thwarted further attacks both at home and abroad. He reiterated that he hopes eventually to close Guantanamo, and called on other countries to work with us toward this end, urging nations to take back their nationals at Guantanamo who will not be prosecuted by military commission. He emphasized that we are a nation of laws and that we will continue to work with the international community to construct a common foundation to defend our nations and protect our freedoms.

4. (U) In tandem with the President's speech, the Department of Defense today issued two significant new detainee-related instruments: a new Directive on detention

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UNITED STATES DEPARTMENT OF STATE
REVIEW AUTHORITY: ARCHIE M BOLSTER
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standards and a new Field Manual on interrogation. DOD issued the Directive and Field Manual after a comprehensive review to ensure consistency with U.S. and international law, including the Supreme Court's decision in the Hamdan case. By law, DOD personnel are only permitted to use those interrogation techniques listed in the new Field Manual, the contents of which are entirely public.

5. (U) The President's speech, draft military commission legislation, and new DOD detention policies represent a major new initiative on U.S. detention policy. With these announcements, the Administration intends to work with the Congress on new military commission legislation and to consult on this and other new programs to ensure that the CIA can continue to play a vital role in collecting intelligence about new attack plans, newly-developed capabilities, and members of terrorist organizations. This initiative also creates an opportunity to further U.S. diplomatic efforts to explain U.S. detention policies, seek consensus on the need to recognize the unique challenges created by the war on terrorism, and develop a comprehensive and durable framework for the conduct of this conflict into the future.

6. (U) ACTION REQUEST: Drawing from the points below, posts are directed immediately to engage with host governments and local media to pursue this initiative at all levels. Para 7 contains public diplomacy themes. Para 8 contains talking points. Para 9 contains selected questions and answers. In addition to these talking points, posts should review and draw as necessary from the full text of the President's speech (available at the white house website).

7. (U) PUBLIC DIPLOMACY THEMES

-- In a major speech today the President announced that 14 leaders and operatives of al Qaeda have been moved from classified locations, where they were being held and questioned by CIA, to DOD custody where they can be brought to justice for their crimes. This group included those believed to have orchestrated the 9/11 attacks and the attack on the U.S.S. Cole, and those believed to have been involved in the bombings of our embassies in East Africa.

-- The ICRC has been notified and will have access to them at Guantanamo. No detainees remain in CIA custody.

-- After the September 11 attacks, we took the offensive to deny terrorists safe haven and kill or capture al Qaida operatives. We had many successes, some publicly known, some not.

-- Information from captured terrorists is one of the most vital tools we have to stop new attacks. Information from captured terrorists has saved lives in the United States and overseas.

-- We created a program, run by the CIA, to focus on a small number of the most dangerous terrorists and operatives, many of whom we believed knew the terrorists' secrets about potential attacks -- secrets that would help us save innocent lives.

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-- The CIA program for detaining and questioning these high-value terrorists has been conducted professionally and effectively. The Department of Justice reviewed the conditions of confinement and the questioning procedures and advised that the program complied with the U.S. constitution, laws, and treaty obligations.

-- The Supreme Court, in June in the Hamdan case, held that military commissions to try these terrorist for their offenses against the laws of war could not go forward without additional legislation. The Court also held that Common Article Three of the Geneva Conventions applies to the US war against al Qaida.

-- Common Article 3 of the Geneva Conventions describes in vague and undefined terms how the US should treat captured terrorists, leaving US personnel uncertain on where the law draws the line.

-- Accordingly, the President has sent legislation to Congress to (1) make clear the standards for questioning of captured terrorists so that US personnel can effectively and lawfully obtain the intelligence we need from terrorists, and (2) authorize the creation of military commissions as an effective and fair means to try terrorists for their crimes.

-- This is part of the Administration's broader effort to work with Congress to obtain additional authorization for the tools this and any future Administration will need to fight and win the war on terror.

-- The President has made clear that the United States will move toward the day when the United State can close the detention facility at Guantanamo Bay. America has no desire to be the world's jailer.

-- We are engaged in a global struggle -- and the entire civilized world has a stake in its outcome. America is a nation of law. As the Administration works with Congress to strengthen and clarify our laws at home, the United States will continue to work with members of the international community who have been our partners in this struggle.

-- One critical area of discussion is the need for a durable and effective framework for the detention and interrogation of those captured during this conflict.

-- We believe that the our laws and policies, together with the legislation proposed by the President, provide a comprehensive and durable legal framework for the interrogation and treatment of detainees in these kinds of conflicts.

-- This comprehensive framework is fully consistent with U.S. domestic and international law requirements. Indeed, this framework is more than consistent with Common Article 3 of the Geneva Conventions.

-- We are ready to work with our partners around the world to construct a common foundation to defend our nations and protect our freedoms.

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8. (U) TALKING POINTS

----- Key Elements of President's Speech -----

- On September 6, President Bush delivered a major speech addressing the issue of detainees in the war on terrorism.
- In his remarks, the President:
 - announced that 14 leaders and operatives of al Qaeda have been moved from classified locations, where they were being held and questioned by the CIA, to DOD custody where they can be brought to justice for their crimes;
 - stated that the ICRC has been notified and will have access to them, and that no detainees remain in CIA custody;
 - explained the need after September 11 to take the offensive to deny terrorists safe haven and kill or capture al Qaeda members;
 - described the CIA program created after September 11 to detain and interrogate the most dangerous terrorists captured by the United States during the ongoing armed conflict with al Qaeda, who had unparalleled knowledge about terrorist networks and their plans for new attacks; and
 - demonstrated the critical ways that this program has thwarted further attacks both at home and abroad.
- This program has been focused on a very small number of the most dangerous terrorists.
- The President indicated that we will consult with Congress on this and other programs to help us gather vital intelligence to prevent terror attacks.
- The President also indicated that the Administration has provided the Congress with draft military commission legislation, and called upon the Congress to act quickly on that legislation in order to develop new military commissions consistent with the Supreme Court's decision in the Hamdan case.
- The President also laid out key facts regarding Guantanamo Bay and its future. He described how approximately 315 of approximately 760 detainees have been returned to other countries, and asked other countries to work with us to transfer out as many of the remaining detainees as possible in order to eventually close Guantanamo.
- The President emphasized that we are a nation of laws and will continue to work with the international community to construct a common foundation to defend our nations and protect our freedoms.

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Review of U.S. Positions

- We recognize that the international community has not always agreed with U.S. positions in the war on terror.
- We believe that we are in a state of armed conflict with al Qaeda, the Taliban, and their affiliates following the attacks of September 11, on the U.S.S. Cole, and on our embassies in East Africa.
- In our armed conflict with al Qaeda, the Taliban, and their affiliates, it is the law of war that applies.
- These individuals have been determined to be unlawful enemy combatants who are not entitled to prisoner of war status. As in other conflicts, under the law of war they may be detained until the end of hostilities.

Treatment of CIA Detainees Transferred to Guantanamo

- The President has now announced the transfer of 14 individuals from the CIA to DOD custody at Guantanamo for possible prosecution by military commissions, and that no detainees remain in this CIA program.
- This disclosure reflects the President's intention to bring these individuals to justice.
- The President carefully has considered what aspects of the program may be disclosed, consistent with national security. We are not confirming, among other things, site locations, interrogation techniques, or total numbers of individuals who may have been detained in this program, as these are operational details that would provide valuable information to al Qaeda and could have an adverse impact on the effectiveness of CIA's future operations.
- The detainees transferred include Khalid Sheikh Mohammed ("KSM") and Abu Zubaydah, two of the most notorious members of al Qaeda.
- Interrogations of the 14 individuals have yielded vital intelligence that we have shared with our allies, and stopped numerous plots, including in Karachi, Heathrow Airport and the Canary Wharf in London, and in the United States.
- At Guantanamo, these individuals will receive the same standard of treatment as all other detainees at Guantanamo.
- The ICRC will be allowed to visit these individuals. We are in contact with the ICRC on this issue.
- These detainees will appear before a combatant status review tribunal to confirm that they are properly held as enemy combatants in accordance with the same standards that govern all other DOD detainees at Guantanamo.
- These detainees will have access to counsel, will be

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afforded the opportunity to worship, and will be able to write and receive mail from their families and friends, to the same extent as other detainees in DOD custody.

-- All requests by foreign officials to meet with these detainees will be considered using the existing DOD policy on foreign government access to Guantanamo detainees.

-- These individuals will be housed in a separate high-security facility for security reasons.

----- Military Commission Legislation -----

-- The President announced that the Administration has submitted draft legislation to create a strong and effective military commission structure.

-- In the wake of the Supreme Court decision in the Hamdan case, we are working with Congress to create a process for prosecuting unlawful enemy combatants that ensures terrorists can be brought to justice; recognizes the nature of the enemy and the battlefield; protects our national security interests; and provides the accused a full and fair trial.

-- This legislation is the product of close consultation with members of Congress and with military lawyers in all branches of the armed services.

-- This legislation clarifies application of Common Article 3 of the Geneva Conventions to our conflict with al Qaeda.

-- The vagueness of some terms in Common Article 3 makes them susceptible to uncertain and unpredictable application.

-- The President has asked Congress to make these ambiguous terms clear to provide guidance to our personnel. The bill also amends the War Crimes Act to eliminate the vague terms while still criminalizing the most serious violations of Common Article 3.

-- The Administration looks forward to continuing to work with Congress to ensure that we have the necessary tools to question and prosecute terrorists, and that the men and women on the front lines in the war on terror have clear rules that are defined in law as they work to protect us.

BEGIN NOTE: Posts should be aware that there will likely be particular interest in the Administration's proposal to interpret vague elements of Common Article 3 by equating the detention standards contained in Common Article 3 with the standards of the Detainee Treatment Act and by amending the War Crimes Act to criminalize the most serious violations of Common Article 3. END NOTE

----- A Durable Framework for Detention -----

-- The President has expressed his desire to work with members of the international community who have been

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partners in this long struggle.

-- One critical area of discussion is the need for a durable and effective framework for the detention and interrogation of those captured during this conflict.

-- We have learned that while the traditional rules and procedures of criminal justice are vital, they are not always sufficient to deal with this type of enemy. The law of war is an appropriate body of law to confront the threat posed by an organized enemy with global reach and an ability to inflict mass casualties.

-- As a matter of international law, these terrorists are unlawful enemy combatants to whom the law of war applies. In the Hamdan case, the U.S. Supreme Court recently confirmed that the law of war applies, when it ruled that Common Article 3 of the Geneva Conventions applies to our conflict with al Qaeda.

-- We recognize that detention in the war on terror has been controversial, but over the last five years we have made numerous changes to our policies and to the legal framework governing these policies.

-- In addition to the military commission legislation announced by the President, Congress in 2005 enacted the Detainee Treatment Act, and our Defense Department has now issued a new Field Manual and Detention Directive to provide clear rules for the detention and interrogation of all individuals detained by the Department of Defense.

-- We believe that these laws and policies, together with our proposed legislation, provide a comprehensive and durable legal framework for the interrogation and treatment of detainees in conflicts such as our continuing conflict with al Qaeda.

-- This comprehensive framework is fully consistent with U.S. domestic and international law requirements. Indeed, this framework is more than consistent with Common Article 3 of the Geneva Conventions -- the proposed legislation and new DOD policies also exceed the minimum protections in Common Article 3 in significant ways.

-- We are ready to work with our partners around the world to construct a common foundation to defend our nations and protect our freedoms.

9. (U) QUESTIONS AND ANSWERS: The following questions and answers have been selected from a more comprehensive set of questions and answers because they are the most likely questions to be asked of U.S. officials:

QUESTION: why is this program being disclosed now? why is it being decided to bring these detainees to GTMO now, after all this time, and disclose that we have them?

ANSWER:

-- We have long intended to disclose our detention of these terrorists at the appropriate time, when consistent with

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national security.

-- Most of the intelligence value of these detainees has at this time been exhausted.

-- The President decided that it is important if possible to prosecute these key terrorist leaders and operatives for their crimes, and that military commissions are the best forum for doing that. We have been waiting for some time for a ruling from our courts resolving whether military commissions will be available for this purpose.

-- The Supreme Court's decision this summer in Hamdan did two things: it invalidated the existing military commissions and, by virtue of its holding that Common Article 3 of the Geneva Conventions applies in this context, it also imposed vague and undefined legal standards on military and intelligence operations regarding detainees in our conflict with al Qaeda.

-- In light of that decision, we are now asking that Congress both authorize military commissions to try these terrorists, and that they address the Common Article 3 issue in order to provide a clear legal framework for military and intelligence operations in our conflict with al Qaeda.

-- It is important that Congress and the public understand the importance of these issues to our national security as Congress considers how to address them.

-- Our Administration has worked in the last two months with members of Congress on how best to respond to the Hamdan decision, and today we submitted our proposed legislation. We want to work with Congress to enact a durable and sustainable framework for confronting the serious threat posed by international terrorism to our nation's security.

QUESTION: Did you tell the countries who had secret prisons that the U.S. would make this announcement? How did they react?

ANSWER:

-- Few tools are more critical to our ability to fight and win the war against al Qaeda and its affiliates than the close intelligence relationships the United States maintains with states allied with us in this war. Many countries take great risks in order to help us, and do so with the explicit agreement that the work they do will remain secret. We will not discuss these relationships, except to say that we could not achieve our successes alone and we are grateful to those who have helped.

-- We have provided our allies information from this program and they have told us of its great value in helping prevent terrorist attacks in their own countries.

QUESTION: How many detainees remain in this program?

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-- None. However, we expect that we will continue to capture key terrorist leaders and operatives in the future.

-- As in the past, we may need to detain such terrorists without disclosing their detention in exceptional circumstances. We will not comment in the future on whether we are holding detainees in this manner, or if so, how many are being held. If we were to answer such questions, the pattern of our answers over time could reveal information that would aid our terrorist enemies.

-- We do not expect that we would need to detain individuals for an extended period of time without notifying the ICRC, but we reserve the right to hold detainees without notice to the ICRC for as long as may be necessary.

-- We will continue to keep Congress informed as appropriate.

QUESTION: How many detainees have been in the program since its inception?

ANSWER:

-- Since the development of this program in mid-2002, fewer than 100 terrorist detainees have been held for detention and questioning in CIA's custody. The program was selective: it was designed only for a small number of the most dangerous terrorist leaders and operatives, many of whom were believed to know information of great intelligence value -- for example, on attack planning or al Qaeda's capabilities. CIA officers have captured or played a role in the capture, questioning, and transfer of many more terrorists since 9/11, but only a very few entered this program. The overwhelming majority of such captured terrorists were taken into detention by U.S. military or host country officials.

QUESTION: Why were the detainees held in secret facilities and not identified to the ICRC?

ANSWER:

-- These terrorists have been held under conditions that were deemed essential to learning information they knew about planned terror attacks, al Qaeda's senior leadership, and the enemy's current capabilities.

-- It is critical not to make the identities or locations of key terrorist leaders and operatives we capture immediately known, so as not to alert al Qaeda to their detention and allow al Qaeda to make adjustments to its plans. It has also been important to keep operational details of CIA's efforts, including its interrogation procedures, secret from al Qaeda, in order to preserve their effectiveness.

-- Maintaining secrecy and focusing all relevant intelligence on questioning a small number of the most dangerous terrorists enabled us to collect information that stopped terror attacks and saved the lives of thousands of Americans and foreign nationals.

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-- We place significant value on our relationship with the ICRC and on its work and rely heavily on the ICRC to ensure important protections for our personnel.

-- Our decisions here are not intended to devalue the important role of the ICRC. The Department of Justice made the determination that detention in this program was legal, and we determined that, in a small number of cases, it was necessary in order to obtain intelligence information from these individuals that was critical to protecting the United States and its allies from further terrorist attacks.

-- Providing the ICRC notice of and access to these terrorists is not legally required. Such notice and access is required under the Geneva Conventions only for POWs and protected persons.

-- Even though international law provides no such right, the United States has made clear that, as a matter of policy, it will provide ICRC access to al Qaeda and Taliban detainees to the maximum extent practicable, and such access has been denied only to a tiny fraction of such detainees.

QUESTION: What legal authority does CIA have to capture, detain, and question these terrorists?

ANSWER:

-- The authority derives from the U.S. Constitution, including the President's authority as Commander in Chief, and various statutes, including the September 18, 2001 Authorization for Use of Military Force and the National Security Act.

-- Exercise of this authority is also consistent with the law of war. Under the law of war, the United States may detain captured enemy combatants until the end of hostilities.

-- DOJ reviewed CIA's interrogation procedures, which were referred to it by CIA, and determined that they complied with the U.S. Constitution, applicable U.S. statutes, including the anti-torture statute, and applicable treaty obligations, including those in the Convention Against Torture (CAT). And of course the General Counsel of CIA also reviewed the procedures and determined that they were lawful.

QUESTION: Were the detainees provided basic human necessities during detention? What were their conditions of confinement like?

ANSWER:

-- Yes. Terrorists held by CIA have been provided with basic human necessities.

-- They have been held in humane conditions of confinement. We are not going to comment further on the conditions under which they were held.

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QUESTION: The media has reported that CIA has rendered more than 100 terrorists since 9-11, including some individuals who were picked up due to mistaken identity. Have all of these individuals been in the CIA program discussed by the President?

ANSWER:

-- Suggestions that we have rendered thousands or even hundreds of terrorists to secret sites are inaccurate. This program was selective: it was designed only for a small number of the most dangerous terrorist leaders and operatives, many of whom were believed to know information of great intelligence value -- for example, on attack planning or al Qaeda's capabilities. Most of the terrorists transported by the United States since September 11, 2001 were not part of the highly specialized CIA program disclosed today, but were transported to their home countries, or countries where they faced criminal charges, or to DoD for questioning and detention as enemy combatants.

-- We note that before we turn a terrorist over to a foreign government, where appropriate we obtain credible assurances that the country will take responsibility for ensuring that the individual will not pose a threat and will not be tortured.

QUESTION: How did you decide who to take into the program?

ANSWER:

-- This program was selective: it was designed only for a small number of the most dangerous terrorist leaders and operatives, many of whom were believed to know information of great intelligence value -- for example, on attack planning or al Qaeda's capabilities.

QUESTION: How many CIA detention sites exist and where are these sites?

ANSWER:

The number of sites and locations will not be disclosed. Providing locations of CIA's detention sites would put our allies at risk of terrorist retaliation and also betray relationships built on trust that are vital to winning the war against al Qaeda and its affiliates.

QUESTION: Why couldn't you detain them at GTMO? Wasn't it so that you could torture them?

ANSWER:

-- It was decided that it was important to keep this small, tightly controlled effort entirely separate from DoD's much larger detainee operations.

-- It is also critical not to make the identities of senior terrorists we capture immediately known, so as not to alert al Qaeda to their detention and allow al Qaeda to make adjustments to its plans. It has also been important to

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keep operational details of CIA's efforts, including its interrogation procedures and locations of its facilities, secret from al Qaeda, in order to preserve their effectiveness.

-- These operational requirements could not be met at GTMO.

-- The United States does not authorize torture. It is against U.S. law.

QUESTION: What interrogation techniques were used with these detainees?

ANSWER:

-- One of the reasons these interrogations have proved so successful is that terrorists do not know what the procedures are or what the limits are. Al Qaeda trains to resist U.S. interrogation procedures that are publicly revealed. We want our procedures to be clear to our interrogators. We don't want them to be clear to the terrorists. Therefore we will not identify or describe these procedures publicly.

-- However, I can assure you that the authorized procedures used in questioning detainees were determined to comply with applicable U.S. law, including U.S. treaty obligations. They were also deemed to be safe and effective and they were subjected to rigorous review to ensure safety of the detainee and professionalism. CIA personnel involved in interrogations receive hundreds of hours of professional training before they undertake this mission.

-- Providing further detailed information publicly about CIA questioning will aid our terrorist enemies, allowing them to develop and train in effective countermeasures - many terrorists are already trained to resist the procedures in the Army Field Manual - and unnecessarily degrade our ability to detect and disrupt terrorist attack plans.

QUESTION: What kind of intelligence can the CIA gather with this program that cannot be gathered by the military with the Army Field Manual techniques?

ANSWER:

-- The CIA gathered life-saving intelligence from captured terrorists who are the most dedicated to al Qaeda's cause and the least willing to share intelligence. Many of these terrorists had received interrogation resistance training and were familiar with the interrogation methods publicized in the U.S. Army Field Manual on Interrogations.

-- As a result of this program, these terrorists have given the United States a fuller, deeper, and more complete understanding of their organization. Dedicated members of the organization like these can provide unique insight into the extreme mindset and methods of the al Qaeda membership.

-- These terrorists have provided valuable, independently

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verified and corroborated intelligence on al-Qaeda and its terrorist allies, to include information on: members; financing; logistics; plots; communications; document forgery and criminal activities; travel routes and safe havens; and terrorist intentions to obtain and use chemical, biological, and nuclear devices in their attacks. Subsequent disruption of these components of al Qaeda's network has proved invaluable in weakening our enemy's ability to launch offensive operations.

-- Intelligence gathered by questioning detained terrorists has been used as lead information to guide further counterterrorist operations. It is a vital, irreplaceable piece of the intelligence puzzle, but we still seek to corroborate it through other sources to gauge its reliability.

QUESTION: How can you say that the act of waterboarding does not constitute torture or cruel treatment?

ANSWER:

-- We will not confirm, deny, or comment on procedures or alleged procedures, so as to preserve their effectiveness.
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Joshua L Dorosin 09/06/2006 06:13:59 PM From DB/Inbox: Joshua L Dorosin

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L155

Deeks, Ashley S

From: Robinson, John G
Sent: Thursday, February 01, 2007 11:41 AM
To: Dorosin, Joshua L; Deeks, Ashley S; Noyes, Julieta V (DRL); Petersen, Robert B
Cc: Robinson, John G
Subject: Germany orders arrest of 13 over CIA 'kidnapping'

Germany orders arrest of 13 over CIA 'kidnapping'

BERLIN, Jan 31, 2007 (AFP) - Germany has ordered the arrest of 13 people behind the alleged CIA-backed kidnapping of a Lebanese-born German man, prosecutors said Wednesday, in one of the best-known cases of US "renditions" of terror suspects. The prosecutor's office in Munich, southern Germany, said in a statement that the city's administrative court had issued the arrest warrants against people believed to be CIA agents on suspicion of abduction and grievous bodily harm. German authorities are probing allegations by Khaled el-Masri that he was abducted by US agents in the Macedonian capital Skopje on New Year's Eve 2003 and flown to a prison in Afghanistan for interrogation before he was released five months later in Albania. Masri, a 43-year-old unemployed car salesman, has said he was drugged, questioned and tortured while imprisoned. The case raised tensions when US Secretary of State Condoleezza Rice visited Germany in December 2005 at the height of a controversy over the CIA's strategy of "rendition" - flying terror suspects through European states to detention in third countries where they risk being tortured.

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U.S. Dept. of State
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2201 C St. NW
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L157

Deeks, Ashley S

From: Bellinger, John B(Legal)
Sent: Tuesday, February 06, 2007 10:09 AM
To: Deeks, Ashley S
Subject: FW: New Spain and Portugal Rendition Investigations (to add to Italy and Germany)

FYI...

From: Bellinger, John B(Legal)
Sent: Tuesday, February 06, 2007 10:08 AM
To: 'Kyle.Sampson@usdoj.gov'
Subject: New Spain and Portugal Rendition Investigations (to add to Italy and Germany)

Judge tells Spain to declassify CIA flight papers

Wed Jan 31, 1:13 PM ET

A judge has ordered Spain's state intelligence agency to declassify any documents it has about secret CIA flights shuttling terrorism suspects, court officials said on Wednesday.

High Court Judge Ismael Moreno issued the order to the National Intelligence Center (CNI) as part of an investigation he began last year to determine whether suspects on CIA flights touching down on the Spanish island of Mallorca were held illegally or tortured, the officials said.

Up to 50 people were moved across Europe in flights to jails in third countries where they faced torture and other abuse, according to European Parliament investigators.

A Council of Europe investigator last year said Spain might have acted in "collusion, active or passive," with secret detentions and unlawful inter-state transfers.

The Spanish government has said it has no knowledge anything illegal took place in its territory. No government spokesman was immediately available to comment on Wednesday's ruling.

Moreno's ruling came as a court in Germany ordered the arrest of 13 people suspected of involvement in the abduction of German national Khaled el-Masri, who says he was kidnapped and tortured by the CIA.

Kuwaiti-born Masri testified about his ordeal to Judge Moreno in October.

Portugal probes alleged CIA flights

Mon Feb 5, 10:58 PM ET

Portugal's attorney general is opening a criminal investigation into claims that CIA flights, some of them allegedly carrying terror suspects, made stopovers in the country, the state-owned news agency reported on Monday.

The agency Lusa quoted Deputy Attorney General Candida Almeida as saying the investigation had "many leads" to pursue after a Portuguese deputy at the European Parliament presented a dossier of allegations.

"Before, we had no indications (of a crime), but the complaints we have received show areas we might

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explore," Almeida was quoted as saying.

Officials at the attorney general's office were not immediately available for comment. But authorities often use Lusa to make official announcements.

The attorney general's decision to launch a formal investigation is embarrassing for the government. Last week, Foreign Minister Luis Amado said authorities had not unearthed any evidence of CIA flights and would not investigate the matter further.

A report published by a European Parliament committee last month said Britain, Poland, Germany, Italy and other EU nations were aware of CIA flights over Europe and of "extraordinary rendition," a practice whereby the U.S. government allegedly sends foreign terror suspects to third countries for interrogation.

It said information from Eurocontrol, the EU's air safety agency, showed that more than 1,200 undeclared CIA flights had entered European airspace since the Sept. 11 attacks in 2001.

Though there was no direct evidence that CIA flights had used Portugal as a stopover, the report urged the government to continue investigating whether they had.

Ana Gomes, a European Parliament deputy, met with the attorney general last week and said she gave him evidence that dozens of CIA planes had landed in Portugal, some of them flying to or from the U.S. military prison for terror suspects at Guantanamo Bay, Cuba.

Gomes said she collected statements from witnesses who claimed to have seen handcuffed prisoners at an airport in Portugal's mid-Atlantic Azores Islands.

She also alleged that local authorities knew Portugal was being used for CIA flights.

A CIA spokesman declined to comment Monday on the allegations.

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