

**Briefing before the House Committee on Foreign Affairs,
Subcommittee on International Organizations, Human Rights, and Oversight
Subcommittee on Europe**

**“Extraordinary Rendition in
U.S. Counterterrorism Policy:
The Impact on Transatlantic Relations.”**

A Statement by

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Submission by Baroness Sarah Ludford MEP

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1. Overview of the committee's activities

After twelve months of hearings, more than 30 meetings, 7 official delegations to different countries, a large volume of testimony from witnesses including government representatives and victims, the work of the European Parliament's temporary committee on alleged illegal CIA activities in Europe came to a close with the adoption of the committee's final report on 14th February 2007.

Some facts and figures¹:

- 33 sessions (more than 110 hours of meeting)
- 10 Bureau meetings, with the participation of political groups coordinators
- 7 official delegations: FYROM, USA, Germany, UK, Romania, Poland, Portugal
- almost 200 witnesses and interlocutors heard in committee or in delegations
- 19 cases of extraordinary renditions analysed, with the direct participation of several victims including Maher Arar and Khaled el Masri
- almost 700 amendments tabled
- thousands of pages of documents and flight logs read and analysed

2. The setting up of the TDIP committee

The European Parliament had been following the question of the compatibility of action against terrorists with human rights standards with interest, even before September 11th 2001. But after that date the interest intensified, especially with respect to Guantanamo Bay where some MEPs had constituents detained. In subsequent years there were various media and NGO reports alleging rendition, detention without trial and torture, but this came to a head in November 2005 with press reports of secret CIA detention centres in Eastern Europe. These reports galvanised both the European Parliament and the EU's sister organisation the Council of Europe (in which the US is an observer) to mount investigations to probe whether European human rights law had been breached.

The European Parliament's Civil Liberties and Foreign Affairs committees, meeting in early December 2005, urged the European Parliament to open its own inquiry into the allegations and a resolution of the Parliament as a whole called for a "parliamentary inquiry", which "should at a minimum be conducted through a temporary committee". Some MEPs backed the setting up a 'committee of inquiry' which under the Parliament's

¹ More detailed information (list of all meetings, of all persons heard, of persons who have refused the invitation, etc) can be found from page 37 to 77 of the final report, at:
<http://www.europarl.europa.eu/comparl/tempcom/tdip/pe382246.pdf>

rules of procedure has some degree of power to oblige the provision of documents and appearance of Member States' representatives. But political group leaders decided instead on a temporary committee which has no such powers, so any cooperation with it was purely voluntary.

The formal decision to launch the *temporary committee on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners* (with the abbreviation TDIP, based on the French title) was taken at the January 2006 plenary session² in a resolution which also defined the cross-party composition of the committee, its remit and (as with all temporary committees) its maximum of 12 months duration.

It is important to note that the focus of the committee's work was, properly, to be activities in Europe and the responsibility of European governments. It was mandated to collect and analyse information to establish whether:

1. third countries agents (CIA or others) have carried out abductions, "extraordinary rendition", detention at secret sites, detention incommunicado or torture or other cruel, inhuman or degrading treatment of prisoners on the territory of the European Union, including accession and candidate countries, or have used that territory to those ends, for example through flights;
2. such actions could be considered a violation of Article 6 of the Treaty on European Union³, as well as of the European Convention for the Protection of Human Rights and Fundamental Freedoms and of other international treaties;
3. citizens of the European Union or the candidate countries, or any other person entitled to protection from, or otherwise under the jurisdiction of, the EU, the Member States or the candidate countries have been among those involved in or subjected to abductions, "extraordinary rendition" operations, detention at secret sites, etc in the territory of the European Union or elsewhere;
4. Member States, public officials, persons acting in an official capacity or European Union institutions have been involved or complicit in illegal deprivation of liberty of individuals, including abduction, rendition, transfer, detention or torture, either by act or omission.

The committee was instructed to submit an interim report 4 months after the beginning of its work – in order that the Parliament could maintain oversight of the value of its work - as well as invited "to submit to the plenary any recommendation that the committee deems necessary in this matter, notably concerning the political, legal and administrative conclusions to be drawn at European level as well as possible consequences for EU relations with third countries".

²<http://www.europarl.europa.eu/omk/sipade3?PUBREF=-//EP//TEXT+TA+P6-TA-2006-0012+0+DOC+XML+V0//EN&L=EN&LEVEL=2&NAV=S&LSTDOC=Y&LSTDOC=N>

³ Article 6 of the Treaty on European Union states that 'The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States.'

The committee held its constituent meeting on 26 January 2006. It was composed of 46 full Members and 46 substitute Members, from all political groups. It was chaired by Carlos Coelho (European People's Party, Portugal), the *rapporteur* was Claudio Fava (Socialist Group, Italy), and the first Vice-President was Sarah Ludford (Alliance of Liberals and Democrats, UK). In the European Parliament system, a *rapporteur* - lead author - is always appointed with the primary responsibility to produce the draft report.

After a series of steering group meetings to agree on a common programme of activities, the committee then started its hearings of victims of renditions, their lawyers, journalists, former Ambassadors, prosecutors enquiring on specific cases of extraordinary rendition, ombudsmen, NGOs, of Swiss senator Dick Marty (*rapporteur* of the Council of Europe Parliamentary Assembly), of Javier Solana (EU Secretary General and High Representative for the Common Foreign and Security Policy) and of Gijs de Vries (EU Counter-Terrorism Coordinator). Two delegations were also organised in this first period to FYROM and to the US in order to have an exchange of views with the authorities.

3. The interim report

The European Parliament adopted the committee's interim report on 15th June 2006 by 389 in favour, 137 against and 55 abstentions and endorsed the continuation of the temporary committee's work for the remainder of its established twelve-month term.

This report was welcomed by most of the groups and judged by the President of the committee as "excellent". It deplored the "the fact that the CIA has on several occasions been clearly responsible for the illegal abduction and detention of alleged terrorists on the territory of Member States and for extraordinary renditions and that, in a number of cases, this has concerned European nationals"; condemned the practice of extraordinary renditions and that people have been deported to countries where torture takes place; "considers it implausible...that certain European governments were not aware of the extraordinary rendition activities taking place on their territory and in their airspace or airports".

The report also recalled international obligations concerning torture and underlined that the Chicago Convention on civil aviation has been breached. It took stock of the information gathered and criticised the unwillingness of EU Member States and of candidate countries - as well as of US authorities - to provide clear evidence that they were not involved in these operations directly or indirectly.

4. Second phase

The committee continued its work of hearings and delegations in the second half of the term, focussing on secret prisons, on collecting more and new information and on the political and legal recommendations to be drawn for the future.

On the issue of secret prisons, the committee analysed the information (ABC news of 5th December 2005) according to which former and current CIA agents confidentially stated that 11 top Al Qaeda suspects were allegedly kept in secret detention sites in Eastern Europe, and notably in Romania and Poland. A Human Rights Watch report also cited the same countries. The TDIP committee sent a delegation to Romania, concluding that the internal enquiry had been superficial (and unpublished), and discovered that a CIA plane had landed with persons inside carrying weapons, which had not motivated the Romanian authorities to open any police or judicial enquiries.

The TDIP committee also sent a delegation to Poland, which encountered a complete lack of cooperation from the Polish authorities. A week later the former Director of the Szymany airport came to the TDIP committee to explain that persons had been taken off planes and carried away by law enforcement agents to be brought apparently to a secret services headquarters nearby. The committee also sent delegations to Germany (to meet the enquiry committee of the German Parliament), the UK (to meet government representatives and authorities, MPs, lawyers and victims) and Portugal (to meet authorities and MPs).

The TDIP committee also heard Javier Solana and Gijs De Vries. Criticism was levied at Mr Solana for his failure to disclose all the facts and discussions of which he was aware. Mr De Vries was equally criticised because his inability to answer the TDIP committee's questions implied that the position he occupied lacks competence and substance.

5. The final report

The final report was the topic of lively debate between and within political groups. That it was subject to 475 amendments, some aimed at strengthening and making more precise its contents, while others aimed at diluting specific conclusions, is testimony to the controversy it generated.

After having been endorsed in committee with 28 votes in favour, 17 votes against and 3 abstentions, the final report was adopted in plenary on 14th February 2007 by 382 votes in favour, 256 against with 74 abstentions (for breakdown of votes by political group see the annexed table).

The report levied criticisms, of varying severity, against 13 EU member states and 4 associated states, in respect of active or passive cooperation with extraordinary rendition. It asserted that over 1200 flights operated by the CIA (not all used for extraordinary rendition) flew into European airspace or stopped over at European airports between 2001 and 2005 and that European countries had either admitted flights or turned a blind eye when they may have been illegally transporting detainees. It accused officials of several countries (notably Italy, UK, Germany, Sweden, Austria) of active involvement in, facilitation of or failure to prevent kidnapping or extraordinary rendition. In respect of the allegations of secret prisons, the final report (after tight votes) said that 'no definitive

evidence has been provided to contradict any of the allegations concerning the running of a secret detention facility on Romanian soil' and 'it is not possible to acknowledge or deny that secret detention centres were based in Poland.'

A series of political and legal recommendations were made, such as on the need for full national-level inquiries, for proper oversight of security services, for correct implementation of the Chicago Convention, for ensuring that overflight clearances are accompanied by human rights guarantees, and for ratification and implementation of various international legal instruments. It stressed 'the necessity of political dialogue with the United States...on security matters in order to combat terrorism effectively and by legal means' and called for an EU-US counter-terrorism summit to seek an end to illegal practices of extraordinary rendition and secret detention.

The report called on the Council of Ministers and the European Commission to meet their responsibilities under Article 7 of the EU treaty, which requires investigation and provides for sanctions when Article 6 obligations (see footnote 3 above) are breached. It considered that human rights law means a state has a positive obligation to investigate reasonable allegations. It instructed the European Parliament's relevant standing committees to follow up and monitor developments, in particular to consider action under Articles 6 and 7 of the Treaty by the Parliament itself if there is 'no appropriate action' by the other institutions.