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NOTE

from : General Secretariat of the Council
to : Delegations

Subject : Report on the meeting of the Temporary Committee of the European Parliament on the alleged use of European countries by the CIA for the transport and illegal detention of prisoners, held in Brussels on 20 April 2004

- *Exchange of views with Mr MURRAY, former UK ambassador to Uzbekistan*

In his introductory remarks, Mr MURRAY told the Committee about his experiences of the extraordinary rendition programme in Uzbekistan. He said that according to the agreement between the UK and the US intelligence services these services exchanged 100 percent of their intelligence information. During his time in Uzbekistan he had thus come across US intelligence, obtained through so called “detainee debriefings”, i.e. torture. He was sure that the US information was obtained through torture, since the US intelligence he received was consistent with the confessions that victims of torture had been forced to sign. When he approached the US embassy about the issue, he was told that the Uzbekistan intelligence service probably did get its information through torture, but that the US did not see that as a problem since the information was vital in the war on terror. He had made a number of protests to his superiors about the situation, but his protests had had no effect. In March 2003, he was summoned back to the UK for a meeting with officials of the UK Ministry for Foreign Affairs. Mr MURRAY said to the Members of the Committee that he at

that meeting was told that the UK Secretary of State, Jack Straw, had personally considered the question and decided that the UK should continue to receive useful intelligence even if obtained under torture. Later that month, in a letter written by one of the participants at the meeting, addressed to one of the officials who had also attended, it was stated that according to Article 15¹ of the UN Convention against Torture it was not an offence under that Convention to receive or possess information obtained under torture, even though it was an offence to invoke that information as evidence in proceedings. According to Mr MURRAY, receiving or possessing such information would in any case constitute a breach of Article 4 in the Convention². Mr MURRAY stated that while he was against terror as much as anyone, he believed that ignoring the human rights of Muslims would lead to an increase in hatred against the West in Muslim countries. Apart from being illegal and immoral, he said that torture was also an ineffective way to obtain information, since the victim would “confess” to anything, which would generate false information.

To questions from Mr FAVA (PSE, IT), Mr MURRAY said that he was not aware of the CIA sharing its information with any other European security service than the UK, and said that some European states, in particular Germany, which still had an airbase and troops in Uzbekistan, had their own links with Uzbekistan intelligence services. With regard to who had been tortured, he said that he personally knew about 200-300 cases of persons who had been tortured, but that the number of persons tortured could be estimated to be at least 7000. Less than 1 percent of those had links to terrorist activities. Most of them were simply part of the political opposition, and were not fundamentalists. People who practiced their religion and prayed five times a day could be arrested because of that. As for any investigation of his statements in the UK, he said that there had been none. Instead, he had been asked to resign as ambassador and a disciplinary action, in which he was later acquitted, had been instituted. The Foreign Affairs Committee of the House of Commons had discussed his case with several people, but his own approaches to that Committee had not been accepted. Asked by Mr ÖZDEMİR (Verts/ALE, DE) about the position of the UK Government on torture, he said that while the Government condemned the use of and the instigation of torture, it seemed happy to receive intelligence obtained through it. He added that the UK Parliament had never asked about issue.

¹ Article 15 Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

² Article 4 (1) Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.

Asked by Mr MIKOLÁŠIK (PPE-DE, SK) about the link between the intelligence he received and the information obtained through torture, Mr MURRAY said that a link between the tortured person and the information he had received was difficult to establish, since the information received only made reference to “detainee debriefings” and did not mention the name of the person tortured. That way it was possible for people who received the information to say that they were unaware of what was going on.

As for links of Uzbeks to Al-Qaeda he said that in Uzbekistan there were only a few people linked to it, and that the Islamic movement in Uzbekistan had moved to Afghanistan in the early 1990s and effectively integrated into Al-Qaeda. As for the training camps which supposedly existed in Uzbekistan, he said that there were none, and stressed that the intelligence had indicated locations of training camps, but that when investigated, there had been no such camps.

To a question from Mr KREISSL-DÖRFLER (PSE, DE), Mr MURRAY replied that he had never come across any information regarding detention centres in EU Member States or in Bulgaria and Romania, and that he was personally very sceptical of the existence of such centres in those countries.

Asked by Mr GUARDANS (ALDE, ES) whether any other European ambassadors in Uzbekistan would have the same information as him, Mr MURRAY replied that other European ambassadors did not routinely see the CIA intelligence that he received. He had had discussions with the German, French, Italian and Polish ambassadors, but due to confidentiality reasons those discussions had been held on a more general basis concerning the level of cooperation with Uzbek authorities and had not been related to the question of obtaining information through torture. He regretted that the Commission did not have a delegation in Uzbekistan. As for rendition flights, he had only known of flights from Kabul to Tashkent, and could not give first-hand information about renditions from countries other than Afghanistan. He did not know of any European who had been tortured in Uzbekistan.

To a question from Mr CATANIA (GUE/NGL, IT), Mr MURRAY said that the Uzbeks acted largely autonomously in the torture and detention of prisoners and reminded the Committee that Uzbekistan had been in charge of intelligence concerning Afghanistan during the Soviet period. He had not heard of any Americans or Europeans being present during torture sessions, but said that the Americans most certainly had an input as to who was interrogated.

Mr CAMRE (UEN, DK) wondered what interest the US had in receiving information from Uzbekistan and asked what their interest would be in false information. Mr MURRAY replied that the US had an interest in justifying support to President Karimov, since it had had important interests in the Enron contract to take oil and natural gas in Uzbekistan.

To Ms KUDRYCKA's (PPE-DE, PL) question about the link between the situation in Uzbekistan and the competence of the Committee, Mr MURRAY answered that the situation attested to the willingness of the CIA and the UK to rely on information obtained under torture, and said that such willingness was the foundation for the extraordinary rendition programme.

Asked by Ms ROURE (PSE, FR) about evidence of flights, Mr MURRAY referred to Eurocontrol.

To Ms BUITENWEG's (Verts/ALE, NL) question about how he knew that the US and the UK had taken a policy decision about using information obtained through torture, Mr MURRAY replied that he had been told so at a meeting on 7 March 2003. Any documentation about that was however classified as top secret. Furthermore, he said that no one had ever tried to argue that the information in question had not been obtained under torture.

- *Exchange of views with Mr DE VRIES, EU Counter-Terrorism Coordinator*

Mr DE VRIES made an introductory statement which can be found in the annex.

To questions from Mr FAVA, Mr DE VRIES answered that he did not want to prejudge the outcome of the work of the Committee and that it was up to the Committee to establish whether there was irrefutable evidence for the allegations. He stressed that the EU, in contacts with external actors, was raising the issue of human rights in the discussion on the fight against terrorism and that it had called attention to secret detentions and detention without trial. Furthermore, the EU had requested the US to adhere to the traditional interpretation of the Geneva Convention. He emphasised that national intelligence was not covered by the Treaties, since the Member States had unanimously agreed to reserve the monitoring of the functioning of domestic intelligence services to themselves. The legal situation must be respected and neither he nor Mr Solana would be able to give any information on operational details of cooperation between Member States' national intelligence services. Mr DE VRIES stressed that the Member States were legally bound to follow

the European Convention on Human Rights, which was a cornerstone of the EU, and reminded the Committee that the Member States had responded to questions from Mr Davies, the Secretary General of the Council of Europe, concerning the alleged CIA transportation of prisoners and detention centres. Confirming that intelligence had undoubtedly served in the fight against terrorism, he said that EU legislation was fundamental for facilitating the exchange of information. Emphasising that torture remained illegal in war time as well as in peace time he underlined, throughout the debate, that it was fundamental that the EU respect the rules that it wanted others to follow. Acknowledging that cooperation existed between the intelligence services of the US and of the Member States, and that this cooperation was crucial, Mr DE VRIES, while regretting having to give a rather formalistic reply, said that any discussions the US government might have with national governments or with the Member States' intelligence services on operational intelligence were outside the scope of the Treaty. Answering Mr SALAFRANCA (PPE-DE, ES) and other MEPs, he said that the Council's role was to engage in discussions with the US and urge it to respect human rights. Mr DE VRIES furthermore confirmed that there had been discussions between the Council and the US about renditions and Guantánamo Bay. The EU's position was that the US should give the UN rapporteurs on Human Rights full access to Guantánamo Bay. A letter had been sent to the US Secretary of State, Dr Rice, in November 2005, to which she had replied in a detailed statement on 5 December 2005. Her reply had subsequently been discussed within the Council. Mr DE VRIES told the Committee that EU Foreign Ministers in March had called Guantánamo Bay a cause of concern to the Union. There had also been discussions with the US on an administrative as well as senior official level concerning the interpretation of international law and of the new US Defence authorisation act, adopted in January 2006. To a question from Mr SZYMANSKI (UEN, PL), Mr DE VRIES answered that while there had been debates within the Member States whether new circumstances should lead to a reinterpretation or a change of the global Human Rights regime, on balance the majority view in Europe was not in favour.

Mr DE VRIES reminded the Committee of the adoption of the EU Counter-Terrorism Strategy, and stressed that to prevent a new generation of terrorism, there was need for more than intelligence cooperation, and that the efforts to fight terrorism must not have counter-productive effects in the long term. He stressed that the fight for human rights was an essential dimension of the fight against terrorism. He expressed his hope that the Committee would look at how better to assist third countries to improve the rule of law.

With respect to the role of the EU Situation Centre, Mr DE VRIES said that it was limited to analytical coordination. Any operational coordination takes place outside the EU institutions. He told the Committee that the role of the Joint Situation Center was to analyse trends and broad developments, not to go in to concrete cases. The role of the institutions was to provide a legal framework for exchange of information between the national police and intelligence services, for example through the Data Retention Directive, analytical cooperation, and cooperation with third countries. The role of the coordinator is to make sure that the work of the Council on these issues was fully joined up.

To Mr LAMBRINIDIS' (PSE, EL) questions on whether there was any agreement between the US and the EU that would justify rendition, whether any US official had ever revealed anything about the rendition programme to him, whether the renditions could be legal under EU law and whether he had received any intelligence that had been obtained under torture, Mr DE VRIES answered in the negative.

To a question from Ms BUITENWEG about any proposals for measures to be taken by the EU, Mr DE VRIES said that while it was the task of the Committee to establish and evaluate the facts, it was also important that it considered the lessons to be drawn from the current discussions. The internal situation was addressed in the interim report from the Council of Europe¹. As regards the external dimension, support for the UN Convention against Torture must be strengthened and the Member States who had not signed and/or ratified the Convention must be encouraged to do so. The same went for the Protocol concerning outside visits, which had been signed by 17 Member States and ratified by 5. He undertook to provide information on which Member States had signed and/or ratified the Convention and the Protocol and which had not done so.

To a question from Mr CATANIA about an agreement signed between the EU and the US in Athens in January 2003, and about how he obtained his information on any cooperation by Member States with the CIA concerning the renditions, Mr DE VRIES said that he was unaware of any such agreement and that the information he had was the information that the Member States had transmitted to the Council of Europe.

¹ Question 4 concerning any involvement of public officials/any official investigations

To a question from Ms LUDFORD (ALDE, UK), Mr DE VRIES replied that relations between the EU and the Council of Europe were a strength, but underlined that there was a need for coordination of the responsibilities of each of the organisations. He stressed that respecting the European Convention on Human Rights was an absolute obligation for the Member States, and said that the Council of Europe, through its Human Rights Court, its Human Rights Commissioner and its Committee reporting on the conditions of prisoners had well-established mechanisms of monitoring the activities of Member States. He reminded the Committee that the EU Charter on Fundamental Rights was limited to EU legislation and actions of Member States to implement such legislation. Anything outside the scope of EU legislation would be covered by the Council of Europe machinery. As for implementation of Article 6 TEU, he considered it premature at this stage, since investigations were still ongoing.

To a question from Mr ROGALSKI (IND/DEM, PL), Mr DE VRIES said that he had no knowledge of any CIA detention centres in the European Union.

In reply to questions from Ms GOMES (PSE, PT) and other Members, Mr DE VRIES emphasised the importance of being careful and not see it as factually proven that illegal renditions had taken place with the knowledge of European governments. He stressed that the evidence had not been established yet and repeated that he did not want to prejudge the outcome of the investigations of the Committee as well as of the Council of Europe. Reiterating that the Member States had competence over their security services, the police services and the judicial authorities, and that the EU's role was to legislate to facilitate cooperation, he stressed that there were political and legal limits to the role of the EU. He concluded by emphasising the importance of consistency of the activities of the Council, be it internal or external activity, and stressed the need to work for a common template.

- *Exchange of view with Mr VALLÉS, journalist at Diario de Mallorca*

Mr VALLÉS gave an account of his reports on the CIA flights in the Diario de Mallorca. In March 2005 Diario de Mallorca published the first set of data concerning CIA flights. Among the aircraft concerned were the Boeing 737 with registration number N313P (which later changed) and two Gulfstream V. On one occasion, Spanish authorities were told that an aircraft would go to Örebro, Sweden, but it was later showed that it had actually gone to Baghdad instead. This was the day after

the Atocha killings (11 March 2004). To a question from Mr SALAFRANCA, Mr VALLÉS said that he found it strange that an aircraft could leave so easily the day after the killings. There had been flights to Libya, Azerbaijan, Skopje, Baghdad, Kabul, Bucharest and Washington. The planes always returned to Washington. Mr VALLÉS told the Committee that a CIA aircraft that left from Palma in January 2004 had been involved in the kidnapping of Khaled El-Masri. *Diario de Mallorca* had identified crews of the planes that landed in Palma de Mallorca in 2005. The crew members all had US Government passports. Mr VALLÉS found it highly unlikely that the planes could have landed incognito, and considered that a very high level of ignorance was claimed, but he had no information that the Spanish intelligence services had been involved. *Diario de Mallorca* had asked the hotel for a list of the guests and had established that some of the names were very similar to the names in the Abu Omar case. Some names were however obviously fake names, taken from American film heroes, although the passports were real US government passports. Asked about evidence of transportation of prisoners, Mr VALLÉS said that it was difficult to get, since no one had disembarked from the planes, but there were documents from the air traffic authorities proving that the aircraft had been there. He thought that the current discussion was a bit “schizophrenic” in that the US had admitted the transportation, but the EU had not.

- *Exchange of views with Mr HORGAN, former UN peacekeeper and former officer of the Irish Army*

Mr HORGAN had produced a dossier for the Committee, and considered that the dossier contained overwhelming prima facie evidence that Shannon airport in Ireland had been used for transportation of rendition victims. He said that a link must be made between the wars in Afghanistan and Iraq and the extraordinary rendition programme. Referring to the dossier he had provided the Committee with, he said that CIA planes had landed in Germany, the UK, Ireland, Portugal, the Czech Republic and in Cyprus. He criticised Ireland, as a neutral country, for having allowed thousands of US troops to be transported via Shannon airport. He stressed that the Committee should not be blinded by statistics but should look at the people behind it. Acknowledging the importance of the fight against terrorism, he said that state terrorism, for example in the form of dropping bombs over Baghdad, should not be ignored. He stressed the need to seek as much information as possible. According to the information he had received over the last couple of days, CIA planes were still landing at Shannon airport. He considered the publication of the names of the prisoners at Guantánamo Bay a step in the right direction, but stressed the need to document all the prisoners in

the rendition system. He considered that the UN had lost its value in many ways and thought that the EU was one of the few supranational organisations that could take action and called for help to make the US return to the rule of law.

To questions from Mr FAVA, he referred to the dossier he had given to the Committee secretariat, and said that he did not have information about specific prisoners. He said that it was clear that Shannon airport had been involved, even if only for refuelling. He replied to Mr FAVA and other Members that he had no evidence about prisoners on board, since no one had had the right to board the planes, but said that there was a strong likelihood that there had been prisoners on board, and that there was strong prima facie evidence that Shannon airport had been used for rendition purposes.

To Mr COVENEY's (PPE-DE, IE) comment that the Committee's mandate did not include the wars in Afghanistan and Iraq and the transit of troops to those countries, he replied that the wars were the root of the problem. As for the awareness of the Irish government, he said that it was probably not aware of the transportation initially, but that he was of the opinion that it had made an agreement with the CIA in March 2003. He was convinced that in time, leaks from the CIA would prove his suspicions. To a question from Mr LAMBRINIDIS, Mr HORGAN answered that the Irish government had taken measures at Shannon airport to prevent information and investigation, and that there had been instructions not to search planes. He had verbal statements from the police confirming that. Asked about hard evidence for his allegations, he said that he did not have the power to investigate further, and that it was the task of the Irish Government and the Irish police to make thorough investigations of the issue. However, in no case had the Irish Government investigated any of the CIA planes and/or their crews. As for black sites in Poland and Romania, he said that there was weak evidence for that. According to international media reports, any black sites had closed down in November 2005 and been moved to North Africa. He stressed that according to the UN Convention against Torture, the strength of the evidence did not have to be beyond reasonable doubt and reminded the Committee that it was in the very nature of activities of this kind to be hidden. He concluded by saying that he set his hope on the Committee to find out the truth.

For further information: Ms Cavallin (phone: 8134)



ANNEX

Check against delivery

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

Introductory comments EU Counter-Terrorism Coordinator Gijs de Vries

Brussels, 20 March 2006

1. Terrorism constitutes one of the most serious threats to international peace and security. Terrorists target the essence of democracy: that political conflicts must be resolved through peaceful means. Today's terrorism inspired by groups such as Al Qaida also denies people the right to life and the right to freedom of religion. It is the duty of states to protect their citizens from terrorism. Security is a precondition of liberty.

Over the years, several thousands have died at the hand of terrorists in Europe alone, and many more world-wide. The European Union is strongly committed to protecting the rights of victims of terrorism. In the fight against terrorism governments have a duty to heed the victims' call for justice and protection. The Union's counter-terrorism legislation and policies are designed to this end.

The fight against terrorism thus is both a moral duty and a legal obligation under international law. To the European Union and its member states, the fight against terrorism is a fight for human rights.

2. States must ensure that any measures they take to combat terrorism comply with their obligations under international law, in particular international human rights, refugee and humanitarian law. The EU strongly believes the fight against terrorism must be fought within the boundaries of human rights. This is why the EU endorsed - and help create - successive Security Council Resolutions (such as UNSCR 1456) which require states to ensure that any measure taken to combat terrorism comply with all their obligations under international law, in particular international human rights, refugee and humanitarian law.

This principle is at the heart of the Counter-Terrorist Strategy which the Council adopted in December 2005. It states as the EU's strategic commitment: "to combat terrorism globally while respecting human rights, and making Europe safer, allowing its citizens to live in a area of freedom, security and justice".

Torture is abhorrent. The prohibition against it is absolute. All EU member states are a party to the UN Convention against Torture, which sets out the principle of non-refoulement if there is a risk of torture. Furthermore, EU governments unanimously agreed to enshrine the principle of non-refoulement in the draft Constitutional Treaty (Article II-79). In the case of *Chahal v United Kingdom* the European Court of Human Rights ruled that diplomatic assurances are an inadequate guarantee where torture is "endemic" or a "recalcitrant or enduring problem".

The right to a fair trial is another non-derogable right. Detention without trial and secret detention are illegal under international law.

3. Respecting human rights in the fight against terrorism is first and foremost a moral and legal obligation. It is also a practical necessity.

As demonstrated by last year's vicious attacks in London, the terrorist threat to Europe emanates not only from across our borders, but also from local networks rooted in their own breeding ground. Radical ideologues and terrorist recruiters are targeting Muslim communities both outside and inside the EU. Aided by the power of modern technology, in particular the Internet, they seek to fuel and exploit feelings of oppression, discrimination and humiliation. The core of the issue is propaganda which distorts conflicts around the world as a supposed proof of a clash between the West and Islam and which claims to give individuals both an explanation for grievances and an outlet for their anger. This diagnosis distorts perceptions of Western policies and increases suspicions of hidden agendas and double standards.

Addressing this challenge is beyond the power of governments alone. Today's terrorism will only be defeated with the engagement of the public, and especially Muslims, in Europe and beyond.

To defeat the extremists, Western countries need to win the battle for hearts and minds. We need to engage in this fight together with Muslims, on the basis of common values. Those values are centred on a respect for the sanctity of life, for democracy and human rights. This is why the promotion and protection of human rights, regardless of nationality or creed, is key to the prevention of terrorism.

There is a second reason why human rights protection is a core element in the strategy against radicalisation and terrorist recruitment which the Council adopted four months ago. Terrorist

movements often arise in societies where human rights are denied and opportunities for political expression are lacking. The rule of law, good governance, and protection of basic freedoms are among the strongest tools in the fight against terrorism. To be effective in our efforts to promote human rights globally as Western countries we must lead by example.

To win the battle for hearts and minds our policies to combat terrorism must respect the rights and values we have pledged to defend, including the rights of prisoners. Credibility matters.

4. In the Union's political dialogue with third countries the protection of human rights is a priority issue, from support for the International Criminal Court to the implementation of the EU Torture Guidelines. Human rights are also discussed frequently with the United States, including the requirement to respect international law in the fight against terrorism. The EU has urged the U.S. Administration on several occasions to grant full access to Guantanamo Bay to the Human Rights Rapporteurs of the United Nations. EU Foreign Ministers have stated that Guantanamo Bay remains a source of serious concern to the Union.

The reports about US detention facilities in Europe and the use of aircraft to transfer terrorist suspects between countries in order to interrogate them using torture and ill treatment have been debated by European Union Foreign Ministers at the General Affairs Council meeting on 21 November 2005. As a result, the Presidency wrote on 29 November to the US Secretary of State, Condoleezza Rice, on behalf of the European Union, seeking the views of the United States Government on these allegations.

On 5 December the United States Secretary of State made a detailed statement on the matter in advance of her visit to Europe. The issue was subsequently discussed by EU Foreign Ministers and Secretary Rice during Ms Rice's visit to Brussels. The Presidency of the Council has expressed its full support for the ongoing investigations by the rapporteur of the Council of Europe's Parliamentary Assembly, Mr Marty; by the Secretary-General of the Council of Europe, Mr Davis; and by the European Parliament's Committee.

Terrorists aim to scare and provoke democracies into abrogating the rights and liberties they have pledged to uphold. It is a trap we must avoid. The fight against terrorism is first and foremost a conflict about values. Democratic societies can only overcome the scourge of terrorism in the long term if they remain committed to their own principles.
