



**COUNCIL OF  
THE EUROPEAN UNION**

**Strasbourg, 16 November 2006**

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COHOM 168  
USA 94**

**NOTE**

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from : General Secretariat of the Council  
to : Delegations

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Subject : Report on the meeting of the Temporary Committee on the alleged use of European countries by the CIA for the transport and illegal detention of prisoners, held in Strasbourg on 13 November 2006

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The meeting was chaired by Mr COELHO (PPE-DE, PT).

**I. Exchange of views with Mr Davis, Secretary General of the Council of Europe**

In his opening remarks, Mr DAVIS explained that the allegations concerning transport and illegal detention of prisoners had been looked into by the Council of Europe on three fronts. The Parliamentary Assembly had launched an investigation aiming at clarifying the events, which after Mr Marty's report on behalf of the Committee on Legal Affairs and Human Rights led to the adoption of a resolution and a recommendation. Furthermore, the Venice Commission had issued an opinion on the legal obligations of Council of Europe Member States in respect of secret detention facilities and inter-state transport of prisoners. Finally, in November 2005 Mr Davis, acting under Article 52 of the European Convention on Human Rights (ECHR), had sent out a request for information to all State Parties to the Convention (i.e. all Member States of the Council of Europe, since they are all parties to the Convention). Before sending out this request, Mr Davis had met in private with the Polish and Romanian ambassadors, following media reports of the existence of secret prisons in those countries.

After consultations with their respective governments, both ambassadors gave an assurance that no such prisons existed within their respective territories. The decision to initiate the request under Article 52 was taken at a later stage, following press reports on extraordinary rendition. In those reports the countries allegedly concerned were not named, which was why Mr Davis had chosen to address all Member States of the Council of Europe regarding the matter. States were asked to explain how their internal law ensured the effective implementation of the ECHR on four issues: 1) adequate controls over acts by foreign agents in their jurisdiction; 2) adequate safeguards to prevent, as regards any person in their jurisdiction, unacknowledged deprivation of liberty, including transport, with or without the involvement of foreign agents; 3) adequate responses (including effective investigations) to any alleged infringements of ECHR rights, notably in the context of deprivation of liberty, resulting from the conduct of foreign agents; 4) whether since 1 January 2002 any public official had been involved, by action or omission, in such deprivation of liberty or transport of detainees; whether any official investigation was under way or had been completed. Mr Davis published a first report in February 2006 and a second one, after having received some clarifications and additional information from certain states, in June the same year. All Member States had replied, and a vast majority had replied to all questions. Bosnia and Herzegovina acknowledged events concerning the "Algerian group", which took place in January 2002. Some replies were not entirely satisfactory. The Italian government did not give information about the Abu Omar case, with the motivation that criminal procedures were ongoing. The information provided by FYROM in respect of the El-Masri case was insufficient in many ways. The analysis carried out showed that there was insufficient protection of human rights with regard to the activities of friendly/allied secret services in many States, that current international regulations for air traffic did not give adequate safeguards against abuse, and that international rules on State immunity often prevented States from effectively prosecuting foreign officials who committed crimes on their territory. In June 2006, Mr Davis circulated proposals to governments on how to address the situation. These proposals were published in the beginning of September after discussions in the Committee of Ministers and identified basic principles and guidelines to address the gaps found. The purpose was not to extend the ECHR, but to make its implementation more effective and to make sure that events such as those under investigation could never happen again. Mr Davis stressed that human rights had to be respected in the fight against terrorism and concluded by informing the Committee that the conclusions of the Committee of Ministers would be drawn at a later date, which had not yet been decided.

To Mr FAVA's (PSE, IT) question on whether Italy had declined to give information about the Abu Omar case with reference to judicial proceedings or with reference to state secrecy, Mr DAVIS repeated that the refusal was motivated by judicial proceedings. Italy had given general replies to the questions, and not given any information about any specific case.

To questions from various Members regarding Poland and Romania, their cooperation and the qualities of their replies, Mr Davis said that he had received clear, unequivocal and unambiguous assurances from the ambassadors, with the full authority of their governments, that there were no secret prisons on their territories. He had not received any evidence which would contradict these assurances. The assurances had been given with regard to illegal detention, and did not concern the transport of prisoners.

To comments and questions from Members regarding the location of secret prisons, Mr Davis underlined that while the immediate image of a secret prison was a prison camp with barracks and fences, hotel rooms, police station cells, so called "safe homes" or even private houses could be secret prisons. Regarding US military bases, Mr Davis said that he had no information about how these were used. He had not addressed the US, since the US was only an observer at the Council of Europe, and not a member, and was not a party to the ECHR. While the existence of detention centres could not be denied, their location was not publicly known. Mr Bush had not said that the events had taken place in Europe, but if it had happened on other continents, most people would be surprised if it had not happened in Europe. Ms Rice had stated that what had happened had happened in agreement with European governments. Mr Davis considered the statements of Mr Bush and Ms Rice very serious, but stressed that he was not an investigator and that his task was to see in what way Member States applied the ECHR. It was up to the members of the Committee to draw conclusions from their findings. For Mr Davis, it did not matter in what country the events had taken place. It could happen in any country to anybody. His concern and motive throughout his inquiry, was to ensure that nothing similar could ever happen again. He did not consider that there was any need to change the rules, but simply to ensure their effective implementation.

To questions regarding the applicability of ECHR, Mr Davis stressed that the Convention was applicable throughout the Member States' territory, which included US military bases within that territory. He underlined that a State had the obligation to protect not only citizens and residents, but also visitors within its territory, from human rights violations. Illegal immigrants also had a right to protection.

Ms IN'T VELD (ALDE, NL) considered that there seemed to be a pact of silence among EU governments, and that none of them had even tried to come clean. Ms KLAMT (PPE-DE, DE) disagreed with her on this point and stressed that persons appearing before the Bundestag Committee of inquiry did so under oath and could be prosecuted for perjury if they lied.

To comments and questions whether he thought further evidence would be found, Mr DAVIS said that a lot of people had been involved in the rendition programme. He was of the opinion that the truth would come out in the future.

Mr ÖZDEMİR (Verts/ALE, DE) raised the issue of xenophobia in the context of rendition. He disagreed with the idea that "anybody" could disappear, and considered that the risk was higher for people with Arab-looking features. In respect of people who were still detained in Guantánamo Bay, but who had not yet been released, he suggested that EU countries offer to welcome them. Mr DAVIS agreed with the comment on xenophobia and added that not just immigrants, but people of foreign ethnic origin, were discriminated against. As regards welcoming the people still in detention in Guantánamo Bay, he said that it was not within his mandate to suggest such a thing, but left that to the Committee. He was very careful to stay within his mandate, and did not want his work to be undermined by critics who thought he went beyond it.

Reacting to comments from Mr CATANIA (GUE/NGL, IT), who considered that it was likely that the Afghan detainees in Guantánamo Bay, who made up more than half of the total number of detainees there, had been transported via European airspace and touched down on European territory, Mr DAVIS stressed that his inquiry under Article 52 ECHR was not closed. He would ask further questions if he received evidence that something happened in a Member State which was inconsistent with the information he had received up until now.

To Ms KLAMT's question on what information was still missing in the El-Masri case, Mr DAVIS said that FYROM had stated that it had given all information to the German Bundestag, and that he was awaiting the result of that investigation. If the Bundestag Committee came to the conclusion that FYROM had not respected human rights, he would have to see what action to take. However, he did not want to prejudge the outcome of the Bundestag Committee's investigation.

Addressing Ms KUDRYCKA (PPE-DE, PL), who objected to what she considered to be inaccurate statements regarding Poland in the Marty report, Mr DAVIS underlined that the matter at stake was not whether US aircraft had landed in a certain country, but whether such aircraft carried persons who were subject to extraordinary rendition.

Reacting to repeated comments from Ms INT VELD about the lack of instruments needed to prevent and investigate events such as those under investigation, Mr DAVIS referred to his proposals from September 2006. He saw a need for scrutiny of foreign secret services, and mentioned Hungary as an example of a country that had such scrutiny. He also underlined the need for control over aircraft with regard to the protection of human rights, which was not covered by the Chicago Convention. Mr Davis also said that there were several instruments and bodies in place. Apart from the ECHR there was also the Social Charter. A body which was particularly important was the Committee for the Prevention of Torture, which was very effective. Regarding legal remedies for victims, Mr Davis said that anyone whose human rights had been violated could take action through domestic courts, and once national remedies were exhausted, the matter could be taken to the European Court of Human Rights. In this context, he expressed his regrets at the intervention by certain governments in a case pending before the European Court of Human Rights with the aim of changing the case law concerning the principle of non-refoulement. There were people who had a duty to prosecute if there were enough evidence of human rights abuse. As regards prosecution of actors involved in extraordinary rendition, Mr Davis said that while governments as such could not be prosecuted, people could. Referring to the Nuremberg trials, he stressed that no-one could claim he was "just following orders". People involved in the rendition programme would certainly be morally liable and in most countries also legally liable. He concluded by saying that although he did not want to prejudge the outcome of the discussion of his proposals on how to fill the current gaps in legislation and practice, he had received a lot of support for them.

## **II. Administrative information**

Time and place of the next meeting: 20 November 2006 at 15:00 in Brussels