



COMMISSIONER FOR HUMAN RIGHTS
COMMISSAIRE AUX DROITS DE L'HOMME



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MEMORANDUM

To: Ms Laura Codruța Kövesi
Prosecutor General of Romania

From: Thomas Hammarberg
Council of Europe Commissioner for Human Rights

RE: Advancing accountability in respect of the
CIA Black Site in Romania

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Introduction

1. My Office has prepared the present submission pursuant to some discussions with the Permanent Representative of Romania to the Council of Europe, which followed my publication of two Human Rights Comments¹ in September 2011. I have assumed that it is in our common interest to establish the truth and secure accountability in respect of detention and interrogation activities reported to have been carried out at a secret prison facility (“Black Site”) operated by the US Central Intelligence Agency (“CIA”) on the territory of Romania in the context of the “war on terror”.
2. Within the terms of my mandate, I have attempted to assemble as much credible factual material as possible regarding the operations of the CIA Black Site in Romania. Towards this end I have drawn upon original investigation and analysis undertaken by my Office during the six years of my mandate as Commissioner, as well as the work and findings of other Council of Europe bodies in the same period, notably the inquiries led by the Parliamentary Assembly and its former Rapporteur, Senator Dick Marty, as reflected in his reports published in 2006² and 2007.³
3. The sources for our submission include official US Government documents describing CIA operations (many of which have been declassified as a result of litigation under the Freedom of Information Act, or emerged from other court proceedings), flight records and aeronautical data amassed from diverse entities across the global aviation sector⁴ (and especially in the countries that hosted CIA operations), and excerpts of interviews with former CIA detainees carried out by delegates of the International Committee of the Red Cross (ICRC)⁵. Reports produced by investigative journalists, notably as a result of a collaboration between the *Associated Press*⁶ and

¹ Reference to two consecutive editions of the Council of Europe Commissioner’s Human Rights Comment, as follows: “Ten years of ‘global war on terror’ undermined human rights – also in Europe”, dated 1 September 2011, posted at: http://commissioner.cws.coe.int/tiki-view_blog_post.php?postId=172; and “Europeans must account for their complicity in CIA secret detention and torture”, dated 5 September 2011, posted at: http://commissioner.cws.coe.int/tiki-view_blog_post.php?postId=175.

² See Dick Marty, Committee on Legal Affairs and Human Rights, Council of Europe Parliamentary Assembly, “Alleged secret detentions and unlawful inter-state transfers of detainees involving CoE member States”, Doc. 10957, dated 12 June 2006, describing the “global spider’s web” and the concept of “rendition circuits” (“CoE Marty Report 2006”), available at <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc06/EDOC10957.htm>.

³ See Dick Marty, Committee on Legal Affairs and Human Rights, Council of Europe Parliamentary Assembly, “Secret detentions and illegal transfers of detainees involving Council of Europe member states: second report”, Doc. 11302, dated 11 June 2007, detailing the development of the CIA’s “HVD Program”, particularly operations in Poland and Romania (“CoE Marty Report 2007”), available at: http://assembly.coe.int/ASP/Doc/DocListingDetails_E.asp?DocID=12049.

⁴ Our sources in the aviation sector include current and former employees of national civil aviation authorities, airports, pilots, private charter companies (including those that provided aircraft or other services to the CIA), US Government contractors and sub-contractors, and international organisations such as Eurocontrol.

⁵ See International Committee of the Red Cross, Regional Delegation for United States and Canada, Washington; “ICRC Report on the Treatment of Fourteen ‘High Value Detainees’ in CIA Custody”, WAS 07/76, dated February 2007 (“ICRC Report on HVDs”). The report was marked “strictly confidential and intended only for the Authorities to whom it is presented”; but it was leaked to the New York Review of Books in April 2009 and is now available online at: <http://www.nybooks.com/icrc-report.pdf>. The aim of the ICRC report is described as follows at page 4: “to provide a description of the treatment and material conditions of detention of the fourteen [HVDs] during the period they were held in the CIA detention program, as reported to the ICRC during its private interviews with these persons.”

⁶ The Associated Press has published a series of articles related to the CIA Black Site in Romania based on investigations led by its bureau in Washington, DC. The latest and most authoritative of these articles is the following: Adam Goldman and Matt Apuzzo, “AP Exclusive: Inside Romania’s secret CIA prison”, dated 8 December 2011 (“AP report on CIA Black Site location in Romania”), available at: <http://news.yahoo.com/ap-exclusive-inside-romania-secret-cia-prison-050239912.html>. This article is accompanied by an interactive slideshow entitled “Bright Light: Inside secret CIA prison in Romania”, which features details regarding the location and layout of the facility,

German public television, *ARD Panorama*⁷, have also enabled specific elements of the CIA's operations in Romania to be verified and corroborated.

4. It is my view that sufficient evidence has now been amassed to allow us to consider the existence of a CIA Black Site in Romania as a proven fact, and to affirm that serious human rights abuses took place there. Nonetheless, it remains the role and responsibility of the Romanian authorities to establish the full circumstances of what happened, including the extent and nature of any crimes that occurred. In order to fulfil Romania's positive obligations under the European Convention on Human Rights, I believe it is now imperative that the Romanian authorities conduct a prosecutorial investigation capable of leading to the identification and punishment of those responsible, whoever they might be.
5. The material in this submission is divided into three main sections, as follows:
 - **Section I** contains information gathered in respect of the anatomy of detention operations at the CIA Black Site in Romania, including the opening of the facility, details of the CIA rendition flights that brought in further detainees, and the life-cycle of the CIA Black Site in Romania;
 - **Section II** contains information gathered regarding the operating conditions that existed for the CIA Black Site in Romania, notably in respect of the physical location and characteristics of the prison facility, and the "cover" provided by the CIA's Romanian partners in order to preserve secrecy and security; and
 - **Section III** seeks to offer a basis on which to develop case studies of individual detainees held at the CIA Black Site in Romania, notably by establishing their identities and by recounting details of the treatment authorised by the US Department of Justice for use in their interrogations.

along with certain background details regarding detainees held there; it is available at:

<http://hosted.ap.org/interactives/2011/cia-romania/>.

⁷ As a result of its collaboration with the Associated Press, a team of German investigative journalists produced a television reportage for the ARD news programme Panorama: see John Goetz, Kristopher Sell, "CIA-Geheimgefängnis in Bukarest enttarnt", broadcast dated 8 December 2011, available in the ARD web archive at: <http://daserste.ndr.de/panorama/archiv/2011/ciagefaengnis101.html>.

I. The anatomy of detention operations at the CIA Black Site in Romania

1.1 Opening of the CIA Black Site in Romania

6. The opening of the CIA Base codenamed “Bright Light”, and the start of detention operations at the CIA Black Site in Romania, was marked by a flight into Bucharest Baneasa Airport (LRBS) on the night of **22 September 2003**. Flight records show that the Boeing 737 aircraft, registered with the FAA as **N313P**, arrived at Baneasa at 21h31m GMT that night in the course of a four-day flight “circuit”, during which it landed in and departed from a total of six different foreign territories, as well as the US naval installation at Guantanamo Bay, Cuba.

7. The eight (8) individual routes flown by the aircraft N313P in the course of that circuit, along with the dates of the flights, are presented below:

<u>Departure airport</u>	<u>Arrival airport</u>	<u>Date of flight</u>
Washington, DC (KIAD)	Prague, Czech Rep. (LKPR)	20 Sep 2003
Prague, Czech Rep. (LKPR)	Tashkent, Uzbekistan (UTTT)	21 Sep 2003
Tashkent, Uzbekistan (UTTT)	Kabul, Afghanistan (OAKB)	21 Sep 2003
Kabul, Afghanistan (OAKB)	Szymany, POLAND (EPSY)	22 Sep 2003 (arrived 18h50m GMT)
Szymany, POLAND (EPSY) (departed 19h56m GMT)	Bucharest, ROMANIA (LRBS) (arrived 21h31m GMT)	22 Sep 2003
Bucharest, Romania (LRBS)	Rabat, MOROCCO (GMME)	22 Sep 2003
Rabat, Morocco (GMME)	GUANTANAMO BAY (MUGM)	23 Sep 2003
Guantanamo Bay (MUGM)	Dulles, Washington, DC (KIAD)	24 Sep 2003

8. It has been reported that as many as five (5) consecutive individual routes on this rendition circuit – beginning in Tashkent, Uzbekistan and concluding in Guantanamo Bay – may have involved transfers of detainees in the custody of the CIA.

9. In particular, though, the highlighted route flown between Szymany, Poland – the airfield closest to the location of the CIA’s first European Black Site – and Bucharest, Romania was significant because it was the first time in the history of the CIA Rendition and Detention Program that the CIA engaged in its trademark practice of “dummy” flight planning for its routes into and out of Romania.

10. To recap, the practice of “dummy” flight planning, as uncovered by CoE Rapporteur Marty in his 2007 report,⁸ was part of a system of cover-up frequently used in relation to CIA flights, especially on routes into and out of the European host countries of CIA Black Sites – Poland, Romania and Lithuania. Using this practice, CIA flights were deliberately disguised so that their actual movements would not be tracked or recorded – either “live” or after the fact – by the supranational air safety agency Eurocontrol (and presumably by investigators who might wish to document their activities).

⁸ See Marty Report 2007; at paras. 184 to 190, pages 36-38.

11. False flight plans in respect of Romania - customarily filed on behalf of the CIA by its well-known aviation services contractor **Jeppesen International Trip Planning**⁹ (“Jeppesen”) – consistently featured an airport of departure (ADEP) and / or an airport of destination (ADES) that the aircraft never actually intended to visit. The CIA’s deliberate trend, which it began on 22 September 2003 and continued for more than two years, was to avoid listing Bucharest (LRBS) as its express destination. If Bucharest was mentioned at all in these flight plans, then it was usually only as an alternate, or back-up airport, on a route involving Constanta (LRCK) or Timisoara (LRTR), for example.

12. The following excerpt has been located and extracted from the original “data strings”¹⁰ for the aircraft N313P in the period in question. The excerpt shows a copy of a “dummy” flight plan filed by Jeppesen at 21h22m GMT on 21 September 2003, for the flight of N313P from Szymany (EPSY) to Romania. The highlighted “LRCK” is the false declaration of Constanta as the destination the flight.

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>>> From file : 030921.an1_output_manager.log.pif1op2.wri

=====

```

Date is      : 030921225938
To Network   : AFTN
To Addresses :
EPWWZQZX
MESSAGE is :
Length is   : 241
Header is   :
KIND        : FLIGHT_PLAN
TITLE       : IFPL
EFPM_ID     : AA42160280
TIME_STAMP  : 030921 2259
FPD_ID      : AA41292823
ARC_ID      : N313P
ADEP        : EPSY
ADES        : LRCK
GROUP_ID    : GERMPO
Text is     :
(FPL-N313P-IG
-B737/M-SDGHIRUWY/S
-EPSY2100
-N0456F410 DCT DW H92 WAR UN871 LDZ UN983 DIBED UL621 BUKOV UN616 CND CETUL2F
-LRCK0136 LRBS
-EET/UKLV0035 LRBB0057 REG/N313P SEL/AFRS STS/STATE RMK/IFPS REROUTES ACCEPTED DOF/030922
ORGN/KSFOXLDI)

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⁹ Jeppesen International Trip Planning is the travel service of Jeppesen Dataplan, an aviation services provider based in San Jose, California and a subsidiary of Boeing, the world’s largest aerospace company. When Jeppesen International Trip Planning files communications, notably flight plans, in the Integrated Initial Flight Plan Processing System (IFPS), they are identified by the use of the company’s “originator address”, which is “KSFOXLDI”.

¹⁰ “Data strings” are exchanges of messages or digital data (mostly in the form of coded text and numbers) between different entities around the world on aeronautical telecommunications networks. “Data strings” record all communications filed in relation to each particular aircraft as its flights are planned in advance, and as it flies between different international locations. The filings of initial flight plans come from diverse entities, including aviation service providers, ANS (Air Navigation Services) authorities, airport authorities and government agencies. Specialist operators of the Integrated Initial Flight Plan Processing System (IFPS) process each message, circulate it to relevant “third parties” and reply to the entity that sent it, in the form of an “Operational Reply”. Messages sent by “IFPS operators” are also recorded in “data strings”.

13. It is noteworthy that in the penultimate line of this plan (highlighted yellow), Jeppesen invoked a very important “special status”, or STS, designation that is supposed to be used only in strictly limited circumstances:¹¹ “**STS/STATE**”. In filing this designation, Jeppesen claimed an official status for N313P as a diplomatic or state aircraft, only one notch below the aircraft that carry Heads of State [STS/HEAD]. The flight plan therefore confirms that the mission of N313P, as well as its cover-up, was known about and authorized in the highest echelons of the US Government, as well as in the authorities of the receiving state, Romania. N313P shares this STS designation with the majority of CIA detainee transfer flights into Europe we have analysed.¹²

1.2 Further detainee renditions into the CIA Black Site in Romania

14. Based on having unpicked the practice of “dummy” flight planning and, in respect of several key landings of CIA rendition aircraft, having obtained original documentary records from agencies inside Romania, we have been able to compile a substantial, albeit non-exhaustive list of disguised rendition flights into Bucharest, all of which bore the character of “detainee drop-offs”¹³. Beginning with the landing of N313P that marked the opening of the CIA Black Site in Romania, the most significant of these flights can be summarised as follows:
- i. **N313P** landing at 21h31m GMT on the night of **22 September 2003**, assessed to have been bringing in at least two CIA detainees from Szymany, POLAND; “dummy” flight plans filed featuring Constanta (LRCK);
 - ii. **N313P** landing at 23h51m GMT on the night of **25 January 2004** (assessed to have been bringing in CIA detainee(s) from Kabul, AFGHANISTAN; “dummy” flight plans filed featuring Timisoara (LRTR);
 - iii. **N85VM** landing at 23h14m GMT on the night of **26 January 2004** (assessed to have been bringing in CIA detainee(s) from Amman, JORDAN; “dummy” flight plans filed featuring Constanta (LRCK);
 - iv. **N85VM** landing at 21h47m GMT on the night of **12 April 2004** (assessed to have been bringing in CIA detainee(s) from US Naval Base, GUANTANAMO BAY, via a technical stopover in Tenerife; “dummy” flight plans filed featuring Constanta (LRCK);
 - v. **N288KA** landing at 21h24m GMT on the night of **31 July 2004** (assessed to have been bringing in CIA detainee(s) from Kabul, AFGHANISTAN and from Amman, JORDAN; “dummy” flight plans filed featuring an unspecified destination;
 - vi. **N787WH** landing at 09h45m GMT on **18 February 2005** (assessed to have been bringing in CIA detainee(s) from Rabat, MOROCCO; “dummy” flight plans filed featuring Constanta (LRCK);

¹¹ STS designators are very strictly limited, because once granted they allow deviations from planned routes and other important exemptions. See Eurocontrol, User Relations and Development Bureau, *IFPS Users Manual*, Edition No. 11.2, 30.03.2007 (hereinafter “Eurocontrol IFPS Users Manual”), available at <http://www.cfm.eurocontrol.int>; at Section 50, “Special Status Flights (STS)”, p. 50-1.

¹² There are of course legal implications of flying as a “state flight”: i.e. the sending state incurs legal responsibility for whatever acts the aircraft and its crew engaged in. The systematic *mala fides* resort to “dummy” flight planning would also fall to be considered among these acts.

¹³ See CoE Marty Report 2006, at Section 2.2 “Components of the spider’s web”, pages 15 to 17. At paragraph 43: “Detainee transfer / drop-off points” are defined as “places visited often, where flights tend to stop for just short periods, mostly far off the obvious route – either their location is close to a site of a known detention facility or a *prima facie* case can be made to indicate a detention facility in their vicinity.”

- vii. **N308AB** landing at circa 21h00 GMT on **26 May 2005** (assessed to have been bringing in CIA detainee(s) from Amman, JORDAN; “dummy” flight plans filed featuring an unspecified destination; and
- viii. **N860JB** landing at 19h34m GMT on **21 August 2005** (assessed to have been bringing in CIA detainee(s) from Kabul, AFGHANISTAN; “dummy” flight plans filed featuring Constanta (LRCK).

1.3 Life-cycle of the CIA Black Site in Romania

15. Our investigations into the CIA’s Black Sites in Europe have enabled us to understand the underlying transience of the CIA’s individual detention facilities. Simply put, we have found that each CIA Black Site had a unique individual life-cycle.
16. The timing of operations on each host territory of a CIA Black Site was highly sensitive and sometimes resulted from abrupt changes in conditions. Factors influencing not only the choice of location for a Black Site, but also the length of its life-cycle, included: the CIA’s relationships with foreign liaison services / operational partners in the respective host territories; and the CIA’s determination to evade detection or exposure of any aspect of its RDI Program.
17. Such was the cyclical nature of the CIA’s Program, the mantle of most significant venue for detention and interrogation operations shifted from one host territory to another in periods measured by months. Thailand hosted “Black Site No. 1” near Bangkok and was the sole “Customized HVD Facility” for just under nine months (27 March to 4 December 2002). Poland, host of “Black Site No. 2” at Stare Kiejkuty, followed immediately and remained in operation for just under ten months (5 December 2002 until 22 September 2003).
18. Such was the expansion of the CIA’s HVD Program in the course of 2003, it is not possible to say thereafter that one single site remained predominant for the entirety of its existence. However, for a period of at least one year, beginning with its opening on 22 September 2003, the mantle of most significant site passed to Romania, which hosted “Black Site No. 3” in Bucharest.
19. Information otherwise gathered regarding the life-cycle of the CIA Black Site in Romania includes the following:
 - *The CoE Marty Inquiry found that “Romania was developed into a site to which more detainees were transferred only as the HVD Program expanded”, and that “the Romanian Black Site was incorporated into the Program in 2003, attained its greatest significance in 2004, and operated [at least] until the second half of 2005”¹⁴*
 - *The Associated Press has reported that “The Romanian and Lithuanian sites were eventually closed in the first half of 2006 before CIA Director Porter Goss left the job. Some of the detainees were taken to Kabul, where the CIA could legally hold them before they were sent to Guantanamo. Others were sent back to their native countries... All the prisons were closed by May 2006, and the CIA’s detention and interrogation program ended in 2009”¹⁵; and*

¹⁴ See CoE Marty Report 2007, at Section II.ii.b, entitled “The United States’ choice of European partners”, at page 26, paragraphs 130-135.

¹⁵ See AP report on CIA Black Site location in Romania

- *ABC News reported on December 5, 2005 that “two CIA secret prisons operat[ed] in Eastern Europe until [November 2005]” – presumed to have been in Romania and one other country – and that “the United States scrambled to get all the [detained Al-Qaeda] suspects off European soil before Secretary of State Condoleezza Rice arrived there today”.*¹⁶

II. Operating conditions for the CIA Black Site in Romania

2.1 Precise physical location, capacity and layout

20. As a result of the aforementioned AP / ARD collaboration, the exact whereabouts, capacity and layout of the CIA Black Site in Romania have been established for the first time. The prison facility was operated in an underground basement that forms part of the building complex housing the National Registry Office for Classified Information (ORNISS), at No. 4 Strada Mures, Sector 1, Bucharest.
21. It is significant that the facility was found to have been located in the northern part of downtown Bucharest, as this accords with the CIA methodology of maintaining only a short drive between the rendition airfield, Baneasa Airport, and the detention site.
22. Further aspects of the identified location in conformity with prototypical CIA methodology¹⁷ include the following:
 - *“After flying into Bucharest, the detainees were brought to the site in vans. CIA operatives then drove down a side road and entered the compound through a rear gate that led to the actual prison. The detainees could then be unloaded and whisked into the ground floor of the prison and into the basement”*¹⁸
 - *Whereby Romanian military intelligence officials have testified that they were involved in providing “perimeter security” and other operational assistance to their American counterparts, notably in securing airports at which CIA aircraft were landing*¹⁹; and
 - *The New York Times has reported that the CIA’s detention centers, including its facility in Romania, were “each built to house about a half-dozen detainees... [who] were kept in isolated cells”*²⁰; after which the AP confirmed that:

¹⁶ See Brian Ross and Richard Esposito, *ABC News*, “Exclusive: Sources Tell ABC News Top Al-Qaeda Figures held in Secret Prisons”. December 5, 2005; available at: <http://abcnews.go.com/Blotter/Investigation/story?id=1375123>.

¹⁷ The most authoritative source of information on “prototypical” CIA methodology is an 18-page background paper the Agency transmitted to the Office of Legal Counsel (“OLC”) in December 2004, in which the “interrogation process” (in its broadest sense) is described. See Central Intelligence Agency, “Background Paper on CIA’s Combined Use of Interrogation Techniques”, transmitted in Fax from Associate General Counsel [name redacted] for Daniel Levin, Acting Assistant Attorney General, Office of Legal Counsel, *Re: same*, dated December 30, 2004 (“CIA Background Paper on Techniques”), available at: <http://www.aclu.org/files/torturefoia/released/082409/olcremand/2004olc97.pdf>. The document contains, at page 4, “a summary of the detention conditions that are used in all CIA HVD facilities and that may be a factor in interrogations”; it further states, at page 1, that the CIA process of eliciting “cooperation” from detainees is, from the point of capture: “based on the concept of using both physical and psychological pressures in a comprehensive, systematic, and cumulative manner... to overcome a detainee’s resistance posture.”

¹⁸ See AP report on CIA Black Site location in Romania

¹⁹ See CoE Martyr Report 2007; in particular at Section IV.iii.a, entitled “Creating a secure area for CIA transfers and detentions”, at pages 44 to 45, paragraphs 219-226.

²⁰ See David Johnston and Mark Mazzetti, “Interrogation Inc.: A Window into CIA’s Embrace of Secret Jails”, in *The New York Times*, August 12, 2009, available at: http://www.nytimes.com/2009/08/13/world/13foggio.html?_r=1&hp

- *“The basement [of the CIA Black Site in Romania] consisted of six prefabricated cells, each with a clock and arrow pointing to Mecca, officials said. The cells were on springs, keeping them slightly off balance and causing disorientation among some detainees”²¹.*

2.2 Operating agreements and authorisations on the part of the Romanian authorities

23. Recent reporting appears to offer more information than was previously known about the proprietary character of the building(s) in which the CIA Black Site in Romania was housed, and the means by which the premises was appropriated and renovated. There is a precedent in this regard: the equivalent CIA Black Site in Poland was a constituent part of an existing state facility that was “loaned” to the CIA – situated inside the Polish military intelligence base at Stare Kiejkuty.²²

24. In the case of Romania, the creation and operation of the National Registry Office for Classified Information (ORNISS), as a result of Romanian Government Emergency Ordinance No. 153 of 7 November 2002,²³ coincided with an important development in the operations of the CIA Rendition, Detention and Interrogation Program, as follows:

- *The New York Times has reported that Kyle ‘Dusty’ Foggo, the then serving Chief of CIA Logistics in Europe (stationed in Frankfurt), agreed in March 2003 to an assignment to “oversee construction” of CIA Black Sites in Romania and two other locations²⁴.*

25. It is clear that there exists a set of official documents according to which the basis for the CIA’s operation of a secret detention facility on Romanian territory was agreed, and its operational permissions and protections were authorised. The Council of Europe’s understanding on this issue was contained in the Marty Report of 2007 in the following terms:

- *“... that the most important documents at issue have the character of “bilaterals”, derived from the application of the wider NATO framework to US-Romanian counterterrorism co-operation in the course of the “war on terror”²⁵*

(“NYT Story on the Foggo facilities”): “One jail was a renovated building on a busy street in Bucharest, Romania, officials disclosed.”

²¹ See AP report on CIA Black Site location in Romania

²² See Anna Marszalek and Michal Majewski, “Amerykanie mieli tajna baze na Mazurach’ [Americans had a secret base in the Mazury lakes], published in Polish newspaper *Dziennik*, 7 September 2008, available (in Polish language) at: http://dziennik.pl/polityka/article233214/Amerykanie_mieli_tajna_baze_na_Mazurach.html. The article cited testimony from Polish intelligence insiders describing a “zero zone” on the premises of Stare Kiejkuty, to which only CIA had access. See also CoE Marty Report 2007, at Sections III.iii.a and b, entitled “Transfer of HVDs into CIA detention in Poland” and “Arrival and ‘drop-offs’ at Szymany Airport”.

²³ All relevant information pertaining to the legal framework under which ORNISS was created and operates is available on its official website at: <http://www.orniss.ro/en/legislation.html>.

²⁴ See NYT Story on the Foggo facilities: The article described the “unusual request” made to Kyle D. Foggo, Chief of CIA’s European Logistics Base, by two unnamed CIA officials in March 2003 for “his help building secret prisons to hold some of the world’s most threatening terrorists”. Foggo is reported to have “agreed to the assignment” – and “with that, [he] went on to oversee construction of three detention centers... according to former intelligence officials and others briefed on the matter.”

²⁵ See CoE Marty Report 2007, in particular at Section II.iii.b, entitled “Application of the NATO framework in Romania”, at pages 28 to 31, paragraphs 142-157.

26. It is equally clear, however, that decisive compulsory powers, derived from judicial and / or executive order, would be required to declassify the relevant documents, especially those classified under NATO's Security of Information policy.²⁶
27. It would seem to me incumbent on Romania's judicial and political authorities to reveal publicly the parameters of the State's co-operation with the CIA in the "war on terror", not least to avert damage to the State's political credibility and perceived human rights record in the eyes of important partners on the international stage. This is the only means by which to Romania can ensure that accountability for *specific* human rights abuses can be differentiated from attribution of responsibility for a *general* approach to a policy issue.

III. Treatment of detainees held at the CIA Black Site in Romania

3.1 Categorisation / "value" assessment of the detainees

28. Since the publication of the CoE Marty Report in 2007, it has been widely accepted that the detainees held at the CIA Black Site in Romania were at least putatively "high-value detainees", or HVDs, and were kept in the "exclusive custody"²⁷ of the CIA's RDI Program. Each captive categorised as HVD was defined by the US Government as: "a detainee who, until time of capture, [*the relevant USG agencies*] have reason to believe (1) is a senior member of al-Qa'ida...; (2) has knowledge of imminent terrorist threats against the USA... or has / had direct involvement in planning and preparing terrorist actions against the USA...; and (3) if released, constitutes a clear and continuing threat to the USA or its allies"²⁸...
29. A more nuanced understanding of the categorisation of HVDs, derived from CIA documents that were declassified in 2009, demonstrates that the process of "value" assessment took part in two main stages:
- *first, detainees were "generally categorized" as "targets" prior to their detention on the basis of the "quality of the intelligence that they [were] believed likely to be able to provide about current terrorist threats against the United States"²⁹;*
 - *second, the CIA's Counterterrorist Center subsequently assigned "high-value", or HVD, status to a much smaller group of detainees, having interrogated them, according to the extent to which they had "advanced our understanding of terrorism on multiple fronts"³⁰.*

²⁶ See CoE Marty Report 2007, at Section II.iii.d, entitled "Preserving secrecy and NATO Security Policy", at pages 31 to 33, paragraphs 160-166.

²⁷ The CIA itself has described what being in CIA custody meant for a high-value captive in the "war on terror" in the following terms: "find[ing] himself in the complete control of Americans... [experiencing] significant apprehension... because of the enormity and suddenness of the change in environment, the uncertainty about what will happen next, and the potential dread [he] might have of US custody." See CIA Background Paper on Techniques, at page 2.

²⁸ See US Department of Justice, Office of Legal Counsel, "Memorandum for John A. Rizzo, Senior Deputy General Counsel, CIA from Steven G. Bradbury, Principal Deputy Assistant Attorney General, *Re: Application of 18 USC §§ 2340-2340A to Certain Techniques that may be used in the Interrogation of a High Value Al-Qaeda Detainee*, dated May 10, 2005, available at: http://luxmedia.vo.llnwd.net/o10/clients/aclu/olc_05102005_bradbury46pg.pdf ("Bradbury CIA Techniques Memo"); at page 4.

²⁹ See Central Intelligence Agency, Inspector General, SPECIAL REVIEW; "Counterterrorism Detention and Interrogation Activities (September 2001 – October 2003), (2003-7123-IG), dated 7 May 2004, released in its latest declassified form 24 August 2009 ("CIA IG Report"), available at: http://luxmedia.vo.llnwd.net/o10/clients/aclu/IG_Report.pdf; at page

³⁰ See CIA, Directorate of Intelligence, "Detainee Reporting Pivotal for the War Against Al-Qa'ida", analysis prepared by the DCI CTC's Office of Terrorism Analysis, dated June 3, 2005, heavily redacted version released August 24,

30. A further factor worth considering in the process of “value” assessment is the length of time for which the Romania detainee(s) had already been held in CIA custody at other locations prior to being brought to Romania. HVDs were considered to bear the greatest “value” as intelligence assets in the first few days, or weeks, after their capture, since this was the period in which they were assessed as holding “live” or “actionable” intelligence about imminent threats of terrorist attack. As such, certain HVDs were categorized as “lower value” after multiple months of successive “cycles” of interrogations and debriefings, purely because their information had effectively been exhausted.
31. Gauging the “value” assigned by the CTC to the detainees held at the CIA Black Site in Romania – both *generally*, and *specifically* at the times these detainees were brought there – is a vital step towards understanding where this facility fit into the hierarchy of all the Black Sites in the CTC Program.
32. This process also informs our understanding of the extent to which “actionable intelligence” was likely to have been sought from the detainees held in the facility, as well as the parameters within which interrogators at the CIA Black Site in Romania were likely to have applied for authorisation to exercise “enhanced interrogation techniques” (“EITs”)³¹ in their treatment of the detainees.
33. Notwithstanding the individual interrogation regimes designed specifically for individual detainees, the CIA reported to the US Department of Justice in 2005 that a set of six *Standard Conditions of CIA Detention*³² were being applied routinely to detainees held in the CIA’s detention facilities – including at the CIA Black Site in Romania. These conditions included forms of treatment that might in themselves have ramifications for compliance with the ECHR, including the use of blindfolding or hooding, forced shaving of hair, indefinite periods of incommunicado solitary confinement, continuous white noise, continuous illumination using powerful light bulbs, and continuous use of leg shackles (in some instances for 24 hours a day).

3.2 HVDs brought to Romania after prior interrogation in other CIA Black Site locations

34. The CoE Marty Inquiry reported that one set of detainees held in Romania “belonged to a category of HVDs whose intelligence value had been assessed as lower”³³ – a reference which we interpret to indicate certain cases in which HVDs were brought to Romania having been held and interrogated previously for extended periods in other Black Sites. This downgrading of a

2009 (“CTC Detainee Reporting Pivotal”); available at:

<http://ccrjustice.org/files/CIA%20Doc%20Detainee%20Reporting%20Pivotal.pdf>.

³¹ For a summary of the original list of ten (10) EITs described by the CIA to the OLC in 2002, see CIA IG Report, *op. cit.*, *supra* note 16, in the textbox at page 15: “Enhanced Interrogation Techniques”. Further, at page 30, paragraph 64: “EITs include physical actions and are defined as ‘techniques that *do* incorporate physical or psychological pressure beyond Standard Techniques’. The CIA IG report cites: DCI Interrogation Guidelines, *op. cit.*, *supra* note 41.

³² The CIA reported on detention conditions in classified correspondence with members of the DoJ’s Office of Legal Counsel (OLC), excerpts of which have subsequently been made public in declassified OLC memos: see, in particular, Memorandum for John A. Rizzo, Acting General Counsel, Central Intelligence Agency, from Steven G. Bradbury, Acting Assistant Attorney General, Office of Legal Counsel, Department of Justice, Re: Application of the Detainee Treatment Act to Conditions of Confinement at Central Intelligence Agency Detention Facilities, dated 31 August 2006; released 24 August 2009; available at: <http://www.justice.gov/olc/docs/memo-rizzo2006.pdf> (“Bradbury DTA Memo 2006”).

³³ See CoE Marty Report 2007, at Section II.ii.b, entitled “The United States’ choice of European partners”, at page 26, paragraphs 130-135.

detainee's intelligence "value" may in fact be represented more accurately as the detainee's transition from being "interrogated" to being "debriefed"³⁴, which significantly reduced the likelihood of a detainee being subjected to EITs.³⁵

35. Based on our investigations, individual detainees belonging to this set of HVDs held in Romania include the following:

Khalid Sheikh Mohammed (KSM)

- *Arrested: 1 March 2003 : Rawalpindi, Pakistan*
- *Previously held: Pakistan; Afghanistan; Poland*
- *Subjected in Poland to a range "unauthorised techniques", including extreme "repetitive use" of the waterboard technique³⁶, as well as sustained inhuman and degrading treatment*
- *Transferred to CIA Black Site in ROMANIA: 22 September 2003 N313P flight: Szymany (EPSY) – Bucharest (LRBS)*
- *"Kept continuously shackled"³⁷ but participated in extensive debriefing in 2003-4 and does not appear to have been subjected to EITs in Romania*

Walid Bin Attash (alias "Khallad")

- *Arrested: 29 April 2003 : Karachi, Pakistan*
- *Previously held: Pakistan; Afghanistan; Poland*
- *Subjected in Poland to his most intensive period of "enhanced techniques", accompanied by abuse including deliberate exploitation of his disability³⁸, denial of basic sanitary needs and persistent "water dousing"*

³⁴ See CIA IG Report, at page 6, footnote 6 for an insightful explanation of the definitions of, and distinction between, CTC interrogators and debriefers, as well as their respective roles: "Before 11 September (9/11) 2001, Agency personnel sometimes used the terms *interrogation/interrogator* and *debriefing/debriefer* interchangeably. The use of these terms has since evolved and, today, CTC more clearly distinguishes their meanings. A debriefer engages a detainee solely through question and answer. An interrogator is a person who completes a two-week interrogations training program, which is designed to train, qualify, and certify a person to administer EITs. An interrogator can administer EITs during an interrogation of a detainee only after the field, in coordination with Headquarters, assesses the detainee as withholding information. An interrogator transitions the detainee from a non-cooperative to a cooperative phase in order that a debriefer can elicit actionable intelligence through non-aggressive techniques during debriefing sessions. An interrogator may debrief a detainee during an interrogation; however, a debriefer may not interrogate a detainee." In my analysis this explanation demonstrates yet further the systematic nature of "HVD Interrogation".

³⁵ For an indication, generally, of why EITs would be applied less readily, or ceased altogether, see Bradbury Article 16 CAT Memo, at page 30; also citing Bradbury Techniques Memo, at page 5: "'Use of enhanced techniques ceases 'if the detainee is judged to be consistently providing accurate intelligence...' Indeed, use of the techniques usually ends after just a few days when the detainee begins participating."

³⁶ See CIA IG report, at pages 44-45, paragraph 100: "Cables indicate that Agency interrogators [at Quartz Base] applied the waterboard technique to [KSM] 183 [times]"; see also paragraph 91: "183 applications of the waterboard".

³⁷ See ICRC report on HVDs, in the section on "Prolonged Use of Handcuffs and Shackles", at page 16.

³⁸ See ICRC report on HVDs, at page 11 ("artificial leg sometimes removed by the interrogators to increase the stress and fatigue"), and at page 22, in the section entitled "The Role of Medical Staff".

- *Transferred to CIA Black Site in ROMANIA: 22 September 2003 N313P flight: Szymany (EPSY) – Bucharest (LRBS)*
- *Participated in extensive debriefing in 2003-4 and is not known to have been subjected to EITs in Romania*

Ramzi Binalshibh³⁹

- *Arrested: 11 September 2002 : Karachi, Pakistan*
- *Previously held: Pakistan; Afghanistan; Poland; Morocco; Guantanamo Bay*
- *Subjected in Poland to his most intensive period of “enhanced techniques”, accompanied by abuse including prolonged stress standing, water dousing and a one-month liquid diet*
- *Transferred to CIA Black Site in ROMANIA: 18 February 2005 N787WH flight: Rabat (GMME) – Bucharest (LRBS)*
- *Binalshibh told the ICRC that in Romania he was: “restrained on a bed, unable to move, for one month, February 2005 and subjected to cold air-conditioning during that period”⁴⁰; and that forced shaving was used to humiliate him⁴¹.*

Abd al-Rahim Al-Nashiri

- *Arrested: October 2002 : Dubai, UAE*
- *Previously held: Dubai; Afghanistan; Thailand; Poland; Morocco; Guantanamo Bay*
- *Subjected in Poland to several “unauthorised techniques”, including incidents described by the CIA Inspector General as the “most significant abuses” in the CIA Program*
- *Transferred to CIA Black Site in ROMANIA: 12 April 2004 N85VM flight: Guantanamo Bay (MUGM) – Bucharest (LRBS)*
- *Debriefing subsided considerably beyond February 2004 and is not known to have been subjected to EITs in Romania*

3.3 HVDs brought to the CIA Black Site in Romania to be interrogated using EITs

36. In accordance with known CIA methodology, every HVD was interrogated most intensively in the period soon after his capture, upon being brought to his first CIA Black Site, or customised HVD Interrogation facility. It was accordingly those HVDs who were captured in 2004 or 2005, and

³⁹ Binalshibh is the subject of a dedicated interactive slideshow entitled “Secret jails: Terror suspect’s odyssey through CIA’s Black Sites”, which features details regarding his entire detention history and some elements of the treatment to which he was subjected; it is available at: <http://hosted.ap.org/specials/interactives/wdc/binalshibh/>.

⁴⁰ See ICRC report on HVDs, at page 16.

⁴¹ See ICRC report on HVDs, at page 17: “first his head was shaved and then some days later his beard was also shaved off. He was particularly distressed by the fact that the people who shaved him allegedly deliberately left some spots and spaces in order to make him look and feel particularly undignified and abused.

who were first transferred into exclusive CIA custody during the operating period of the CIA Black Site in Romania, who were most likely to undergo interrogation on Romanian territory. These detainees constituted a second set, distinct from those named above, and they underwent what had become the CIA's process of "prototypical interrogation"⁴² (which could be prescribed by Headquarters for a period of 30 days in the initial period after capture⁴³) on the territory of Romania.

37. Based on our investigations, individual detainees belonging to this set of HVDs held in Romania include the following:

Janat Gul⁴⁴

- *Arrested: June 2004 : Afghanistan or Pakistan*
- *Previously held: Afghanistan (transitory detention)*
- *Transferred to CIA Black Site in ROMANIA: 31 July 2004
N288KA flight: Kabul (OAKB) – Amman (OJAM) – Bucharest (LRBS)*
- *Treatment at the CIA Black Site in Romania: Gul was subjected to extensive, customised application of "enhanced interrogation techniques" (EITs), as follows:*
 - *Upon Gul's capture, a meeting of the principals of the US National Security Council took place on 2 July 2004 "to discuss the possible interrogation of CIA detainee Janat Gul"*⁴⁵;
 - *In a letter dated 6 August 2004, from Acting Assistant Attorney General Daniel Levin, head of the Office of Legal Counsel, to John A. Rizzo (Acting General*

⁴² For this terminology, see US Department of Justice, Office of Legal Counsel, "Memorandum for John A. Rizzo, Senior Deputy General Counsel, CIA from Steven G. Bradbury, Principal Deputy Assistant Attorney General, Re: Application of 18 USC §§ 2340-2340A to the Combined Use of Certain Techniques in the Interrogation of a High Value Al-Qaeda Detainee, May 10, 2005, at: http://luxmedia.com.edgesuite.net/aclu/olc_05102005_bradbury_20pg.pdf ("Bradbury CIA Combined Use Memo"); in the section entitled "A Prototypical Interrogation", at pages 6 to 8. Note that almost all of the content of this memo is taken from the most authoritative source document on interrogations, the CIA Background Paper on Techniques, op. cit., supra note 99, at page 9, under "Interrogation – A day-to-day look", which describes a "prototypical interrogation".

⁴³ See CIA Background Paper on Techniques, at page 16: "The entire interrogation process outlined above, including transition, may last for thirty days... If the interrogation team anticipates the potential need to use interrogation techniques beyond the 30-day approval period, it will submit a new interrogation plan to HQs for evaluation and approval."

⁴⁴ The Associated Press has reported (see AP report on CIA Black Site location in Romania) that the Janat Gul held in CIA custody in Romania was an Afghan national, "alias Hammidullah", who "ran Afghanistan's Ariana Airline when the Taliban government was in power". This appears to be a case of mistaken identity, because official US Government documents confirm that the detainee nicknamed Hammidullah was in US DoD custody at GTMO until 2005 and was then freed as a result of "repatriation" to Afghanistan. The Janat Gul held in CIA custody at the Black Site in Romania was a former protégé of KSM who was assessed to be an Al-Qaeda facilitator with live operational knowledge.

⁴⁵ Although the names of the detainees whose cases are discussed in such meetings are not normally disclosed, Gul's name was left unredacted in a document declassified by the US Department of Justice. See Maureen E. Mahoney and Everett C. Johnson, Counsel for Jay S. Bybee, "Classified Response to the US Department of Justice, Office of Professional Responsibility Classified Report dated July 29, 2009", dated October 9, 2009 ("Bybee Response to DoJ OPR report"), available at: <http://judiciary.house.gov/hearings/pdf/BybeeResponse090729.pdf>; at page 22: "[Deputy Attorney General James Comey] joined Ashcroft at a NSC Principals Meeting on July 2, 2004 to discuss the possible interrogation of CIA detainee Janat Gul.

Counsel at the CIA), the US DoJ formally approved the use of waterboarding on Janat Gul⁴⁶;

- *In addition, “[the in situ] interrogation team [in Romania] sought and obtained approval to use the following techniques: attention grasp, walling, facial hold, facial slap, wall standing, stress positions, and sleep deprivation”;*
 - *The interrogation team in Romania then “carefully analysed Gul’s responsiveness to different areas of inquiry”, and “noted that his resistance increased as questioning moved to his ‘knowledge of operational terrorist activities’”; hence*
 - *Upon the interrogation team’s initiative to “weaken Gul’s physical ability and mental desire to resist interrogation over the long run”, authorisation was sought and obtained to use dietary manipulation, nudity, water dousing and abdominal slap as additional techniques;⁴⁷ such that*
 - *Accordingly, a total of thirteen (13) EITs⁴⁸ - including waterboarding – were approved to be employed on Gul and potentially thereafter on all other detainees brought to the CIA Black Site in Romania for interrogation;*
 - *Although in the specific case of Gul, he was not ultimately waterboarded because “a medical contraindication may have precluded the use of this particular technique”⁴⁹.*
- *Gul was not among the fourteen (14) HVDs transferred to DoD custody at Guantanamo Bay in September 2006 and there is no official record of his current whereabouts or his fate after being held at the CIA Black Site in Romania.*

Mustafah Faraj Al-Azibi (“Abu Faraj Al-Libi”)

- *Arrested: 2 May 2005 : Mardan, Pakistan*
- *Previously held: Pakistan; Afghanistan (transitory detention)*

⁴⁶ Levin stated that “although it is a close and difficult question, the use of the waterboard technique in the contemplated interrogation of [Janat Gul] outside territory subject to United States jurisdiction [i.e. in Romania] would not violate any United States statute... nor would it violate the United States Constitution or any treaty obligation of the United States”. The letter has been declassified in redacted form and is also partially replicated in: Department of Justice, Office of Professional Responsibility, “REPORT (Final Version) – Investigation into the Office of Legal Counsel’s Memoranda Concerning Issues Relating to the CIA’s Use of ‘Enhanced Interrogation Techniques’ on Suspected Terrorists”, 29 July 2009 (“DoJ OPR report”), at:

<http://judiciary.house.gov/hearings/pdf/OPRFinalReport090729.pdf>; at page 127. See also Bybee Response to DoJ OPR report, at page 22: Levin “approved use of the waterboard on an individual detainee Janat Gul within a matter of weeks of the CIA’s request”. Bybee further notes that “The waterboarding technique that Levin authorised [for use on Gul] was, in fact, far more intensive than the procedure outlined in the Classified Bybee Memo...”

⁴⁷ For the full narrative of the interrogation history summarised in the three preceding paragraphs, see See Bradbury Article 16 Cat Memo, at pages 7 to 8.

⁴⁸ For the full set of approved techniques, and the purported effects of their use by the CIA, see US Department of Justice, Office of Legal Counsel, “Memorandum for John A. Rizzo, Senior Deputy General Counsel, CIA from Steven G. Bradbury, Principal Deputy Assistant Attorney General, Re: Application of 18 USC §§ 2340-2340A to Certain Techniques that may be used in the Interrogation of a High Value Al-Qaeda Detainee, dated May 10, 2005 (“Bradbury CIA Techniques Memo”), available at:

http://luxmedia.vo.llnwd.net/o10/clients/aclu/olc_05102005_bradbury46pg.pdf.

⁴⁹ Bradbury CIA Techniques Memo, at page 41.

- *Subjected in Poland to several “unauthorised techniques”, including incidents described by the CIA Inspector General as the “most significant abuses” in the CIA Program*
- *Transferred to CIA Black Site in ROMANIA: May or June 2005 unknown aircraft / probable route: Kabul (OAKB) – Bucharest (LRBS)*
- *While no official account of his treatment has been made public, it is understood that Al-Libi was interrogated using EITs upon his arrival in Romania, corresponding to the following report: “During the first month of their detention, detainees [in Romania] endured sleep deprivation and were doused with water, slapped or forced to stand in painful positions, several former officials said”⁵⁰*

38. It is worth reiterating that the list of detainees included in this submission is not exhaustive, and that according to some reports there are between two and four further detainees held in Romania at various junctures between 2003 and 2006. The common thread that connects all of the detainees mentioned is that none of them has faced any recognisable form of justice in relation to the terrorist acts of which they are suspected and to the present day, up to ten years since they were apprehended, their ultimate individual and collective fate remains unresolved.

39. **My recommendation is that this important matter be subjected to judicial scrutiny, by means of opening a prosecutorial investigation, at the earliest possible juncture.**

⁵⁰ See AP report on CIA Black Site location in Romania.