The Domestic Politics of Protecting Human Rights in Counter-Terrorism:
Poland’s, Lithuania’s, and Romania’s Secret Detention Centers and Other East European Collaboration in Extraordinary Rendition

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Three countries in Eastern Europe, Poland, Lithuania, and Romania, hosted secret detention sites for the benefit of the Central Intelligence Agency’s (CIA’s) interrogation program from about 2002 to 2006. All three countries initially denied with indignation these allegations. In the past five years, Poland moved toward prosecution as a result of a Supreme Court decision ordering declassification of documents, which resulted since 2008 in an ongoing prosecutorial investigation likely to indict the former Interior Minister and possibly others. While Lithuania’s parliament identified plans for a site, it claimed to not know whether it was used, and prosecution was aborted. Romania’s secret prison became the host not only to second-tier, high-value detainees of the CIA, but after Poland shut down its site, to the most dangerous detainees, who were tortured in the basement of the National Security Archives Building in Bucharest. Romania’s three governmental branches continue to deny that it ever collaborated with the CIA or that such a site even existed. This essay analyzes this variation in the domestic responses of these three countries, as well as other CIA collaborations with Bosnia, Kosovo, and Macedonia. It argues that international pressure was a necessary condition for domestic political processes, especially in the legislative and judicial branches supervising executive actions. However, the strength of the latter two branches, along with the type of political class and civil society, will explain the strongest reform process in Poland, the medium-range response in Lithuania, and the nonresponse of denial by Romania.

Keywords: human rights; Poland; Romania; Lithuania

Well-documented East European collusion in torture and extraordinary rendition by the CIA was mendaciously denied by the Romanian government and its opposition without serious domestic or international repercussions, while similar assistance to CIA war crimes in Poland and Lithuania have led to modest steps toward domestic accountability, including investigations, legislative reforms, and prosecutions. Most of those imprisoned in these three of the most committed U.S. allies and anti-Russia
societies in Europe may have been active terrorists, though Abu Zubaydah was not even a member of Al Qaeda, even though the United States asserted he was the number-three in that organization. Even if they were terrorists, there is no legal context, particularly in Europe’s zone of human rights treaties for aiding and abetting torture, cruelty, and inhuman or degrading treatment or punishment. By providing the CIA secret detention facilities since 2002 for some of the 136 known, a high-value detainees controlled by the CIA worldwide, with the cooperation with at least 54 governments, Europe provided that national security agencies and contexts were able to escape the post-War civilian states’ commitments to the rule of law, democracy and human rights. For example, Belgium, Finland and Denmark allowed their airports and airspace to be used for CIA sponsored flights carrying prisoners for torture. Great Britain, Italy, Germany and Australia, for example, helped interrogate one or more suspects and either allowed or actively aided in their transfers. Some of these Western countries, particularly Britain, have asked for their nationals to be released by the U.S., a request that has not always been honored by the U.S. Britain and Germany have also conducted several inquiries into their own actions Most of the other Western countries have had little more accountability for their actions than the East European countries analyzed here. Space does not permit a complete evaluation. It should be noted, for example, that countries like Azerbijian, Albania, Croatia, and Bosnia, Georgia and Macedonia allowed their airports and airspace to be used for CIA renditions to torture. Azerbaijan, Croatia and Georgia made no known statements and conducted no investigations. Albania made an explicit denial without any investigation. Romania conducted an investigation and denied involvement. Lithuania and Poland had investigations that were tacit admissions of complicity, but whose resolution remains jeopardized. Bosnia conducted an investigation and explicitly admitted involvement, the only East European country to so concede its actions. Macedonia, whose direct involvement is most egregious of any in this chapter, has made no investigation and denied all involvement. (Other non-European, CIA-controlled, "black sites" included Thailand, Afghanistan, Morocco, Guantánamo Bay, Diego Garcia, and U.S. Navy Brigs. The U.S. Defense Department kept many more detainees in illegal secret detention, especially in Iraq and Afghanistan.) Many detainees (the word ‘prisoner’ would be more accurate, given the length of time in captivity) were transferred among many secret arrested in Pakistan on 1 March 2003, sent to Afghanistan, then to Poland, where he was interrogated and water-boarded 183 times, and then transferred in 2004 to Romania and to Guantánamo Bay on 6 September 2006. Another of the 14 high value detainees transferred from Romania in 2006 to Guantánamo in 2006 was Riduan isamuddin (Hambali).

The legislative bodies of both the forty-seven-member-state Council of Europe (CoE) and the twenty-seven-member-state European Union (EU) passed repeated resolutions calling for each European country to investigate the own collaboration in extraordinary rendition. The European Court of Human Rights, a judicial body of the
former, has also accepted lawsuits against member states responsible for alleged torture, unlawful detention, and extraordinary rendition on their territory. This is reinforced by European Court of Human Rights (ECHR) case-based, soft law holding that CoE member states have a positive obligation to investigate and punish all gross and systematic violation of human rights, as well as holding torture absolutely forbidden and whose violation requires not only prosecution but also reparations and rehabilitation to victims—even if they are terrorists.

Council of Europe (CoE) member states since 1991, Poland, and 1993, Romania and Lithuania, all three countries had ratified and violated the Coe’s European Convention on Human Rights and Fundamental Freedoms and are eligible for lawsuits before the CoE’s European Court for Human Rights for these violations. Lithuania eventually in 2011 became the first country in Europe to admit that it had allowed the CIA to establish two secret detention centers (“black sites”), though it never took legal action, supposedly on the grounds that there was no evidence that they were actually used. One high-value detainee, Abu Zubaydah, has claimed that he was tortured in Poland in his lawsuit initiated in October 2011 in the CoE’s European Court of Human Rights (ECHR). In addition, Khalid el-Nasri has sued Macedonia in July 2009 for alleged torture, with a hearing before the Grand Chamber occurring on 6 May 2012, a Saudi citizen, Abd al-Rahim al-Nashiri, suspected head of al-Qaeda of the Persian Gulf and mastermind of the attack on the USS Cole, has sued Poland on 6 May 2011; and Babar Ahmad and others the United Kingdom in the ECHR. The latter case was decided in April 2012, holding that there would be no violation of the European Convention if the United Kingdom extradited the appellants (defendants) to the United States (which might not occur because of the prevalence of the U.S. death penalty in many states.) Aside from their torture, the plaintiffs have also sued for the CoE member states’ failure to conduct investigations, which are mandatory for any instance of likely torture. In July 2012, the European Court of Human Rights gave Poland a deadline of 5 September 2012 to provide it with information on the secret prison, including any “agreement on setting up and running a secret CIA prison on Polish territory” and other documentation.

Europe has not undertaken systematic investigations or imposed sanctions. The legal obligation to investigate, and where appropriate to prosecute, torture and rendition is as unequivocal, based on Article 12 of the Convention against Torture among other sources, as the obligation to refrain from torture in both human rights and war law. Following the publication of the ICRC report on the “high-value” detainees in 2009, there could no longer be any debate whatsoever of how detainees at the European black sites in Lithuania, Romania, and Poland were tortured. Both the EU and the CoE remain dependent on press leaks and domestic investigations to discover how the intelligence agency collaboration occurs. Both European countries and the United States have refused to undertake any formal truth commissions, but Congressional inquiries have spasmodically revealed much of what has transpired in the United States, as have the equally serious parliamentary inquiries in Lithuania.
and Germany. Italy and Poland have undertaken prosecutorial investigations. Only in the United Kingdom has the executive branch undertaken a formal study.

In February 2010, Poland’s Air Navigation Services Agency provided flight records to the Open Society Institute’s Justice Initiative and the Helsinki Foundation for Human Rights. They showed six flights in 2003 by two aircraft, a Gulfstream-V and a Boeing-737, five of them originating in Kabul and the other in Rabat, which flew to Szymany airport in the country’s northeast, even though generally the flights were fraudulently recorded in flight plans as having flown to Warsaw. Other flights went to Warmiap Mazuria province. High-ranking Polish border guards traveled from Warsaw to Szymany to handle the CIA travelers, replacing the existing border staff there. These were the first public evidence incriminating the CIA in flights to Poland, which induced the Prosecutor’s Office, which was then investigating these flights and related clandestine detentions, interrogations, and torture, to issue charges two years later after four years of ongoing investigations. This is contrasted with Romania, which did not conduct a serious investigation in its parliament and therefore no prosecutorial investigation occurred, and Lithuania, which began one in parliament, and then halted before the prosecutor seriously considered going to the next stage of issuing criminal charges. Despite the CoE and subsequent documentation and the European Parliament (EP) resolution, neither EU institution, the supranational European Commission or intergovernmental Council, put any pressure on these three EU member states to prosecute, as they so often did for cases of corruption when the three states were candidates for EU membership.

The essay focuses on the three countries that held prisoners who were tortured on their territory, Romania, Lithuania, and Poland, and explains the different outcomes. It also reviews the pattern of collaboration in rendition of other countries, mainly three potential or actual EU candidates, Bosnia, Macedonia, and Kosovo. It explains how international factors, which are not analyzed in detail because of lack of space, are a necessary prerequisite, but the policy reform or rejection reflects mainly domestic political, legislative, and judicial processes. We begin by reviewing the records of Poland, Romania and Lithuania, both in hosting secret detention facilities controlled by the CIA and then reviewing the politics of domestic reform or denial. Poland and Romania represent opposite cases of accountability, while Lithuania is a middle range case. We then briefly review the record of the collaboration of Macedonia, Bosnia, and Kosovo in the arrests and rendering to torture of detainees on its territory. This essay concludes with an institutionalist argument that political and democratic development best explains the variation in the three main cases in this study. This is an important contribution to the study of democratization and human rights, by focusing not only on domestic factors, but also reflecting the prior importance of international institutions. In addition, it demonstrates the possibility of advancing human rights accountability when the human rights violation is unequivocally extralegal and criminal even when national security concerns are strongest. While the likelihood is that neither human rights nor national security will
always trump the other, it is clear that the strongest democracies will be more likely to at least acknowledge extralegal activities sanctioned by official state leaders and institutions. The weaker democracies will be least likely to account for criminal activities, based on weak institutions in the judiciary and parliaments and the political and civil societies viewing the entire reform process as futile and inconsistent with expectations of corruption.

Poland’s Record: The Politics of Judicial Accountability

Without any doubt, Poland hosted at least one secret CIA prison, where waterboarding and dozens of other torturous and cruel techniques were used concurrently for weeks at a time. Though Poland’s legal system has engendered more accountability than any other East European state, full acknowledgment remains in doubt. The United States under the Obama administration, currently adopts a national security justification to prevent judicial inquiries, and seeks covertly to prevent its allies like Poland to investigate further. The Wikileaks cables show conclusively the degree of pressure the United States has undertaken to persuade or, where necessary, to punish its allies for revealing the extent to which CIA collaboration with allied intelligence agencies must continue to operate without effective oversight beyond the very weak prerogatives available to the U.S. Senate and House Select Committees on Intelligence, which were instituted only in 1976. Having hosted the most important secret “black site” managed by the CIA, Poland has been under extreme U.S. pressure not to allow any more details of what the then, strongest US ally in counter-terrorism permitted to occur on its territory.

The most clear evidence of this collaboration in torture and extraordinary rendition comes from the lawsuits of Abu Zubaydah and Abd Al-Rahim Al-Nashiri against Poland at the ECHR. Zubaydah was extraordinarily rendered from a CIA facility in Thailand to Poland by the CIA on 5 December 2002 and was held there between nine or ten months. On or about 5 December 2012, the CIA rendered al-Nashiri to another secret prison in Poland, where he was tortured. U.S. interrogators subjected al Nashiri to a mock execution with a power drill as he stood naked and hooded; racked a semi-automatic handgun close to his head as he sat shackled before them; held him in “standing stress positions;” and threatened to bring in his mother and sexually abuse her in front of him, according to various press reports. The evidence adduced also shows clearly that Poland hosted the CIA torture of at least eight high-value detainees for at least one year at the Polish intelligence service training school in the remote northern village of Stare Kejkuty. They were tortured with the most egregious methods used by the West since World War II. These two regional human rights cases are likely to open the lid on the formidable web of secrecy, sooner or later. Probably, either Poland will prosecute the intelligence agency officials responsible, and therefore, the ECHR will not take these two cases, or if Poland
fails to investigate and prosecute, an equally likely scenario, the ECHR would accept their cases, for having exhausted all of Poland's domestic judicial processes. These processes would require several more years to play out.⁴

Operation “Quartz” held eight high-value detainees from at least December 2002 until at least Autumn 2003, if not into 2004 according to different sources. Torture was perpetrated on at least eight to eleven high-value detainees, according to the Poland-based, Helsinki Foundation for Human Rights. Techniques used there included water-boarding, starvation, body cooling, extended and extensive sensory deprivation, mock executions, slamming prisoner bodies against walls, et al. Polish human rights NGOs published records in 2012 showing that at least five CIA-subcontracted flights carried passengers to the army base in Szuymany, in northeast Poland, and alleged that they were transferred to the clandestine interrogation center in nearby Kiejkuty, which the UN and CoE had identified. Two high-value detainees currently at Guantánamo, Abd al Rahim al-Nashiri and Abu Zubaydah, have also been reportedly been given “victim status,” for the torture they allegedly suffered in Poland, prior to their transfer to Romania. As revealed at his human rights lawsuit in Strasbourg, for example, Al-Nashiri was shipped on 2 December by the CIA on a chartered flight, N63MU, from Bangkok via Dubai to Szymany, Poland, arriving on 5 December 2002, using covers through subcontractors to hide CIA involvement, as with all high-value detainees.⁵ The 2004 CIA Inspector General’s Report, written by an autonomous Congressional office, concluded that al-Nashiri was tortured in Poland. His case also came before the European Court of Human Rights, which found that torture was used with the use of techniques not approved by the U. S. Justice Dept., such as using a semi-loaded handgun, power drill, smoke, stiff brush, shackles, threats, et al.⁶ The precise reasons that Poland closed the prison in 2004 are not confirmed, but it can be inferred that subsequent Polish governments would not tolerate torture being perpetrated on its territory, possibly over the growing public disenchantment over Poland’s participation in the U.S.-led invasion of Iraq. Al-Nashiri and Mohammad were transferred to Guantánamo, to Rabat, and then to Romania for more torture, presumably because the Cuba Naval Base detention centers had been cleaned up or “enhanced interrogation techniques,” the Orwellian euphemism for torture, could only be used at secret bases where the U.S. did not permit the International Committee of the Red Cross to visit and monitor detention conditions. On 6 September 2006, President Bush announced that 14 high-value detainees were transferred to Guantánamo, where they remain to this day, most of them slated for prosecution by a military commission there. Polish and U.S. culpability for incommunicado detention, extraordinary rendition from Poland and torture in Poland, as in Romania, remain prima facie crimes against humanity and war crimes for which no prosecution is imaginable. Still, as human rights activists have always maintained, and is best illustrated by the return of human rights prosecutions to Argentina, after a hiatus of fifteen years, “these issues do not go away.”

Evidence of Polish participation was confirmed by the Dick Marty report by the Parliamentary Assembly of the Council of Europe (PACE) in 2006, 2007, and 2011.⁷
the EU Parliament reports in 2007, 8 2009, 9 2010, 10 and likely in 2012, and the UN in 2010. Following the November 2005 reports of a secret black site in Poland by the Washington Post and Human Rights Watch, Poland’s parliament claimed to have held a secret investigation by the Parliamentary Committee for Special Services (Komisja do Spraw Służb Specjalnych). Any discoveries or conclusions have never been reported. The Polish Government announced that nothing “untoward” was discovered; that is, no secret prison existed. The first, 2006 Marty Report as Special Rapporteur for the Law and Human Rights Committee of the PACE term characterized this effort as inadequate, giving treaty obligations to investigate all credible allegations of torture.

The Polish Government replied to the 21 November Secretary General Terry Davis’s inquiry on legal safeguards in all CoE states parties on 10 March 2006. Undersecretary of State Waszczykowski referred to a Polish legislative member of the PACE, Karol Karski, who provided information the previous day to the PACE Special Rapporteur Dick Marty, that there have “not been in that matter any facts in Poland in contravention of the internal laws, or international treaties and conventions, to which our State is a party.” Waszczykowski’s letter added that any Status of Forces Agreement with NATO only applied to the Polish military, suggesting a violation of Polish law by the latter’s intelligence agencies.

The 2006 Marty Report concluded that between late September and October 2003, CIA-linked aircraft flying to Europe from Kabul only went to the Polish airport of Szymany on the “well-known rendition plane, N313P.” A “former Defence Ministry airfield,” located near the rural town of Szczyno, it was near a large facility used by the Polish intelligence services, known as the Stare Kiejkuty base. Marty noted that he received satellite images of both the airport and the Intelligence base. Karol Karski, Chair of the Polish PACE delegation, was unable to obtain information on these flights from the authorities. Either the information was withheld or was never recorded.

Having named Romania and Poland in the 2006 report, the second and more comprehensive Marty Report in 2007 confirmed that the torture chambers also named by the Washington Post, Human Rights Watch, and ABC News, were in fact located at the Stare Kiejkuty intelligence training base from 2003 to 2005. Marty reported that his small staff of three on the PACE Committee on Law and Human Rights and he had conducted interviews with thirty current or former U.S. and European intelligence officials who secretly risked their careers to talk to Marty. (An interesting issue is whether these intelligence officials were ever identified and punished.) Based on these interviews with U.S., Polish, and Romanian officials, Marty reported a conclusion of particular relevance to the current prosecution likely to occur in Poland. Marty’s 2007 report concluded that the CIA did establish “operating agreements” with the governments of Poland and Romania to hold high-value detainees in secret chambers in their countries that offered unquestioned security and secrecy as well as noninterference. Poland was to receive the most valued detainees,
which it did, until Poland objected to the bad publicity and risks involved. These two countries were chosen because of their desire for U.S. monetary and political support, given their political-military and economic insecurity. Poland, in particular was promised the NATO Integrated Air Defense System (NATINADS) would be located in Poland. However, this was never built because Russia objected that it was aimed at Russia not Iran. Marty quoted a CIA officer, who said,

I think Poland is the main exception; we have an extraordinary relationship with Poland. My experience is that if the Poles can help us they will. Whether it’s intelligence, or economics, or politics or diplomacy—they are our allies. I guess if there is a special relationship outside of the “four eyes” group, then it is the Americans and the Poles.¹¹

Marty also reported that the CIA objected, in effect, that Poland had too much democratic oversight over its intelligence agencies, the Internal Security Agency (Agencja Bezpieczeństwa Wewnętrzne, or ABW) and the Intelligence Agency (Agencja Wywiadu, or AW). Instead, the CIA chose the Military Information Services (Wojskowe Służby Informacyjne, or WSI), which for unclear reasons could or were seen as being more secret and physically secure for the base and the CIA interrogations, which were conducted by a Polish Army Unit (Jednostka Wojskowa) under code JW-2669, the formal occupant of the Stare Kiejkuty facility. Also involved in transfers were the Polish Air Navigation Services Agency (Polska Agencja Żeglugi Powietrznej), the Polish Border Guard (Straż Graniczna), and the national Customs Office (Główny Urząd Celny), which were involved in secretly transferring detainees, forging flight records, and making payments, respectively—all without civilian supervision. Marty named some of the Polish officials involved in or ordering this criminal activity, including President Aleksander Kwaśniewski, Chief of the National Security Bureau Marek Siwiec, the Minister of National Defense Jerzy Szmajdzinksi, and the Head of Military Intelligence Marek Dukaczewski. The President, Marty quoted his trusted, senior sources, approved everything. It is interesting that the Prime Minister, who is now reportedly under the threat of prosecution, was not named by Marty’s 2007 report. Instead, the logistic details of the agreement were “negotiated on the part of the President’s office by the National Security Bureau [BBN].”¹² Marty concluded that the program was not known by many others, based on NATO’s highest levels of highest secrecy classification.

In his 2011 PACE Report on Secrecy, Special Rapporteur Marty also added that the airport manager had 12 hours’ notice to clear runways of all other aircraft and vehicles and ensure that all Polish staff were escorted into the terminal. U.S. officials from the Stare Kiejkuty intelligence training base assumed “control” of everything involving the detainees. “No Polish eye-witness has yet come forward to state whether or not any detainees disembarked the aircraft upon any of these landings—indeed, it may be that no Polish eye-witness to such an event exists.” Marty wrote
that he then had gained definite proof that seven CIA-associated aircraft landed at Szymany airport between 5 December 2002 and 22 September 2003.13

A Polish prosecutor’s investigation that occurred over several years, conducted as in the Lithuania investigation without any U.S. assistance, led to the reports in *Gazeta Wyborcza* in early 2012 that the prison was located in a villa in a remote woods and lake region of the Masovian countryside in a secret service camp in the village of Starer Kiejkuty, and that criminal charges were to be filed in 2012 against former chief of Polish intelligence (UW) Zbigniew Siemiatkowski for permitting the CIA to use the site to detain and mistreat prisoners with corporal punishment (a milder charge than torture, and without mentioning the constitutional prohibitions on giving a foreign power control over Polish territory, as well as forbidding torture and imprisonment without a court order). The former UW chief admitted that in January 2012 prosecutors told him that they would charge him with “unlawful deprivation of liberty” and “corporal punishment” (less serious charges than for torture and conspiracy). While not yet absolutely confirmed in public as of July 2012 that the charges were actually made, this would make Poland the first East European country to incriminate a government official for aiding and abetting unlawful detention and torture, regardless the exact charges. As of July 2012, the investigation was ongoing, though it was taken from the prosecutors in Warsaw and turned over to investigators in Krakow in May 2012 after the charged, former UW chief had been interrogated. The Attorney General, who removed prosecutor Jerzy Mierzewski with the recently appointed deputy appellate prosecutor Waldemar Tyl and transferred the investigation to Krakow, said the reason was to have a “good investigation,” though all the reasons remain secret.14 The transfer is suspicious, both because no official explanation for the transfer of authority was given and because it followed Prime Minister Donald Tusk’s statements that the Warsaw prosecutors must respect their duty to the country. Adam Bodnar of the Polish Helsinki Foundation expressed the widely felt fear that eventually, as in Lithuania, the investigations would be terminated.

Article 40 of the Polish Constitution criminalizes torture in all situations, including national security, consistent with all international and regional human rights treaties. The Polish Constitution also forbids giving foreign countries control over national territory, as well as forbidding violent human rights violations including torture in Article 40. Nor is there any reason of state to justify making available territory or facilities for other states to torture, even if Polish officials were not directly involved.

On 11 March 2008, the Warsaw Regional Prosecutor opened an investigation of unknown scope against persons unknown on any secret CIA prisons in Poland. At some point, the State Prosecutor transferred the case to the Tenth Department of the Bureau for Organised Crime and Corruption. On 1 April 2009, the Warsaw Prosecutor of Appeal, followed by the Fifth Department for Organised Crime and Corruption of the Warsaw Prosecutor of Appeal’s Office, undertook the case. That latter office publicly referred to the European Parliament’s 2007 Resolution as a
rationale for the investigation. The UN Human Rights Committee, the expert committee of the most important human rights treaty, “note[d] with concern that the investigation conducted by the Fifth Department for Organised Crime and Corruption of Warsaw Prosecutor of Appeal [was] not yet concluded,” in its concluding observations on reports on Poland dated 27 October 2010.

The *Gazeta Wyborcza* reported on 30 May 2011 that on 17 February 2011 the Warsaw Deputy Prosecutor of Appeal, Robert Majewski, and the investigating prosecutor Jerzy Mierzewski asked three experts on international law their views on ten issues, the answer to which implicated the Polish officials in charge. These experts concluded that terrorism is a criminal offence in Poland and is prosecuted on the basis of legal provisions of a given state. Secret detention would breach the Constitution and would be enforced by criminal law, except for a prisoner of war, whether or not the defendant was a member of Al Qaeda. Arbitrary arrest without due process or a detention order would be illegal. Torture is also criminal, regardless of the U.S. interpretation. After receiving these interpretations, both prosecutors were removed from the case. In late 2011, the First President of the Supreme Court exempted several officials from keeping classified materials secret and ordered the Intelligence Agency to disclose classified materials to the prosecution. By early 2012, the Prosecutor General transferred the case to the Kraków Prosecutor of Appeal. By 10 January 2012, the Kraków Prosecutor of Appeal charged Siemiątkowski, the Head of the Intelligence Agency in 2002–2004, during the Democratic Left Alliance Government, with abuse of power (Article 231 of the Criminal Code) and a violation of international law by “unlawful detention” and “imposition of corporal punishment” on prisoners of war. This latter information was leaked by late March 2012 and was widely disseminated in Polish and international media.

In response to a 29 February 2012 communique from the Helsinki Foundation for Human Rights, the Kraków Prosecutor of Appeal replied on 4 April 2012 that even without assistance from the United States, the case-file held twenty volumes, with access to classified material strictly restricted. Beyond that, little has been said about the status of the investigation or its likely conclusion.

Still, despite these uncertainties, that Poland should have more independent prosecutors than exist in the United States is impressive. Polish prosecutors sought, but were denied, legal assistance by U.S. authorities under the Mutual Legal Assistance Treaty (MLAT). On 7 October 2009, the U.S. Department of Justice announced that no such assistance would be granted because of national security or other state interests and that they considered the case to be closed. On 22 March 2011, Polish prosecutors submitted another MLAT request for legal assistance. However, Polish authorities failed to support the prosecutors’ efforts and the renewed request was ignored again by the United States. The U.S. refusal makes it difficult to investigate the Polish torture cases, as it would for other countries with even less commitment to their obligations under CoE and EU treaties to promote human rights.
After years of denial, Polish prosecutors began to press criminal charges in 2012, following an investigation by the V Department of the Appellate Prosecutor’s Office began in 2008, on the former chief intelligence officer Zbigniew Siemiatkowski, who was the head of Polish intelligence (UW) in 2002, during the year first years after 9/11. One of the most incriminating pieces of evidence is an alleged bilingual agreement drafted by Polish officials sometime during late 2001 and 2002 between the UW and the CIA. Poland would permit planes contracted by the CIA to land at Szymany airport so that detainees that the CIA claimed were terrorists could be held at the Polish Intelligence Agency’s training base in Stare Kiejkuty, based on specific terms, for example, the protocol if a detainee were to die. The Interior Minister, Zbigniew Siemiątkowski, signed the document with a note: “for the Prime Minister’s information” (then, Leszek Miller). The space left for the CIA Director’s signature was blank because the United States allegedly refused to sign, a potential defense argument of its inauthenticity because a binding contract requires both sides to sign. The prosecution says that it is probative of the state of mind and intentions of Polish officials, in the context of other direct and circumstantial evidence. The three reporters for the Polish Television show Panorama and Gazeta Wyborcza, who broke the story, reported that their Polish informers said that the CIA officials refused to sign because they routinely did not sign inculpating and unconstitutional documents, which they considered to be acceptable intelligence techniques. They viewed the Polish insistence on a signature as naïve—something needed for overt defense agreements, but not covert activity.15

For his part, Siemiatkowski noted, “I cannot comment because all the proceedings are a state secret. I can neither negate or confirm.”16 Surely, he would have denied the torture charges if he could. The incriminating evidence includes, according to Senator Jozef Pinior’s statement to Gazeta Wyborcza, the fact that the current, Krakow-based prosecutors “have a document that shows a local contractor was asked to build a cage at Stare Kiejkuty,” the Polish army base that was used by the CIA as its main prison for “high-value detainees” from December 2002 (when the previous prison in Thailand was closed down) until September 2003, when, for six months, the main “high-value detainees” were held in Poland before being transferred to Romania and elsewhere, until late 2006, when fourteen high-value detainees were sent to Guantánamo. The use of a cage was not standard for prisoners, but was used for clandestine activities, including torture. Senator Pinior commented, “To this day I have not distinguished as to whether the Polish authorities know what Americans are doing in this resort, or thoughtlessly agreed to its extraterritoriality, giving them a free hand.”17 The prosecutors reportedly also have an order signed by Siemiatkowski to establish the prison.

The Polish Prime Minister Donald Tusk, who assumed office in 2009, a year after the investigation had begun, expressed in 2012 his ambivalence at the reported criminal charges, and that of many of the Polish political class, in implicitly confirming that illegal, official torture occurred on Polish soil. On one hand, Poland has
asserted its democratic credentials with the incipient prosecution of a Polish. On the other, the United States had led the nascent Polish democracy astray, first, by commissioning Poland to provide the site and, second, by its intelligence officials leaking the information to the press, all the while not holding its own officials accountable for unlawful activities, the worst of which occurred in Poland and Romania, among other black sites. The Prime Minister complained that Poland has become the “political victim” of U.S. intelligence leaks.18

This may be painful, but concrete evidence that Poland is no longer a country were politicians can fix something under the table and expect it not to come out—even if they do so with the world’s greatest superpower. . . . Poland is a democracy where national and international law must be observed. . . . Let there be no doubt about it either in Poland or on the other side of the ocean.19

I did not come up with those charges and, if I were in the prosecutors’ shoes, I would not come up with such charges. But maybe I don’t have enough information. . . . (The prosecutor) must rise to the highest standards of concern for state interest (and show) the utmost discretion.20

The Prime Minister’s contradictory impulses, possibly typical among many Poles, is that Polish intelligence, no matter what indiscretions or even crimes were held, and no matter how much these practices resemble communist security practices, is an ongoing reality, both in terms of personnel, and the sense that they are needed to protect national security. For the prime minister, to protect human rights would risk Poland’s independence from Russia, as well as risk retaliation from Polish intelligence agencies. Those who argue against impunity and the worst excesses are also hamstrung by the sense that Poland did not commit the abuses, only aided and abetted those perpetrated by its ally, the United States, which Poland needs to protect itself against the Russians. Still, Tusk also expressed his sense that impunity must be ended, when he added, “We can take no pride in the fact that such cases must be probed in Poland” (ibid.). The latter two statements were the first implicit concession by a Polish official in charge of the secret prison that it did exist; previously, Polish officials had denied it.

Previously, Pinior worked on the EU investigation into European complicity in rendition and torture that preceded the Polish investigation. The Polish establishment has criticized Pinior and sought to protect the former leaders at the time, President Alexander Kwasniewski and Prime Minister Leszek Miller (2001–2004), and the current leader of the Democratic Left Alliance, all of whom have repeatedly denied the prison’s existence at any time, while continuing to defend U.S. counter-terrorism policy. Logically, it seems unlikely that the Intelligence chief would allow the CIA to operate on Polish soil without informing his superiors, who alone can order other agencies to cooperate or facilitate the transportation of detainees into and out of the country. This conjecture is supported by direct evidence. According to
Gazeta Wyborcza, the Polish Secret Service briefed both about the prison’s housing CIA prisoners and that incriminating notes were passed on to the prosecutor’s office. While Miller still denied the alleged CIA prison’s existence as of spring 2012, Kwasniewski has since admitted that he knew of the prison and that he had feared that the CIA might use torture. Both could also be prosecuted in addition to Siematkowski, or at least be discredited. Of course, it is still possible that Poland will follow Lithuania’s example and drop charges, at least for the time being, as the exact details of the worst human rights violations in the country since the end of communism remain unclear. These would include knowing on whose authority the spy chief relied to coordinate with foreign intelligence agencies, the military, and the border control agency. The Prime Minister at the time, Leszek Miller, commented in a radio interview that he “will always be on the side of victims, innocent people, women, children murdered by terrorists. . . . I won’t shed tears for murderers. A good terrorist is a dead terrorist.” In addition, important leaders like former President Lech Walesa, while declaring that he is “against torture,” has also stated, “This is war, and war has its particular rules.” In addition, Poland, like Romania, feels that the United States might avenge the publication of details of the CIA program but it nevertheless should be held responsible for asking Poland to undertake criminal acts.

However, following the public announcements of charges against the former Intelligence Director, the prosecutor, Jerzy Mierzewski, was removed from the criminal investigation of secret CIA prisons, presumably because political elites were potentially exposed and they reacted by halting the proceedings. Waldemar Tyl, Deputy Appellate Prosecutor in Warsaw, replaced him, in what appears to be a politically motivated action, occurring at the same time as President Obama’s May 2012 visit to Poland. At the time of writing, the cases had not been terminated, and neither had their status been clarified, short of the termination of the investigation in Lithuania on CIA prisons.

Romania’s Record: The Politics of Denial

Unlike Lithuania and Poland’s documented detention facilities in the countryside, Romania’s secret facility, which hosted in its basement the repeated torture of the architect of 9/11, was located in a nondescript building in the capitol in the middle of a modest neighborhood. Reporters from the Associated Press and German ARD’s Panorama program (not to be confused with the equally well-known BBC, RFI, and Polish programs of the same name) reported that this prison was code-named, ‘Britelite’ or “Bright Light” and held six cells for high-value detainees.22

Al-Nashiri has also sued Romania at the ECHR on 29 May 2012, represented by the Open Society Institute’s Justice Initiative, among others. Given Romania’s far inferior investigation than Poland’s on human rights violations in counter-terrorism, his lawyers filed for a priority status on the case. This would mean, if accepted by
the Court, that Romania’s domestic judicial remedies are not credible and therefore the case would be justiciable at the ECHR without waiting several years for all the requisite appeals to be rejected by Romanian courts. Romania would be liable for all the violations that Poland might be liable, but additionally, for the failure to provide a proper investigation and remedy under Articles 2, 3, 5, and 8 of the European Convention of Human Rights, which has been incorporated into the Romanian Constitution.23

Romania facilitated on its territory CIA torture, abuse, and extraordinary rendition from 2002 to 2006. This was condemned by the PAC and by the EP, yet it is still denied by the Romanian government. Regarding Romania, EU discursive politics had, prior to 2004 and the election of Traian Băsescu as the country’s second opposition president, already been centered on Romanian compliance with international norms. This pressure was consistent with the Romanian Constitution, which holds all ratified treaties as self-executing in domestic law.

At the time of Băsescu’s election, Romania was widely considered a consolidated democracy. Thicker definitions of democracy would indicate that Romania still had progress to make and that its achievements in some areas were in danger of decay. Romania had an acceptable record in protecting most negative human rights, accruing when the government ceases overt violations, though its record is poor on protecting ethnic Roma rights, as well as those of prisoners. Improvements were required for positive human rights, entailing institutional reforms providing public goods, preventing discrimination, and ensuring accountability. As in other countries, international pressure for improved performance would have to be matched by domestic political will.

Romania after 9/11 offered the CIA several “black sites”—secret prisons outside U.S. territory, where activities that would be criminal on U.S. territory could be perpetrated, in a country where they are also criminal—to use in the global war against terrorism. The relevant status of forces agreement between the United States and Romania was possibly standard to those the United States also established with other EU member-states. Yet, the decision to permit U.S. black sites for interrogation, including the likely use of torture, and from which detainees were subject to extraordinary rendition to locations known to use torture—was undertaken in separate and secret protocols or communications that were probably not stated in the status of forces agreements. The extent of initial Romanian knowledge regarding these violations of the 1949 Geneva Conventions, CoE human rights treaties, and the corresponding Romanian enabling legislation is unknown. In time, more Romanian security authorities actively collaborated.

Romania as a CoE member-state and the United States as a CoE observer state both have a legal obligation to obey the European Convention of Human Rights, as well as other relevant treaties banning torture and cruelty, and extraordinary rendition to torture. Romania legally should have insisted that no incommunicado detentions and torture occur on bases within its territory, as well as banned air flights to
other countries practicing torture. As soon as Romania understood that the CIA was conducting these crimes on its territory, it could have refused to cooperate with the CIA. Despite a documented CoE investigation, Romanian security officials and their cabinet supervisors have never been held to account. Nor have the subsequent adamant denials by President Băsescu and the members of Romania’s parliament, who conducted a whitewash investigation, resulted in any domestic political scrutiny or embarrassment, let alone prosecutions as are occurring in Poland and Lithuania for the same type of activities.

While the United States had largely ignored Romania in the early 1990s, the agencies of coercion for the two countries slowly developed extensive relationships, beginning in 1993 when Romania became the first country in NATO’s Partnership for Peace. Prior to assuming office, President Băsescu presumably was unaware what secret promises Romania had made to NATO and the United States in order to be considered for membership. Concerns for national security combined with a desire to please the United States induced Romania to support a cover-up, despite obvious human rights violations. The lack of domestic political will, in the face of Romanian military, intelligence, and security agency secrecy, prevented accountability. The case is important not only as a departure from explicit Romanian ethical and legal commitments, but also because it shows Romania’s lack of democratic control over those agencies, even to the limited extent of a credible state or journalistic investigation and report. Instead, indignant denials from both camps have ensued.

While the EU tended to overlook human rights in the war on terrorism, the Legal Affairs and Human Rights Committee of the PACE took the lead, following initial 2005 reports in The Washington Post and by a human rights NGO, Human Rights Watch. The Committee appointed as Special Rapporteur Dick Marty of Switzerland. He concluded that the CIA tortured and transferred Al Qaeda suspects and others allegedly engaged in terrorism to various countries where they were held incommunicado detention and subjected to torture and cruelty. The majority of the approximate 850 detainees rendered to torture at Guantanamo Bay were proven not to have been even enemy combatants, let alone terrorists, having been turned over to the CIA in return for U.S. bounties of $10,000 or more. Marty was granted investigative and subpoena powers unprecedented in the CoE. His conclusions were facilitated by EU Justice and Security Commissioner Franco Frattini, who ordered that all the data from Eurostat be provided on flights in and out of Romania and other CoE countries. Marty utilized documented flight plans obtained from Eurocontrol and Eurostat, supplemented by data from Human Rights Watch and other human rights NGOs that identified flights into Romanian and Polish black sites. Further corroboration was provided from NGO sources that recorded civilian aircraft numbers via binoculars. Civilian planes were used to circumvent mandatory public reporting of all military flights. Marty also used confidential sources, including from the intelligence agencies of the countries involved. Since the reports’ publication, a lawsuit over expenses by one of the subcontractors that transported detainees for the CIA provided additional, detailed corroboration.
Rapporteur Marty in 2006 named Romania and Poland as the two key countries providing black sites, aiding and abetting torture and extraordinary rendition and turning a willful blind eye to these crimes. Civilian planes had flown into clandestine airstrips for refueling or holding detainees on their way to Guantanamo Bay Naval Base and other torture interrogation centers in CIA-controlled black sites and in other countries. Romania tried to contradict Marty’s findings with fabrications. A subsequent report by Marty in June 2007 provided more extensive detail, naming fourteen CoE countries that participated in extraordinary rendition to torture, listing the names for some of those individuals rendered to torture, including Khalid Sheikh Mohammed, the chief planner of 9/11. Twenty-two countries in Europe were said to have used national security doctrines to prevent investigations, hearings, and prosecutions. He concluded that secret detention facilities in Romania and Poland housed the enforced disappearances and torture of fourteen high-value detainees, who were later transferred to Guantanamo, as well as the extraordinary rendition to torture dozens of alleged lower-ranking terrorists rendered to countries like Egypt, Jordan, Syria, Uzbekistan, and Morocco for extreme interrogation.

After a brief period, when some officials felt the controversy had dissipated from the reports by the PACE Special Rapporteur and the EP Special Committee, further developments emerged. First, the EU demanded in 2009 that its member states conduct independent investigations; the EU Commission President José Manuel Barroso, made such a demand in 25 August 2009 after hearing allegations that Lithuania hosted CIA detention sites. Journalists’ accounts in 2011, based on information from former intelligence officials, who described the location of the Romanian prison and identified pictures of the building, reported that the Bucharest prison was located in the basement of an archive that housed classified information on NATO and the EU. Khalid Sheik Mohammed and other Al Qaeda operatives were kept there until 2006, when they were transferred to Guantánamo after President Bush admitted to the existence of these secret detention facilities.

The Bush administration ignored the torture crime definitions in the U.S. War Crimes statute, the U.S. constitutional prohibition against “cruel and unusual punishment,” the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT) and the U.S. enabling legislation, the Anti-Torture Statute, and the torture bans in both the International Covenant on Civil and Political Rights and the 1949 Geneva Conventions, all of which the United States ratified. The Venice Commission, the independent legal agency for the CoE, affirmed that U.S. practices of extraordinary rendition and detainee abuse were absolutely illegal and called for the investigation of possible crimes committed by European collaborators. In addition, the Venice Commission concluded that the United States was in violation of its status as an observer state to the CoE. Under Article 25 of its governing statute, the International Criminal Court (ICC) claims jurisdiction over individuals, including senior officials, who have facilitated or contributed to the commission.
of a war crime or crime against humanity, such as torture and extraordinary rendition, if the perpetrator is arrested on the territory of a state party to the ICC statute. This appears unlikely, even for the European officials directly responsible for collaboration with the CIA.

Romania has similarly ignored its obligations to investigate and prosecute torture, established when it ratified the same treaties. Moreover, Romania is a state party to two CoE treaties, the European Convention on Human Rights and the European Convention on the Prevention of Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment. The CAT and the two CoE treaties prohibit extraditing or deporting suspects to countries likely to lead to persecution or torture, but require prosecution and extradition of torturers. This non-refoulement criterion is not based on diplomatic assurances that torture will not occur, but rather the actual probability of torture given the track record of the receiving countries. Yet, no one in Romania has been investigated for the country’s key role in the “global spider’s web,” as Marty referred to the incommunicado detention centers.

Following hearings on Marty’s first comprehensive report in January 2006 as Rapporteur to the Legal Affairs and Human Rights Committee, the PACE on June 27 enacted Resolution 1754 that called on the CoE’s Committee of Ministers to take measures to ensure that CoE member-states no longer violate fundamental human rights. Unfortunately, the intergovernmental Committee of Ministers, which represents state interests, has effectively ignored the PACE Resolution 1754 and done almost nothing, deferring action to the individual member-states, many of whom have an interest in not being investigated for alleged intelligence abuses.

The EP began in April 2006 its own investigation of the more than one thousand secret flights since 2001, as identified in the 2006 Marty report. On 6 July 2006, even before Marty had finished his full investigation, the EP endorsed the 2006 Marty Report to the CoE, along with several companion resolutions from the Swedish Ombudsman and Swedish Parliament. Furthermore, following its own set of hearings, which were conducted by the temporary committee on use of European countries by the CIA, established by the Foreign Affairs Committee. The Report was written under the leadership of Claudio Fava and adopted in the plenary session on 14 February 2007 (382 MEPs in favor, 256 against, and 74 abstentions). It asserted that the CIA operated at least 1,245 flights on EU territory and had housed detainees in Romania and Poland. (Their torture was revealed by a secret Red Cross report leaked to Mark Danner and published in 2009, despite the U.S. euphemism “enhanced interrogation techniques.”). Marty’s counterpart, as EP Rapporteur, was Giovanni Fava from Italy. The EP Resolution was not quite as systematic as that of the PACE, but it did name Romania as one of fourteen countries tolerating CIA rendition flights over its territory.

Specifically, the resolution criticized the incomplete investigations conducted by the Romanian Senate, which involved no interviews of NGOs, journalists, or Romanian employees at airports. Romania’s report, conducted by a Senate committee, was kept secret, except for its conclusions, which denied all involvement, as
well as the existence of any secret detention facilities. The Resolution mentioned that Romania had permitted at least 21 CIA stopover flights, at least two of which were headed for Guantánamo and the rest to countries linked with torture. It noted that Romanian authorities appeared to exercise no control over CIA flights into Kogălniceanu Airport. Romania did provide an accident report on a flight from Bagram Air Base, Afghanistan, that crashed in Bucharest, after which the seven passengers disappeared.

While the Romanian authorities politely met the Members of the European Parliament on the Temporary Committee, Poland’s authorities even refused to meet with them. There were two meetings with Interior Ministers, but no investigations conducted by any independent authorities, such as the façade of independence from the legislative branch of Romania. The Resolution named 11 CIA stopover flights in Poland and 64 in Greece.

Unfortunately, neither the supranational arm of the EU (the European Commission), nor its intergovernmental arm (the European Council), have taken any actions in response to the EP Resolution. Those victims no longer held by the United States at Guantánamo Bay Naval Base or elsewhere may sue for damages in the ECHR and in the Court of Justice of the EU (foreigners have standing in both courts).

The NATO legal counsel has never answered Marty’s question in a letter addressed to that office whether the United States is still allowed to utilize European air space without requesting permission and whether U.S. officials have the right to operate in the black sites without being questioned or supervised. For its part, the Obama administration remains attached to the doctrine of state security to prevent any prosecutions or civil law suits; refuses to investigate most senior U.S. officials involved; continues renditions overseas to countries practicing torture, continuing the policy begun under Clinton and deepened under Bush after 9/11; and despite closing down the black sites, has not eliminated national security exceptions permitting secret overseas detention centers.

On behalf of NATO, the United States signed a bilateral agreement with Romania allowing American representatives to obtain the infrastructure, material support, and operational security for the CIA’s covert programs, including housing high-value detainees in hidden but secure detention facilities with no domestic scrutiny. The 4 October 2001 North Atlantic Council decision, implementing the NATO Charter’s Article 5, has never been made public. The details over airspace provided for over-flight clearances for American and allied aircraft for flights related to operations against terrorism or how CIA-subcontracted aircraft had to be designated as military flights or state flights have never been revealed. NATO’s Secretaries-General, Lord Robertson and Jaap de Hoop Scheffer, refused to testify or respond to letters of inquiry from both the European Parliament’s Temporary Committee or the CoE’s Parliamentary Assembly. Romania thus consciously participated in unlawful covert actions using civilian aircraft under military cover to travel secretly through Europe.

Romania is one of three European countries (along with Lithuania and Poland) that secretly agreed to house terror suspects from 2002 until about 2006 in special
detention without any public acknowledgment, though the Polish prisons were
closed earlier and some of its prisoners were brought from Poland to Romania, prob-
able making Romania the site, “Bright Light,” for the most feared detainees and
perhaps the worst torture as well. The Associated Press reported how detainees were
brought into Bucharest, after the CIA scrambled to find another site outside the
United States and outside U.S. law prohibiting torture on U.S. territory:

Shuttling detainees into the facility without being seen was relatively easy. 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. The basement consisted of six prefabricated cells,
each with a clock and arrow pointing to Mecca, the officials said. The cells were on
springs, keeping them slightly off balance and causing disorientation among some
detainees.31

High-value detainees Khalid Sheikh Muhammed and Abu Zubaydah were kept
for three years in Poland and the former was water-boarded 183 times during the
first few months, while the latter was 83 times.32 Romania housed other important
high-value detainees, plus insurgency troops from Afghanistan and Iraq. Flight
records show that a Boeing 737 used by CIA subcontractors flew from Poland to
Bucharest in September 2003, carrying Mohammad and Walid bin Attash, who were
implicated in the USS Cole bombing. Other detainees there included Ramzi Binal-
Shibh, publicly identified as the twentieth hijacker who could not get a visa to the
United States before 9/11; Abd al-Rahim al-Nashiri, the mastermind of the bomb-
ings of the USS Cole, the MV Limburg and other attacks, who was also transferred
from Poland; and Abu Faraj al-Libi, held in Romania from 2003 to September 2006,
the number three in command of Al Qaeda from 2003 until his capture in 2005.
Detainees flown to Romania were often transported by the CIA contractor, Richmor
Aviation, Inc.33 The facility was closed in early 2006, probably when President
Bush publicly admitted on 6 September 2006 the existence of such secret sites
and to transfer some or all of the most dangerous and valued detainees to Cuba.
(There is some evidence that all such secret facilities were not closed by Bush, and
President Obama retained the legal authority to utilize them should national security
require it.)

Incommunicado detention in these sites may itself have constituted torture. The
actual treatment in Poland was so vicious, as detailed in a leaked report of the
International Committee of the Red Cross,34 that the U.S. refusal to admit that this
was torture cannot be taken seriously. Treatment at the Romanian detention facilities
is equally suspect given the authorized interrogation techniques routinely practiced
against detainees, although the specific practices used on detainees in Romania have
not yet been documented. Secret, incommunicado detentions continued until the
U.S. Supreme Court ruled in the 2006 Hamdan case that Guantanamo’s military

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commissions violated Common Article Three of the 1949 Geneva Convention, which also bans “outrages upon personal dignity, in particular humiliating and degrading treatment.”

The accountability process on detainee abuse began in early November 2005, with the Washington Post and Human Rights Watch publishing reports of flights from Afghanistan to remote airfields in Romania and Poland, alleging the existence of secret detention centers in both countries. Based on flight records, Human Rights Watch asserted that a CIA Boeing 737 airplane registered N313P landed in Romania on direct flights from Afghanistan. It landed on 23 September 2003 at the Mihail Kogalniceanu military airfield in Romania and then proceeded to Morocco and Guantanamo Bay Naval Base. The same plane flew from Kabul to Timisoara Airport on 25 January 2004. On 7 November 2005, the PACE began its investigation of CIA secret black sites and rendition in Europe.

A month later, on 6 December 2005, the Romanian parliament established a commission to investigate the HRW and similar allegations. The head of the Romanian parliamentary delegation to the PACE wrote on 20 January 2006 that it was not aware of any camps or of any permission request for over-flights from the CIA. He denied that military airfields were used by civilian aircraft. The Romanian government was satisfied with the explanation of Secretary of State Condoleezza Rice that American activities were completely legal. The only significant Romanian concession came from a Romanian human rights NGO, Organizatia Pentru Aparearea Drepturilor Omului, at the time investigating several possible detention sites. It also found evidence of detention sites near the Babadag training camp and at the Fetesti airfield on the Kogalniceanu military base near Constanța. On 8 January 2006, the Swiss newspaper Sonntagsblick published a 10 November 2005 document, intercepted by the Onyx Swiss system, from a fax from Egypt’s foreign ministry to its London embassy, stating that twenty-three Iraqi and Afghan prisoners were clandestinely interrogated by the United States at this Romanian military base. (The same document also reported that similar interrogation centers existed in Bulgaria, Kosovo, Macedonia, and the Ukraine.) Then Romanian Interior Minister (2004–2007), Vasile Blaga, admitted that the base provided logistics but denied that it detained anyone.

Gyorgy Frunda, Chair of the Romanian delegation during the PACE Plenary Debate in June 2006, refused to admit that Romania had a legal responsibility under the CAT and the European Convention for the Prevention of Torture not to perpetrate or permit extraordinary rendition to torture on its territory—even though that requirement is one of the main purposes of the treaties. When Marty’s 2006 and 2007 reports hit the headlines, Romanian spokesmen carefully issued denials for assertions not made in the reports. They strongly denied that Romania conducted torture, which was not the point since no one accused Romania of torture. Romania continued to deny any national involvement in secret detentions, over-flights, or extraordinary rendition until the issue apparently became moot, when President
Obama issued his executive order on 22 January 2009 closing secret overseas CIA detention facilities.\(^38\) In his 2007 Report, Marty asserted that detainees in Romania included associates and suspected operatives of key Taliban leaders like Mullah Omar; foreign fighters suspected of having performed roles for the Taliban in Afghanistan such as the provision of logistics; leaders of branches of suspected “support networks” for the insurgencies in Iraq and Afghanistan; and suspected leaders of terrorist factions in the Middle East. He quoted from one Romanian official speaking anonymously: “[having] worked on the secret flights . . . we worked directly with associates of the CIA on establishing prisons here.”\(^39\)

The majority of the detainees brought to Romania originated from Afghanistan and Iraq. They were held in a facility similar to that in the notorious Bagram Air Base in Afghanistan.\(^40\) The facilities included the Smardan Training Range, Babadag Training Area and Rail Head, Mihail Kogalniceanu Air Base, and the Cincu Training Range. Marty concluded that Romania agreed to the American demand that all operations be kept secret and that U.S. personnel were to have exclusive access to the facilities. As a result, Romanian authorities felt that they could deny direct knowledge of what was going on. According to Marty’s 2007 report:

> Concerning the transfer of prisoners, from the first moment we said that Romania collaborated with the United States and with other members of NATO. Aircraft landed in Romania and transported persons. We did not and do not know who the persons are because, do not forget, the aircraft are under the authority of the countries where they are registered. The countries in which the airports are located do not have legal instruments to see what happens on board.\(^41\)

Marty, however, had no doubt about the complicity of Romanian officials. While Romanian top officials did not necessarily know the details regarding the places of detention and the people detained, they did know that the United States had unlimited over-flight discretion for purposes of extraordinary rendition and were fully aware of what that entailed. According to The Guardian, confidential sources from the Romanian and Polish security services confirmed that high-value detainees were held in both countries and were subjected to “enhanced interrogation techniques,” the unacknowledged legal euphemism used by the Bush administration for what was actually torture.\(^42\)

Romania’s official parliamentary inquiry issued an emphatic denial, as originally did Poland’s. Instead of searching for truth, the inquiry white-washed government officials of any wrongdoing. Romanian government officials told military security staff to investigate within the limits of the law but, since officials already had determined that nothing ostensibly was illegal and all was in accord with the 2001 NATO treaty, there was nothing to report. Romanian parliamentarians, like the security officials collaborating with the CIA, could then effectively deny they had turned a blind
eye and allowed the CIA the full pleasure of its operations. The Marty report argued that the Romanian responses “were characterised by obfuscation, inconsistency and genuine confusion.” Marty concluded that the Romanian authorities ignored:

far-reaching and unexplained inconsistencies in Romanian flight and airport data; the responsive and defensive posturing of the national parliamentary inquiry, which stopped short of genuine inquisitiveness; and the insistence of Romania on a position of sweeping, categorical denial of all the allegations, in the process overlooking extensive evidence to the contrary from valuable and credible sources. In that information, I was confounded by the clear inconsistencies in the flight data provided to my inquiry from multiple different Romanian sources. There presently exists no truthful account of detainee transfer flights into Romania, and the reason for this situation is that the Romanian authorities probably do not want the truth to come out. The (parliamentary) Committee does not appear to have engaged in a credible and comprehensive inquiry. The Romanian national delegation to PACE, in their carefully worded reply, ruled out the existence of unlawful CIA activity and ultimately reverted to their [sic] initial position of complete denial.

In contrast to Poland and Lithuania, Romanian officials have maintained a consistent albeit untruthful position, viewing the government’s collaboration with the CIA activities as a patriotic and strategic response that does not require an honest accounting, regardless of potential violations of human rights and international commitments to justice. Such a mockery may greatly harm the general promotion of the rule of law. Following the Marty reports, CoE Secretary General Terry Davis proposed greater control over state security agencies, but the suggestion has not been pursued. Marty’s concern has been to fight terrorism while simultaneously respecting human rights. His view is that if the truth does come out, then the trend toward impunity ultimately might be reversed. Conversely, the Romanian position distorting the truth seems to come from perceived realist incentives of Romanian national interest, producing tangible benefits for siding with the United States in its antiterrorism efforts.

The responsible political leadership as well as the national security and military intelligence communities in Romania largely have escaped repercussions surrounding the CIA’s rendition program. After some initial international public outrage, but not in Romania, the torture and rendition controversy in Romania at the time of writing for the most part went away. While Marty’s report also castigated most EU member states for collaboration by permitting the CIA to operate criminally in their territory, there was little visible response. The minimal and inadequate U.S. reaction to documented claims of torture has been a clear signal to countries like Romania that they need not identify and prosecute those responsible for turning an intentional blind eye to the CIA abuses that occurred within the country.

Romania most likely did not expect that its role in the U.S. rendition program would be discovered by Marty and his tiny staff of three. Romanian legislators in Strasbourg, in flatly rejecting all charges, failed in their obligation to lobby for the
country on behalf of universal human rights. In aiding and abetting detention abuse and extraordinary rendition to torture, Romania not only demonstrated the unaccountability, impunity, and autonomy of its intelligence agencies, but of its ordinary politics as well. In assisting the Central Intelligence Agency in one of the most disgraceful episodes in U.S. history, Romania’s government illustrated how it is unable to control the apparatus inherited from the former Securitate. President Băsescu came into office in late 2004, after the Abu Ghrahib photos and earlier press reports on that facility had been published. By 2005, the CIA detention, interrogation, and rendition program had been revealed and was well known as illegal. After 2006 and the first Marty report, Băsescu certainly could have shown leadership on behalf of European values and laws protecting human rights. From all available evidence, the Obama administration has halted the rendition program in Europe. Romania has continued, as of July 2012, to deny that it was ever involved. Instead, the parliament or a special commission should have investigated how the status of forces agreement was altered or ignored to permit illicit U.S. activities and how Romania became willingly complicit in human rights abuses in clear violation of prohibitions in its treaty commitments and its own laws.

The most important lesson from this story is that there were minimal policy changes as a result of Marty’s two reports and the PACE and EP Resolutions. Romania’s participation in extraordinary rendition sparked almost no call for greater transparency or accountability, if only because few in the country appear to care. Romania has not changed its legal and political procedures to prevent the recurrence of torture and extraordinary rendition on its territory, or to reduce the autonomy and impunity of its military and intelligence agencies for human rights abuses. Opposition political parties have been disinterested, given that most political sides were involved at some point in CIA torture. Explicit accusations from Human Rights Watch, the PACE, and the EP have not inspired the human rights community or the media in Romania to make a serious inquiry, thereby acquiescing to the government’s denials. It is particularly surprising that its human rights NGOs, including the distinguished Romanian Helsinki Committee (APADOR) that specializes in police and prison issues, have conducted no credible study and made few statements regarding the protection of human rights in the war on terror. Nor has the EU or the CoE imposed any sanctions on Romania or on other countries as a consequence of the two parliamentary resolutions that were adopted. Romania’s parliamentarians at the PACE have not responded to the documented facts by demanding accountability in their domestic legislature, which is the duty of PACE members. The independently elected MEPs of all political persuasions, who are not implicated by the Romanian legislature’s whitewashed investigation, have not responded either. Responsibility requires a commitment of will from a range of both international and domestic actors. The overwhelming documentation of human rights abuse, however, remains a fact that will not go away, unless no one in Romania is interested in truth and justice on this issue. Until Romania strengthens democratic accountability in
intelligence operations, Romania’s law-free zones for intelligence agency collaboration with systematic human rights abuses will occur again, quite likely in the context of counterterrorism pressures.

**Lithuania’s Record: The Politics of Semi-Reform**

The Report of the Special Committee of the European Parliament (EP) on “the Alleged Use of European Countries by the CIA for the Transportation and Illegal Detention of Prisoners (TDIP) outlined in even more detail the complicity of EU member states. The European Parliament endorsed the TDIP Report in a plenary session in February 2007, urging EU member states to continue investigations. Since that report’s publication, two more black sites were identified in Lithuania and Romania. Elite LLC, Inc. purchased former riding stables/academy in Antaviliai, Lithuania. Incorporated in July 2003, Elite purchased the site and permitted Americans to build a warehouse there, until it was sold to the Lithuanian Security Services in January 2007. Secret rendition flights came to Vilnius and Palanga from Bucharest and Morocco, without any border guard checking or landing flight reviews, on orders from the Lithuanian Security Services.

The Seimas parliament eventually undertook in November 2009 an independent inquiry, some time after ABC News reported the CIA used a detention site outside Vilnius provided by the government, where “high-value detainees” were held up to the end of 2005. The Chair of the Committee on National Security and Defense, Arvydas Anusauskas, reached the conclusion that there was not enough evidence to justify opening a formal parliamentary inquiry. However, when CoE Commissioner for Human Rights Thomas Hammarberg visited in October 2009, the Commissioner and the Lithuanian President Grybauskaite, publicly expressed skepticism about the preliminary inquiry. Then, on 5 November 2009, the Lithuanian parliament’s Committee on National Security and Defense began investigations and two months later, on 22 December 2009, reported that Lithuanian agents assisted in at least five air flights between 2003 and 2005 after the CIA asked the Lithuanian Secret Service (SSD) to provide detention facilities for terror suspects. The first was reportedly not used, and it could not be established if a second, in Antaviliai near Vilnius, was actually used. The quick investigation also failed to determine the complicity of officials, including SSD chief Povilas Malakauskas and Foreign Affairs Minister Vygaudas Usackas. The main recommendation of the parliamentarians’ report was to open a judicial investigation. The latter was started in the next month on January 2010, but was suspended a year later in January 2011 because of an “information shortage,” which if true, resulted from the refusal of the United States and the Lithuanian government to cooperate by revealing relevant information. Many unanswered questions remain.
While parliamentarians toured the two sites, NGOs and journalists could not. The CPT also visited them on 14 and 18 June 2010. The CPT report, published with Lithuania’s consent, as is standard CPT procedure, concluded that “the premises did not contain anything that was highly suggestive of a context of detention; at the same time, both of the facilities could be adapted for detention purposes with relatively little effort.”\(^{47}\) According to the UN, beginning in 2004, eight terror suspects were held in Lithuania for more than one year until late 2005. Two additional rendition fights occurred on 20 September 2004 and 28 July 2005 (UN Document A/HRC/13/42, para 120 et seq.). However, the UN Rapporteur’s Report did not provide additional details.

In January 2011, an influential Amnesty International Report concluded that the failure of the Council, the intergovernmental, ruling body of the EU, to respond to the 2007 Report and Resolution was a dereliction of duty, a position that was reiterated by the EP in its special hearing and resolution of June 2012.

Similarly, NGOs have sought to press EU member states into continuing investigations. The PACE Special Rapporteur Dick Marty, in his last major contribution before his retirement, presented a study that showed investigations were being impeded in nine countries because of the abuse of the state secrecy doctrine.\(^{48}\) It concluded that the parliamentary inquiry in Lithuania was robust, but the prosecutor prematurely ended his investigation because the parliament could not establish whether the CIA facility had ever been used. Presumably, the prosecutor should have continued investigating until it was determined if the facility had in fact been used. Similarly, a solid parliamentary investigation in Germany showed the participation of the government in an abduction, but could not get any additional information from an uncooperative government.

EU Justice and Security Commissioner Frattini, requested an explanation from the governments of Poland and Romania regarding the accusations made in the Marty reports. Doris Mircea, Romania’s spokesperson in Brussels, replied in a November 2007 letter that a committee of inquiry set up by the government had concluded that the allegations were unfounded. She claimed, “No person was kept illegally as a prisoner within Romanian jails, and no illegal transfer of detainees passed through Romanian territory.”\(^{49}\)

In March 2011, Abu Zubaydah’s sued Lithuania at the ECHR for his alleged extrajudicial detention, torture and ill-treatment at a secret prison in Lithuania, and other violations of the European Convention on Human Rights, including his extraordinary renditions to and from Lithuania prior to his eventual rendition to Guantánamo. The complain asserts that on or about 17 February 2005, Abu Zubaydah was rendered to Lithuania and kept captive in a secret detention facility, constructed and equipped specifically for CIA detention with Lithuanian permission and facilitation, as were other detainees, perhaps after the Polish prison was closed. Zubaydah has asked the ECHR to have Lithuania to complete its investigation, as well as to request that the U.S. end his detention in Camp 7 at Guantánamo Bay. At
the time of writing in April 2013, many detainees in Cuba were engaged violent
desistance to forced-feeding by US authorities seeking to prevent a successful hun-
gers strike, which would create more publicity and exposure of US human rights
violations, similar to the political momentum gained by the Irish Republican Army
after the British failed to stop Bobby Sands’ hunger strike in Northern Ireland.

On 11 September 11, 2012, the European Parliament issued a resolution that
“call[ed] on the Lithuanian authorities to honour their commitment to reopen the
criminal investigation into Lithuania’s involvement in the CIA programme if new
information should come to light, in view of new evidence provided by the
Eurocontrol data showing that plane N787WH, alleged to have transported Abu
Zubaydah, did stop in Morocco on 18 February 2005 on its way to Romania and
Lithuania; note[d] that analysis of the Eurocontrol data also reveals new information
through flight plans connecting Romania to Lithuania, via a plane switch in Tirana,
Albania, on 5 October 2005, and Lithuania to Afghanistan, via Cairo, Egypt, on 26
March 2006; [and] consider[ed] it essential that the scope of new investigations
cover, beyond abuses of power by state officials, possible unlawful detention and
ill-treatment of persons on Lithuanian territory.50

Other Balkan States

Macedonia

A German citizen of Lebanese ethnicity, Khalid El-Masri, sued “the former
Yugoslav Republic of Macedonia” (Macedonia or FYROM) in the European Court
of Human Rights in September 2009. This is the first case among many to come on
complicity with secret detention and rendition to torture, since the ECHR allows
plaintiffs from anywhere in the world to sue CoE member states. (Though a CoE
observer state, the United States is not a state party to the Convention and cannot be
sued there.) The Court asked the government of Macedonia for its responses to an
initial set of inquiries about how an innocent man on vacation on New Year’s Eve
2003, mistaken for an al-Qaeda operative with a similar name, was held incommu-
nicado for 23 days, and then extraordinarily rendered to torture in Afghanistan and
then left on a road in Albania, without any acknowledgment or compensation. The
Court’s 17 judges ruled unanimously on 16 December 2012 that the U.S. and
Macedonia were jointly responsible for this extraordinary rendition to torture. The
ECHR ruled that El-Masri was subjected to torture that included: sodomy, forced
nudity, total sensory deprivation, solitary confinement, force feeding, physical
assault, sleep deprivation, inadequate food and water and denial of medical care in
violation of the European Convention on Human Rights. El-Masri’s testimony about
his arrest by Macedonia and rendition to Afghanistan by the CIA for torture was
“established beyond reasonable doubt,” and that “Macedonia violated the prohibition against torture and inhuman or degrading treatment for its role in El-Masri’s abduction.”

He had been arrested on vacation in Macedonia on 31 December 2003 by Macedonian police near the Serbian border and held by government agents for 23 days in a hotel without any consular access before being transferred in Skopje to CIA agents on 23 January 2004, despite knowing that he would be tortured or cruelly treated there and would be rendered by the CIA to torture and/or cruelty in Afghanistan, which in fact occurred for four months. After his interrogation there, it became clear that El-Masri was not a terrorist, and his arrest had been a mistake. At the time of these events, the EU’s PROXIMA police mission was part of the FYRM’s Ministry of Interior and appears to have collaborated with the Security and Counter-Espionage Service (DBK) which apparently blundered when it arrested El-Masri and later transferred him to the CIA. An internal EU issue is whether the Council or its staff has more information on this case, which this intergovernmental arm of the EU is denying to the supranational Parliament.

An official delegation of the EP Temporary Committee were told officially by the Macedonian authorities that it denied arresting and holding el-Masri before handing him to CIA authorities in the country’s capital. The Macedonian parliament refused to investigate even after the German inquiries had determined Macedonian arrests and rendition to torture. To this day, Macedonian authorities have denied that this occurred, first through its 3 April 2006 response to Terry Davis, the CoE Secretary General’s Article 52 Inquiry, and in the conclusion of the May 2007 domestic parliamentary committee, conceding only that Macedonian authorities had not abused their power. El-Masri became the first rendition case to sue a CoE member state, Macedonia, in the ECHR on 20 July 2009. The Court accepted the case, which only occurs in about 1 percent of cases filed, because El-Masri’s complaint on 6 October 2008 to the public prosecutor in Skopje for illegal detention and abduction resulted in no investigation. No evidence was adduced or discovered that contradicted El-Masri’s account of the events, as well as Germany’s noninvolvement, according to an investigation by the Munich Public Prosecutor, Martin Hoffman, who testified before the European Parliament on 11 July 2006. Hoffman noted, “isotope samples of his hair had indicated a “significant change in living conditions” during the time he claims to have been imprisoned.” Experts concluded that “the tests did not contradict the report of El Masri.” The issue is likely to be discussed in the accession process to the EU of Macedonia by both the Commission’s review process and ultimately the Council where a unanimous vote is required.

The United States has merely refused to comment and denied access to the U.S. courts, a decision upheld by the U.S. Supreme Court on the basis of the national security secrets doctrine. Germany has denied any involvement, though a parliamentary inquiry was stalled by the executive’s invocation of the state secrets doctrine to prevent any further inquiry into this and any other forms of German collaboration.
with the CIA. Much testimony by NGOs, as well as innocent victims like Murat Kurnaz, a legal German resident wrongfully rendered to Afghanistan, and El-Masri, were the only important evidence at the hearings. The German executive branch refused to provide important information or offered heavily edited versions, for “state secrecy” and civil servants were prevented from commenting extensively.

Subsequently, a group of Bundestag members appealed to the Federal Constitutional Court to recognize the parliamentary right to information to trump the state secrets doctrine. The Constitutional Court held in favor of the parliamentarians, though its judgment came too late, on 17 June 2009, after the legislative committee had finished its investigation and the Bundestag’s term of office was finishing. The Court ruled that if there is a conflict of rights, the government’s desire to protect internal decision-making process versus the right to know of parliament and the public, specific reasons have to be given to justify withholding information. Moreover, parliaments do and should enforce their own rules to protect state secrets. The decision should reduce the executive’s monopoly on national security information, especially where there are prima facie criminal acts. The Court would decide in the future whether or not the reasons provided by the executive branch merit continued nondisclosure, with embarrassment not a justification. Once a decision has been taken, the justification for further classification is less, though the effect of disclosure must also be assessed. While a risk of leaks always exists, hiding criminal activity makes leaks inevitable, if not necessary.

Bosnia

The 2007 European Parliament Resolution also regretted the refusal of NATO to provide access to the EU, as well as the European Committee for the Prevention of Torture, to the Kosovo Force (KFOR) Peacekeeping Mission’s detention facility at Camp Bondsteel in Kosovo. It suspected that the the CIA and/or NATO operated secret detention facilities at the latter and/or elsewhere in Kosovo. The TDIP heard testimony from the Kosovo Ombudsman, Marek Antoni Nowicki, that from July 1999, detainees were routinely brought to Camp Bondsteel, with only the KFOR commander, usually a U.S. officer, able to review that decision. The European Committee was only able to visit Kosovo’s prisons and detention centers in July 2006. Subsequent CPT visits to the UN Mission in Kosovo, such as in 2010, have, as with other countries, shown no evidence of detainee mistreatment of terrorism suspects.

The government of Bosnia and Herzegovina is the only European country to admit and accept responsibility for its participation in the arrest and rendition of six Bosnians, all of Algerian ethnicity, on 17 January 2002, according to the 2007 EP report. All international authorities were forewarned that Bosnian authorities were going to hand over the six suspected terrorists to the United States, and none apparently took any action to prevent it, according to testimony by the OSCE (Organization for Security and Co-operation in Europe) High Representative for Bosnia, as well as the President of the Human Rights Chamber. The Bosnian troops then transferred the
six to U.S. soldiers in the Stabilization Force (SFOR), who then had them rendered to Guantánamo by U.S. soldiers in the SFOR mission of NATO. The NATO soldiers ignored or disobeyed an order by the Supreme Court of Bosnia to release the six. There was also an explicit, binding, temporary ruling by the Human Rights Chamber for Bosnia and Herzegovina, which was a hybrid court, with eight of the fourteen judges appointed by the CoE’s Committee of Ministers. One of the latter was Manfred Nowak, who became the UN Special Rapporteur on Torture and who verified this NATO violation in the EP’s Temporary Committee (TDIP) established on 18 January 2006. The EP Resolution reported that the U.S. government threatened to close its embassy and end diplomatic relations unless Bosnia arrested the six suspects on terrorism charges. (It is not clear why NATO did not arrest them itself.) In addition, the U.S. commander of SFOR refused to answer any questions of his actions, since he was a U.S. military officer and was not subject to their authority, even though he was leading the peacekeeping operation under the legal authority of the UN Security Council. Subsequent EP Resolutions called for further clarification of the role of the Bosnian government, as well as NATO’s Implementation Force (IFOR) and SFOR missions’ responsibility for disappearing suspected terrorists according to human rights principles.

Kosovo

Since its 17 February 2008 declaration of independence, Kosovo, recognized by the United States and the majority of EU countries, has not investigated, while responding to numerous allegations of new human rights violations against ethnic Serbs, especially in the north, as well as its allegations that Serbia is interfering in its domestic affairs. While the EU could use its incentives of visa liberalization and eventual candidacy for EU membership to demand greater accountability, the EU has focused on its effort to negotiate normalization of relations with Serbia instead. The lack of EU pressure also reflects the fact that Prime Minister Thaçi, the former leader of the Kosovo Liberation Army, presides over a slim parliamentary majority, whose opposition has been Euro-skeptic, ultra-nationalists who would be more hostile to the EU, whose position as mediator with Serbia has been that no change in Kosovo’s borders can be discussed in negotiations. Already, the party in power in the de facto autonomous Serb zone in the north with the capitol of Mitrovica is the ultranationalist Democratic Party of Serbia, which ousted the pro-EU President of Serbia Tadić in the presidential elections of 6 May 2012.

Conclusion

This essay has described how three countries in Eastern Europe, Poland, Lithuania, and Romania, hosted secret detention sites for the benefit of the CIA’s
interrogation program from about 2002 to 2006. Late in 2005, NGOs and the press reported their existence, which was first indicated for Romania and Poland by a special rapporteur of the Parliamentary Assembly of the Council of Europe. A year later, Dick Marty confirmed those two sites in a second report and the European Union’s Parliament did the same concurrently. Later, press leaks indicated a secret torture chamber in Lithuania as well. All three countries initially denied with indignation the allegations. In the past five years, Poland moved toward prosecution as a result of a Supreme Court decision ordering declassification of documents, which resulted since 2008 in an ongoing prosecutorial investigation that is likely to indict the former Interior Minister and possibly other top officials. Lithuania’s parliament admitted to plans for a site, but claimed to not know whether it was used, even though the press reported that at least one site had for a time. After Poland’s site was shut down, in part because of the pressures of democratization, Romania’s secret prison became the host not only to second-tier, high-value detainees of the CIA but the most infamous of them, Khalid Sheikh Mohammed and Abd al-Rahim al-Nashiri detained and tortured in the basement of the National Security Archives Building in Bucharest. However, Romania, in all its governmental branches, continues to deny that it ever collaborated with the CIA or that such a site even existed. The additional collaboration in the arrests of detainees in Kosovo, Bosnia, and Macedonia also indicates varying domestic responses of these three countries, which resulted from initial international pressure as a necessary condition for democratic political processes, especially in the legislative and judicial branches supervising executive actions. However, the strength of different parts of the state, especially the latter two branches, along with the type of political class and civil society, will explain the strongest reform process in Poland, the medium-range response in Lithuania, and the nonresponse of denial by Romania.

The efforts of the EU and CoE to discourage collaboration in extralegal human rights violations in counterterrorism have set a precedent of exposure and some embarrassment. In political cultures with strong civil liberties traditions and institutions, such as Germany and the United Kingdom, there have been strong investigations, which nevertheless have been constrained by the invocation of national security privileges, as well as administrative foot-dragging. The EU and CoE parliamentary studies have led to the documentation of specific torture chambers in the three CoE/EU member states, with the acknowledgment in Poland, semi-acknowledgement in Lithuania, and continued denial in Romania. In newer democracies, with weaker civil liberties traditions, such as Poland and Lithuania, the truth emerged as a result of NGO, CoE, EU, and UN monitoring, which invoked enough domestic outrage to initiate investigations. In weaker democracies, where the rule of law is hardly established against law-breaking top officials in general, such as Romania and Macedonia, blunt denial of any responsibility has stalled any investigations or outrage, even in the face of unequivocal evidence. The costs of undertaking extralegal action has been increased from these precedents.
European intergovernmental organizations have therefore helped but still lack ultimate influence over how far Romania, Poland, and Lithuania continues along the road from totalitarianism to democratization or establish civilian accountability and supremacy over security agency activities, both domestic and transnational. Thus, the discovery of CIA detention facilities in Lithuania, Poland, and Romania after they became EU member states undermined this important supervisory incentive that might have accrued had the CoE and the EU been able to document this official criminality before 2004 for the former two states and before 2007 for the latter. All EU member states and most CoE member states outside of the Soviet Union appear to have collaborated in the CIA’s darkest of the “dark side,” to use the term of former Vice President Dick Cheney on the Sunday after 9/11 on “Meet the Press,” where everything would be done “in the shadows,” unconstrained by law or public knowledge and opinion.

Clearly at the national level, the only serious parliamentary inquiry occurred briefly in Lithuania. Poland in 2012 reportedly became the first European country to charge a former intelligence agency official, after initiating formal investigative proceedings in January, following a classified prosecutorial review since 2008—an initiative for which it deserves credit, assuming the effort is not short-circuited. The other country named in CoE and EU parliamentary investigations, Romania, continues to deny any involvement, as Lithuania and Poland had done until 2006, when the prisons were closed following the allegations, especially by the first, 2006 CoE report. The CoE and EU parliamentary investigations in 2007–2008 also revealed a broad, secret collaboration in extraordinary rendition. Despite these investigations, much more relevant facts remain secret, including the full scope of collaboration with the CIA secret operations in the war on terror, along with all the extralegal acts of extrajudicial disappearances, torture, rendition to torture and unauthorized use of airspace, as well as the extent of elected official cooperation in or ignorance of what occurred.

The politics of national security has meant almost no oversight or review of past practices in Romania and Poland, which lack the legal and institutional frameworks in both parliaments and intelligence agencies, as well as the lack of political will or adequate civil society interest and pressure, especially in Romania. On the other hand, of the dozens of states who practiced secret detention to torture as counter-terrorism policy, only one country has undertaken a judicial investigation that might lead to prosecution, Poland beginning in 2008 with charges possibly in 2012, and its outcome is still uncertain at the time of writing.

Where a prima facie case of criminal activity occurs in national security realms, authoritarian prerogatives should not trump the need for domestic oversight bodies to investigate, even if a foreign aid donor like the United States is involved. The “state within the state” mentality is difficult to overcome unless robust judicial and parliamentary oversight is legally mandatory, with proper documentation required. Both judges and legislatures must not be captured by, in particular, military and
intelligence bodies who, in weak democracies, not only feel that they are immune from scrutiny and legal review but also feel that they must be allowed a political role that is incompatible with civilian supremacy as in a mature democracy. Whistle-blowers who reveal criminal activity, which are not legitimate secrets, must receive legal protection for bringing to light illegal secrets. Judicial and parliamentary bodies must have the right to review classified documents protecting illegitimate secrets. Without the many intelligence agencies that informed the Dick Marty reports, none of this information would have ever been revealed. Obviously, weaker democracies like Romania are more likely to have difficulty in transitioning out of a politicized military-intelligence complex, which classifies all their activities.

The three countries confirmed as having hosted CIA sites demonstrate three models of accountability: Poland has moved toward transparency and possibly criminal prosecution. Lithuania acknowledged hosting a site, but halted its criminal investigation before it could follow the evidence. Romania has denied all the evidence of culpability. Its reaction is similar to its anti-imperial perspective on most instances of foreign pressure: a game to be manipulated to its advantage but without any commitment to the values that the CoE and the EU represent. For example, the new Social Liberal Union (USL) government of Prime Minister Victor Ponta in July 2012 impeached President Băsescu and then decreed that the Constitutional Court could not review the action, as well as decreeing that the subsequent plebiscite would only require a majority of the electoral turnout rather than what its Constitution requires, a majority of the registered electorate. When the German and U.S. governments criticized these decrees as violating the rule of law, the government condemned foreign influence coming from states that had routinely broken international law in the previous decade.

The variation between the three East European states that hosted secret detention facilities can be analyzed in terms of the extent of development of state strength based on the rule of law, civil society strength, and parliamentary and judicial independence. On all three of these categories, Romania ranks lowest and Poland highest, which explains why the latter has become the first and only European state to investigate its top intelligence official accountable to the law, with criminal proceedings possible or likely. Lithuania, ranking in the middle range of these causal factors, at least admitted to the existence of the facility in the abstract, but cut short, like Romania, any conclusion that any facility was ever used for arbitrary detention, torture, and rendition.

Romania’s approach of denial is based culturally on what Albert Hirschman calls the “rhetoric of reaction,” assuming and asserting that proven facts do not apply because of the futility of acting seriously upon them. The same pattern has existed with its elections, which remain implausible for the simple reason that the results are never published on a precinct-by-precinct basis. Everyone in Romania who should know refuses to admit the obvious, which is that the electoral process remains bogus, but simply assumes it is futile to try to do anything about the patent dishonesty of the entire process—twenty-two years after the fall of communism. It is hardly
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surprising, therefore, that when the actual facility is identified in Bucharest, the international news, the equivalent of which was political turmoil and debate in Poland, goes unrecognized in Romania. To this day, a Google search for the Mureş Street torture chamber produces no news article in Romanian mentioning any governmental accountability process or even a leak, nor any sustained press coverage of this issue in the country. The establishment parties in charge at the time from 2000 to 2004, representing the coalition that governed after the 1989 revolution, will not bring attention to the issue, as their authoritarian coalition is implicated in the collaboration. The then opposition of Liberals and Democrats, drawn from the communist aparat most of the time since 2004, has but never touched the issue. Apparently, they too fear retribution, either from the security apparatus or possible exposure of information or disinformation that could indicate corruption. The entire political class, lacking dissidents from the communist era, along with the country’s weak institutions, is involved in corrupt activities, and which facts the security services would quickly reveal about any whistle blower on these issues. Politicians who are really interested in public service are so few in number that any courageous voices are unheard.

Romania’s record, consisting of both plausible accusations and implausible denials, also reflects, as with Poland, Romania’s support for U.S. policy and has included constructing bases for foreign militaries and providing 725 Romanian troops for the U.S.-led war effort in Afghanistan and Iraq. Romania’s decision to support the United States in foreign policy can be viewed as a strategic attempt to use the 9/11 crisis as a negotiating tool for Romania to enter NATO. Then Romanian Defense Minister Ioan Mircea Pașcu characterized the Romanian response to 9/11 as both emotional and pragmatic. Romanian–American foreign relations grew close, and the United States lobbied strongly and successfully for Romania to join NATO in 2004, reversing the ambiguous U.S. position of 1997 when Romania initially had failed in its NATO application. Romania’s participation in the 2003 U.S. invasion of Iraq, by contrast, was criticized by Greece, France, and Germany but without negative consequences for its 2004 NATO accession. Another active participant in the Iraq war, the United Kingdom, later took the lead in advocating Romania’s entry into the EU.

Bosnia’s admission of responsibility is difficult to explain in terms of domestic politics, given how divisive and polarized they have been. Perhaps, the two sides cannot agree on what the policy means, along with the fact that NATO’s SFOR Mission bore responsibility for the detainees at a time where NATO was assumed (wrongly) that it would not sacrifice the prohibitions on torture and rendition in the Fourth 1949 Geneva Conventions. In addition, Bosnia has had significant international influence in developing human rights institutions and education. Kosovo and Macedonia, in contrast, have denied responsibility in part because their even weaker polities are unwilling to account for any human rights violations, including those involving collaboration with arresting and rendering those likely to be tortured. Clearly, foreign pressure on these two countries is less for human rights accountability. In Kosovo, it is due to the divided recognition of its independence and a general
sympathy for its weakness and a strong desire to resolve the ethnic conflict in the North of Kosovo without complications of transitional justice. In Macedonia, which also has had a successful EU peace mission between two ethnic groups, international pressure has not come through its active EU candidacy for membership because the European Commission has not shown any interest in this issue at any time, presumably because it is within NATO’s writ, not the EU or the CoE, to change the nature of civil–military relations in the country during the accession process.

Notes


15. Ibid.


22. ARD, Panorma program, 2012. available at: http://www.youtube.com/watch?v=kJXJFjAHGeQ. for a summary by the Associated Press, which published the scoop at the same time, see: http://www


44. Ibid., paragraphs 228–31 (emphasis in the original).


