



E-BULLETIN ON COUNTER-TERRORISM & HUMAN RIGHTS

No. 31, March 2009

Eminent Jurists Panel launches Report in Geneva, London and Washington

The Eminent Jurists Panel on Terrorism, Counter-terrorism launched its final report, entitled *Assessing Damage, Urging Action*, at the United Nations in Geneva on 16 February. The findings of the panel were further presented in an event addressed by the President of the UN Human Rights Council and the UN High Commissioner for Human Rights. Members of the panel made further presentation of the findings of the report in Bangkok (16 February), London (17-18 February) and the United States (February 26-27). In the United Kingdom the Panels presented its findings to the public at an event organised by JUSTICE, the UK section of the International Commission of Jurists, at Freshfields Bruckhaus Deringer, followed by meetings with Government officials. On 27 February, the Panel presented its report in Washington D.C. at the Brookings Institute and held high level meetings with Government officials. The ICJ also briefed the Sub-Committee for Human Rights of the Parliamentary Assembly of the Council of Europe and held a side event on intelligence accountability at the UN Human Rights Council.

[Press Release \(Geneva\)](#)

[Press Release \(London\)](#)

[Press Release \(USA\)](#)

[Report of the Eminent Jurists Panel](#)

[Executive Summary](#)

AFRICA & MIDDLE EAST

Zimbabwe: Opposition minister nominee released from custody following detention on terrorism charges; Magistrate detained for granting him bail also released

Lebanon: Special Tribunal for Lebanon begins work

AMERICAS

USA: Government ends use of "enemy combatant" definition but still maintains power to detain persons outside of armed conflict

USA: Court of Appeals reverses order to release Uighur detainees held at Guantánamo into the United States

USA: Federal Court allows abuse claims by Abu Ghraib detainees against private contractor

USA: Pentagon report finds Guantánamo in compliance with Geneva Conventions

USA: Report of the International Committee of the Red Cross reveals details of CIA interrogation procedures

USA: Supreme Court vacates Appeals' decision on indefinite detention in Al-Marri case

USA: Government releases Bush administration memos on executive authority in "war on terror"

Canada: Court dismisses Guantánamo detainees' request for intelligence records

Colombia: New law on intelligence services signed amid scandal of secret service's illegal interceptions

Colombia: UN independent experts report human rights flaws in counter-terrorism practices

Costa Rica: President issues new anti-terrorism law approved by Parliament

ASIA - PACIFIC

India: Parliament approves extending protection by paramilitary group to private enterprises in prevention of terrorism

China - Macao SAR: Parliament passes Security Law

Sri Lanka: Journalist allegedly arrested arbitrarily in alleged connection with terrorist attack

Australia: Human Rights Commission identifies human rights flaws in counter-terrorism legislation

EUROPE & COMMONWEALTH OF INDEPENDENT STATES

UK: House of Lords allows deportation of terrorist suspect to Jordan relying on diplomatic assurances

UK: European Court of Human Rights finds detention of alien terrorism suspects in violation of European Convention

UK: Parliament extends validity of control orders for a further year

UK: Guantánamo detainee returns to Britain and denounces UK complicity in torture and rendition

Italy: European Court of Human Rights finds Italy in violation of European Convention for deportation of Tunisian national

Italy: UN independent experts criticise "hard" detention and unlawful deportations in Italy's counter-terrorism practices

Italy: Constitutional Court finds secret of state covered some evidence in Abu Omar trial

The Netherlands: Council of Europe independent expert finds human rights flaws in counter-terrorism measures

Denmark: UN Independent expert addresses extraordinary renditions and diplomatic assurances

Denmark: Government releases report on deportation and control of "dangerous" aliens

Turkey: European Court of Human Rights finds conviction for publishing declaration of terrorist detainees proportionate

UNITED NATIONS & REGIONAL ORGANISATIONS

UN: Independent expert on counter-terrorism and human rights issues report on role of intelligence agencies

UN: Independent experts set new principles on detention in counter-terrorism

UN: Counter-terrorism Task Force Groups on Terrorist Financing and Internet issue final reports and call for respect of human rights

EU: European Parliament calls on EU institutions and Member States to investigate extraordinary renditions

EU: Justice and Home Affairs Council discusses Guantánamo detainees resettlement

EU: Counter-terrorism coordinator proposes plans for Guantánamo detainees' resettlements

Council of Europe: Commissioner for Human Rights calls for accountability in renditions

Organisation of American States: Counter-Terrorism Committee Members issue declaration on border control and international cooperation

ASEAN: Heads of States commit to enhanced counter-terrorism cooperation

IN BRIEF

International Committee of Red Cross issues document on US counter-terrorism detention
Amnesty International publishes report on human rights defenders in Middle East and North Africa

Human Rights Watch publishes report on Syria's Supreme State Security Court

Redress and Reprieve release report on arbitrary detention and renditions in Kenya in countering terrorism

AFRICA & MIDDLE EAST

Zimbabwe: Opposition minister nominee released from custody following detention on terrorism charges; Magistrate detained for granting him bail also released

On 13 February, Roy Bennett, nominated as deputy minister for the Movement for Democratic Change in the new unity government, was arrested on charges, *inter alia*, of plotting acts of terrorism. Despite being granted bail twice, Roy Bennett remained in custody pending State's appeal. On 6 March, Magistrate Livingstone Chipadze was arrested on charges of "abuse of office" for having granted the position by Roy Bennett to deposit bail. On 12 March, Roy Bennett was freed from custody, after the Supreme Court upheld the previous ruling. Magistrate Chipadze was acquitted and released on 17 March.

[Press Article 1](#)

[Press Article 2](#)

[Press Article 3](#)

Lebanon: Special Tribunal for Lebanon begins work

On 1 March, the UN Secretary General announced that the Special Tribunal for Lebanon had begun its work in the Hague, Netherlands. The Special Tribunal has jurisdiction to prosecute and try persons suspected of responsibility for assassination of former Lebanese Prime Minister Rafiq Hariri and certain other attacks occurring between 1 October 2004 and 12 December 2005 pursuant to criminal provisions in Lebanese law, including the offence of committing acts of terrorism. The Tribunal, presided by Professor Antonio Cassese, is composed by four Lebanese and seven "international judges"

[Secretary General Report](#)

[Secretary General Statement](#)

[Security Council Statement](#)

[UN Legal Counsel Statement](#)

[Press Article](#)

AMERICAS

USA: Government ends use of "enemy combatant" definition but still maintains power to detain persons outside of armed conflict

On 13 March, the Justice Department announced that Guantánamo inmates will no longer be labelled as "enemy combatants" in response to District Court's order of January 22 (See, E-bulletin no. 30, February 2009). Nevertheless, it decided to retain the power of detaining certain persons apprehended outside of a situation of armed conflict, such as those suspected of providing "substantial" support to al-Qaeda or the Taliban. A number of international and national NGOs criticised the position as doing little to correct what they assert to be a flawed legal basis for detention.

[DOJ Memorandum](#)

[DOJ Statement](#)

[Judge Order](#)

[NGO Statement 1](#)

[NGO Statement 2](#)

[NGO Statement 3](#)

USA: Court of Appeals reverses order to release Uighur detainees held at Guantánamo into the United States

On 18 February, the federal Court of Appeals for the District of Columbia reversed a District Court decision which had ordered the resettlement within the United States of 17 Guantánamo detainees of Uighur origin who have been detained without charge for seven years. The District Court had determined that there was no lawful basis for the detention of the detainees. In reversing the decision, the Court of Appeals held that the Executive maintained full discretion to decide on aliens' entry into the US territory. The detainees' lawyers from the Center for Constitutional Rights strongly criticized the decision and asked President Obama to allow the detainees entrance into US territory. A petition has been filed by the detainees asking the US Secretary of Defense to be in contempt of the previous District Court's order for his failure to release the detainees.

[Ruling](#)

[Judge Order](#)

[Petition \(contempt\)](#)

[NGO Statement](#)

[Press Article](#)

USA: Federal Court allows abuse claims by Abu Ghraib detainees against private contractor

On 19 March, the federal District Court for Virginia partially denied a motion by CACI International Inc, a private company contracted to carry out interrogations on behalf of the US government in Abu Ghraib, to dismiss former Abu Ghraib detainees' claims alleging multiple violations of US law, including torture, war crimes and civil conspiracy under the Alien Torts Statute.

[Ruling](#)

[NGO Statement](#)

USA: Pentagon report finds Guantánamo in compliance with Geneva Conventions

On 23 February, a Review Team tasked by a President's executive order (See, E-Bulletin no. 30, February 2009) to investigate Guantánamo detainees conditions of confinement concluded in its report that the treatment of detainees meets the requirements of the Geneva Conventions. Nevertheless, it recommended more religious and social interaction, and reported increased anxiety among detainees due to the uncertainty of their departing Guantánamo. The report was criticized by a number of human rights organizations, including Human Rights First, which found the report to be at odds with real-time accounts of detainees and their lawyers.

[Report](#)

[NGO Statement 1](#)

[NGO Statement 2](#)

[Press Article](#)

USA: Report of the International Committee of the Red Cross reveals details of CIA interrogation procedures

On 14 March, the New York Review of Books and the New York Times published expositions by journalist Mark Danner of leaked excerpts of a secret ICRC report from 2007 on the treatment of 14 "high level detainees" held in the CIA's secret detention programme. The report describes in detail the interrogation procedures, including severe beatings, stress positions, subjection to extreme temperatures, "waterboarding" (near drowning). The ICRC concludes in the report that the detainees were subjected to torture and cruel, inhuman and degrading treatment.

[Press Article \(NY Review\)](#)

[Press Article \(NY Times\)](#)

USA: Supreme Court vacates Appeals' decision on indefinite detention in Al-Marri case

On 6 March, the US Supreme Court dismissed as moot an appeal challenging the indefinite detention of suspected al-Qaeda operative Ali Saleh Kahlah al-Marri, vacating the previous judgment of the Court of Appeals, allowing for indefinite military detentions of civilians captured in the United States (see, E-Bulletin no. 25, August 2008). The decision came after Ali Saleh Kahlah al-Marri, who has been held largely in isolation in military detention for nearly six years, was finally charged on 26 February with providing or conspiring to provide material support and resources to a terrorist organisation.

[Court Order](#)

[Indictment](#)

[DOJ Statement](#)

[NGO Statement](#)

[Press Article](#)

USA: Government releases Bush administration memos on executive authority in "war on terror"

On 2 March, the Government disclosed two memoranda and seven opinions of the Office of Legal Counsel which had been formerly classified. The documents contain the advice that executive power may be used in a highly expansive manner during "wartime", including the power to disregard certain constitutional strictures. The release added impetus to calls for an independent commission to investigate Bush administration counterterrorism policies by civil society, NGOs and also within the Senate Judiciary Committee.

[Memoranda](#)

[Senate Hearing \(Video\)](#)

[NGO Statement 1](#)

[NGO Statement 2](#)

Canada: Court dismisses Guantánamo detainees' request for intelligence records

On 16 February, the Federal Court of Canada upheld the decision of the security services not to disclose information on interrogations by Canadian officers in relation to Guantánamo detainees Mohamedou Ould Slahi and Ahcene Zemiri. The appellants requested the information in order to substantiate their claims of torture and other ill-treatment in US courts. The Federal Court held that the detainees did not fall under the protection of the *Canadian Charter on Rights and Freedoms* as they had failed to establish an appropriate *nexus* with Canada.

[Ruling](#)

[Press Article](#)

Colombia: New law on intelligence services signed amid scandal of secret service's illegal interceptions

On 5 March, President Alvaro Uribe signed a new Law on Intelligence Services (*Ley no. 1288*), approved in December 2008 by the Parliament, that operates to limit intelligence operations to specific purposes, including protecting the population from the threat of terrorism. The signature came following allegations that a State security agency, the *DAS*, has been intercepting communications of politicians, judges, and human rights defenders. The Inter-American Commission on Human Rights expressed its concern at this situation and called the Government to expedite its investigations.

[Statute \(S\)](#)

[IACHR Statement \(S\)](#)

[Press Article 1 \(S\)](#)

[Press Article 2 \(S\)](#)

Colombia: UN independent experts report human rights flaws in counter-terrorism practices

On 16 February, the UN Working Group on Arbitrary Detention issued a report on its visit to Colombia in October 2008. The Working Group highlighted a failure to apply safeguards by the Office of the Public Prosecutor in issuing arrest warrants for terrorism-related offences. It also stressed that the centralisation of all detention and proceedings related to terrorism offences in Bogota, and in particular within the facilities of the Colombian army, posed increased difficulties for the effective exercise of the right to defence by the detainees.

[Report \(S\)](#)

Costa Rica: President issues new anti-terrorism law approved by Parliament

On 4 March, the President of Costa Rica ratified an anti-terrorism law approved in February by the Parliament. The Law for the Strengthening of Anti-terrorism Legislation (*Ley 8719*) includes provisions for universal jurisdiction for certain terrorism offences, new terrorism-related offences, procedures for seizure and freezing of terrorism-suspect assets, including of persons named in the UN Security Council terrorism list, and introduces crimes related to financing of terrorism activities.

[Statute \(S\)](#)

[Press Article \(E\)](#)

[Press Article \(S\)](#)

ASIA - PACIFIC

India: Parliament approves extending protection by paramilitary group to private enterprises in prevention of terrorism

On 26 February, the Indian Parliament approved the Central Industrial Security Force (Amendment) Bill 2008 which was intended to replace an Ordinance 2009. The Bill will extend the operations of the Central Industrial Security Force, a paramilitary security force, to the protection of private enterprises, in particular from possible terrorist attacks. The operations of the CISF were previously limited to public enterprises or joint ventures with Governmental participation.

[Draft Law](#)

[Ordinance 2009](#)

[Press Article](#)

China - Macao SAR: Parliament passes Security Law

On 25 February, the Legislative Assembly of Macao SAR passed a National Security Law criminalising acts of sedition, including those committed through acts damaging security of transport, communication or public infrastructures. Amnesty International has strongly criticised this law as containing an over-broad definition of criminal offences that could be applied to conduct, such as public demonstration, undertaken in the legitimate exercise of freedom of expression or association.

[Statute \(Chinese and Portuguese\)](#)

[Statute \(English\)](#)

[NGO Statement](#)

Sri Lanka: Journalist allegedly arrested arbitrarily in alleged connection with terrorist attack

On 26 February, the editor of a Tamil daily newspaper, N. Vithyatharan, was arrested by plain-clothed agents without a warrant. He was reportedly held for interrogation in relation to a 20 February Liberation Tigers of Tamil Eelam (LTTE) attack in Colombo. Human Rights Watch, Reporters sans Frontières and the Committee for the Protection of Journalists have condemned the arbitrary arrest and called for his release. The groups have denounced what is alleged to be a pattern of harassment or persecution of journalists. The first anniversary of the detention of journalist J. S. Tissainayagam was marked on 7 March. He was charged with the offence of "aiding and abetting a terrorist organisation" allegedly on the basis of two articles he wrote covering the Sri Lankan conflict.

[NGO Statement 1](#)

[NGO Statement 2](#)

[NGO Statement 3](#)

[NGO Statement 4](#)

[Press Article](#)

Australia: Human Rights Commission identifies human rights flaws in counter-terrorism legislation

On 4 March, the President of the Australian Human Rights Commission, Catherine Branson QC, gave her assessment that the human rights protection of Australia were inadequate and that it was time for the introduction of a human rights act to address the deficiency. In early 2009, the Australian Human Rights Commission issued a blueprint identifying human rights concerns in relation to anti-terrorism measures, such as preventative detention powers, control orders, detention and questioning powers of the secret service.

[Blueprint](#)

[Speech](#)

EUROPE & COMMONWEALTH OF INDEPENDENT STATES

UK: House of Lords allows deportation of terrorist suspect to Jordan relying on diplomatic assurances

On 18 February, a five-judge panel of the House of Lords ruled unanimously that Abu Qatada, suspected of being a member of Al-Qaeda, could be deported to Jordan to face charges on terrorism offences, despite fears he might be subject to serious human rights violations, including torture or other ill-treatment upon his arrival. National and international NGOs protested at this decision, which relies on diplomatic assurances by the Jordanian authorities concerning the treatment of Abu Qatada on his return.

[Judgment](#)

[NGO Amicus Brief](#)

UK: European Court of Human Rights finds detention of alien terrorism suspects in violation of European Convention

On 19 February, the European Court of Human Rights found the detention of 11 terrorist suspects under the Anti-terrorism, Crime and Security Act 2001, to be in violation of the right to liberty and security, right to a judicial review of the detention, and right to

compensation. The Court also found that the derogation of the United Kingdom from ensuring the right to liberty and security (Article 5 ECHR) had been disproportionate as the detention measures were aimed only at non-nationals.

[Judgment](#)

[Court Statement](#)

[NGO Amicus Brief](#)

[Press Article](#)

UK: Parliament extends validity of control orders for a further year

On 3 and 5 March, the House of Commons and House of Lords of the UK Parliament approved the Prevention of Terrorism Act 2008 (Continuance into Force of Sections 1 to 9) Order 2009, which will extend the validity of the control order regime for terrorism suspects for a further year starting from 11 March 2009. JUSTICE, the British section of the ICJ, opposed such measures as being unnecessary, ineffective and offensive to basic principles of justice.

[Order 2009](#)

[NGO Intervention](#)

UK: Guantánamo detainee returns to Britain and denounces UK complicity in torture and rendition

On 23 February, former Guantánamo detainee Binyam Mohamed arrived in the United Kingdom just after his release. He provided a statement on the same day and an interview on 8 March, reasserting his allegations of torture while in detention in Pakistan, Morocco, Afghanistan and Guantánamo Bay and underscoring the complicity of UK secret service, MI5, in the interrogations. Calls for independent investigations on these allegations were made by several Parliamentarians and NGOs. The Government responded with the announcement of new guidelines on intelligence interrogations. The Intelligence and Security Committee reported on its investigation into the situations and made recommendations to the Prime Minister. The Attorney General invited the Metropolitan Police to start an investigation into possible complicity of an MI5 agent in the torture practices alleged by Binyam Mohamed.

[Mohamed Statement](#)

[Interview](#)

[Prime Minister Statement](#)

[Committee Statement](#)

[Attorney General Statement](#)

[Press Article 1](#)

[Press Article 2](#)

[Press Article 3](#)

Italy: European Court of Human Rights finds Italy in violation of European Convention for deportation of Tunisian national

On 24 February, the European Court of Human Rights held that the deportation of Essid ben Khemais to Tunisia violated the prohibition of torture and ill-treatment and was done unlawfully in defiance of the Court's interim measures. A Tunisian military court had already sentenced Mr ben Khemais *in absentia* to ten years in prison for membership of a terrorist group. The Court rejected the reliance on Tunisian diplomatic assurances by the Italian Government.

[Judgment \(French\)](#)

[Court Statement](#)

Italy: UN independent experts criticise "hard" detention and unlawful deportations in Italy's counter-terrorism practices

On 6 March, the UN Working Group on Arbitrary Detention presented to the Human Rights Council the report of its visit to Italy in November 2008. In the report, the Working Group expressed concern about the repeated extension of the "hard" penitentiary regime for people held under terrorism and mafia offences, and for deportation of aliens suspected of terrorism activities in violation of the principle of *non-refoulement*. The Group also stressed that Italy's successful record of terrorism-related trials and convictions demonstrated the effectiveness of countering terrorism within the ordinary legal system.

[Report](#)

Italy: Constitutional Court finds secret of state covered some evidence in Abu Omar trial

On 12 March, the Constitutional Court found that some of the documents used by prosecutors in the trial against CIA agents and Italian intelligence officers for the kidnapping of Abu Omar were protected from use and disclosure as secrets of state. However, the Court declined to accept the privilege of secrecy for a number of phone conversations among intelligence officers, which forms part of the evidence in the case. Trial Judge, Oscar Magi, postponed the trial until 22 April in order to wait for the full judgment of the Constitutional Court.

[Court Statement \(IT\)](#)

[Prosecutor Statement \(IT\)](#)

[Press Article 1](#)

[Press Article 2](#)

The Netherlands: Council of Europe independent expert finds human rights flaws in counter-terrorism measures

On 11 March, the Commissioner for Human Rights of the Council of Europe, Thomas Hammarberg, released a report on its visit to the Netherlands in September 2008. In the report, the Commissioner expresses his concern at the broad definition of terrorism in criminal law and at the impact of criminal and administrative measures in counter-terrorism on the right to a fair trial, to freedom of movement, and to privacy of persons subject to such measures.

[Report](#)

Denmark: UN Independent expert addresses extraordinary renditions and diplomatic assurances

On 18 February, the UN Special Rapporteur on torture, Manfred Nowak, issued a report on his visit to Denmark in May 2008, in which he welcomed the establishment of an inter-ministerial working group investigating allegations of complicity in extraordinary renditions and recommended the inclusion in it of independent experts and civil society. The expert also expressed concern at the Government's favourable approach to the use of diplomatic assurances in cases of deportations, and asked it not to promote the use of diplomatic assurances at the European level.

[Report](#)

Denmark: Government releases report on deportation and control of "dangerous" aliens

On 11 March, the Government published a report on administrative expulsion of aliens who are considered to pose a threat to the State security and announced that a bill would soon be presented in line with the report's recommendations. The report concludes that Denmark could make use of control orders similar to those applied in the UK for such persons and that limited possibilities to use diplomatic assurances for deportations exist.

[Report \(Danish\)](#)

[Ministry Statement \(Danish\)](#)

Turkey: European Court of Human Rights finds conviction for publishing declaration of terrorist detainees proportionate

On 17 February, the European Court of Human Rights rejected a petition by the owner and the editor in chief of a national newspaper convicted for "publishing the declarations of terrorist organisations" for publishing heated declarations of detainees convicted for terrorism-related offences on prison conditions and state security courts. The Court held that the conviction answered to a pressing social need based on reasons to fear for violent reactions and was a therefore proportional restriction to the right to freedom of expression.

[Judgment](#)

UNITED NATIONS & REGIONAL ORGANISATIONS

UN: Independent expert on counter-terrorism and human rights issues report on role of intelligence agencies

On 4 February, the UN Special Rapporteur on counter-terrorism and human rights issued its Annual Report on 2008 where he focused on intelligence agencies' human rights abuses and implications in countering terrorism. In March, the Special Rapporteurs on counter-terrorism and human rights and on torture launched a worldwide joint study to examine the practice of secret detention.

[Report](#)

[Joint Study](#)

[UN Factsheet](#)

[ICJ Statement](#)

UN: Independent experts set new principles on detention in counter-terrorism

On 16 February, the UN Working Group on Arbitrary Detention issued its Annual Report in which it outlined some basic principles on counter-terrorism such as the necessity of using ordinary criminal proceedings to prosecute acts of terrorism, desistance from resort to administrative detention, the right to be informed of charges, the right to *habeas corpus*, the right to a fair trial with rights of defence and judicial review of detention, and the right to appeal against judicial conviction.

[Report](#)

UN: Counter-terrorism Task Force Groups on Terrorist Financing and Internet issue final reports and call for respect of human rights

In February, the UN Working Group on Countering the Use of the Internet for Terrorism Purposes issued its final report, in which it advocated measures to combat the use of internet for terrorism. The Working Group stressed that all measures must be in full compliance with human rights and the principles of necessity and proportionality. In January, the UN Working Group on Tackling the Financing of Terrorism also issued its final report, in which it recommended, *inter alia*, the full observance of human rights and fair procedures in assets freezing. Meanwhile, on 4 February the UN Counter-terrorism Committee released its work-plan for the first semester of 2009.

[Report \(Internet\)](#)

[Report \(Financing\)](#)

[Counter-Terrorism Committee Work-plan](#)

EU: European Parliament calls on EU institutions and Member States to investigate extraordinary renditions

On 19 February, the European Parliament approved a resolution denouncing the lack of action by Member States and the European Council to investigate the EU Member States' responsibility in connection with the US- led extraordinary renditions programme. The Parliament called on Member States and EU institutions to conduct thorough investigations and to collaborate with them by disclosing information and ensuring effective parliamentary scrutiny of secret services.

[Resolution](#)

[Parliament Statement](#)

EU: Justice and Home Affairs Council discusses Guantánamo detainees resettlement

On 26 and 27 February, the Justice and Home Affairs Council of the European Union held an informal meeting on the issue of the closure of the US detention facility in Guantánamo with a view to determining possible resettlement of certain detainees in EU member States. Ministers agreed on the necessity to obtain more information and study all aspects of the issue and for further discussion with the United States. A group of NGOs urged the Council to ensure that member States provide humanitarian protection to Guantánamo detainees who cannot be safely repatriated.

[Council Statement](#)

[Council Agenda](#)

[NGOs Letter](#)

EU: Counter-terrorism coordinator proposes plans for Guantánamo detainees' resettlements

On 27 February and 5 March, the EU Counter-terrorism Coordinator issued a report and an additional paper on the closure of the Guantánamo detention centre. He analysed the US policy and elaborated the legal framework for the resettlement of certain detainees in EU countries such as the issuance of residence permits or international protection in consultation with countries that are part of the Schengen area.

[Report](#)

[Additional Paper](#)

Council of Europe: Commissioner for Human Rights calls for accountability in renditions

On 16 March, the Commissioner for Human Rights of the Council of Europe, Thomas Hammarberg, called on European States to investigate their complicity with US extraordinary renditions programmes. Taking as a basis the recommendations of the ICJ Eminent Jurists Panel, Mr Hammarberg declared that the need for intelligence information must not be used to cover up facts about human rights violations.

[Viewpoint](#)

[EJP Report](#)

Organisation of American States: Counter-Terrorism Committee Members issue declaration on border control and international cooperation

On 6 March, the Member States of the Inter-American Committee against Terrorism approved a *Declaration on Strengthening Border Controls and International Cooperation in the Fight against Terrorism*. The Declaration demands increased efforts in border controls, extradition procedures and tackling terrorism financing including through assets freezing, as well as respect for international human rights, humanitarian law and refugee law in the fight against terrorism.

[Declaration \(E\)](#)

[Declaration \(S\)](#)

ASEAN: Heads of States commit to enhanced counter-terrorism cooperation

On 1 March, the Heads of State of the Association of South-East Asian Nations (ASEAN) signed a declaration according to which they agreed to implement, among other measures, an ASEAN Political-Security Community Blueprint. The Blueprint provides for enhanced cooperation in counter-terrorism and calls for the ratification by ASEAN States of the ASEAN Convention on Counter-terrorism.

[Declaration](#)

[Blueprint](#)

[Convention on Counter-terrorism](#)

[ASEAN Statement](#)

IN BRIEF

International Committee of Red Cross issues document on US counter-terrorism detention

On 24 February, the International Committee of the Red Cross issued a document explaining its role regarding US detention related to the fight against terrorism. In particular, the ICRC assessed the international humanitarian law implications in the new policies of closing of Guantánamo detention facilities and explains its role in obtaining access and contact with detainees in Bagram (Afghanistan), Guantánamo and Charleston (South Carolina – US).

[Document](#)

Amnesty International publishes report on human rights defenders in Middle East and North Africa

On 11 March, Amnesty International published a report assessing the situation of human rights defenders in the region. The report stresses that adoption of new counter-terrorism

legislation after 11 September 2001 has aggravated the threats to human rights defenders.

Report

Human Rights Watch publishes report on Syria's Supreme State Security Court

On 24 February, Human Rights Watch published a report on Syria's Supreme State Security Court. The report denounces violations of the right to fair trial by an independent and impartial tribunal and the use of overbroad terrorism-related offences against public dissent. The organisation calls for the abolition of this Court, the activities of which have been suspended since July 2008.

Report

Redress and Reprieve release report on arbitrary detention and renditions in Kenya in countering terrorism

On 4 March, the NGOs Redress and Reprieve released a report evaluating the situation of arbitrary detentions and extraordinary renditions by the Kenyan authorities in the framework of counter-terrorism policies in Kenya.

Report

NGO Statement

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