



# **E-BULLETIN ON COUNTER-TERRORISM & HUMAN RIGHTS**

**No. 33, May 2009**

## **Report of the Eminent Jurists Panel presented at the United Nations in New York**

On May 4-6, the ICJ presented the findings contained in the report of the Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights in a briefing at the United Nations in New York. The briefing was hosted by the delegations of Mexico and Liechtenstein. The ICJ also held consultations on the more effective integration of human rights into the work of UN bodies, including the Counter-Terrorism Committee and its Executive Directorate and into the Global Strategy on Counter-terrorism.

**Press Release**

## **ICJ holds briefing on the Eminent Jurists report at Council of Europe**

On April 28, the ICJ presented the findings and conclusions of the Eminent Jurists Panel during a side event at the Parliamentary Assembly of the Council of Europe in Strasbourg. The event was sponsored by the Sub-Committee on Crime Problems and the Fight Against Terrorism and chaired by the Anti-terrorism Co-ordinator of the Council of Europe.

**Council of Europe Announcement**

### **AFRICA & MIDDLE EAST**

**Ethiopia:** Draft counter-terrorism law published

**Uganda:** Parliament rejects Bill which would allow arbitrary communications interceptions

**Zimbabwe:** Anti-terror law used against leading human rights activists

**Libya:** Former CIA detainee reportedly commits suicide in Libyan prison

**Iraq:** Concern over execution of terrorism convicts and other human rights violations

**Israel:** UN Committee against Torture concerned at Israeli counter-terrorism practices

### **AMERICAS**

**USA:** Obama to regularise prolonged preventive detention for some Guantánamo detainees, and continue military commissions system

**USA:** Senate report provides new details on illegal interrogations techniques

**USA:** New administration standard for detention without trial tested in court

**USA:** Court dismisses civil suit for torture by four former UK Guantánamo detainees  
**USA:** Supreme Court excludes superiors' liability for discrimination, ill-treatment and arbitrary detention of Muslims post 9/11  
**USA:** Court rejects US administration's claim of state secret privilege in rendition lawsuit  
**USA:** Justice Department investigation to recommend that authors of CIA "torture memos" should not be prosecuted  
**USA:** Former Guantánamo detainee Boumediene resettled in France  
**Colombia:** Judiciary protests at illegal monitoring of judges by secret services  
**Colombia:** Human rights defender accused of terrorist collaboration freed; journalist labelled as "terrorists' ally" in exile  
**Chile:** UN Committee against Torture criticises abuse of anti-terrorism law against indigenous communities

## **ASIA - PACIFIC**

**India:** Mumbai attack - defense lawyer alleges client was tortured  
**Sri Lanka:** NGOs condemn failure of UN Human Rights Council to address human rights abuses  
**Malaysia:** Terrorism suspect detained under anti-terrorism law; activists detained under same law freed  
**Philippines:** UN Committee against Torture finds human rights flaws in anti-terrorism law

## **EUROPE & COMMONWEALTH OF INDEPENDENT STATES**

**UK:** Police announces to limit use of search powers; proposed secret inquests withdrawn  
**UK:** Secret services fed information to Syria for arrest of Britons  
**France:** Former Guantánamo detainee Boumediene resettled in France  
**Italy:** European Court of Human Rights stops expulsion to Tunisia  
**Spain:** Judge opens investigation into Guantánamo torture allegations  
**Spain:** Court acquits ten on terrorism charges because of illegally obtained evidence  
**Spain:** Constitutional Court reverses Supreme Court's decision on electoral list  
**Sweden:** Migration Court upholds asylum for former Guantánamo detainee

## **UNITED NATIONS & REGIONAL ORGANISATIONS**

**UN:** Security Council Member States call for fair procedural guarantees in listing  
**EU:** Council's Presidency puts forwards draft conclusions for resettlement of Guantánamo detainees  
**EU:** European Commission proposes new system for terrorism lists after *Kadi* case  
**Council of Europe:** Parties to Counter-terrorism Convention renew commitment to human rights  
**Council of Europe:** Parliamentary Assembly to address abuse of state secrecy  
**Organisation of American States:** Summit's final declaration upholds respect of human rights while countering terrorism

## **IN BRIEF**

Redress publishes report on right to reparation for victims of renditions and arbitrary detention  
Center on Global Counter-terrorism Cooperation publishes paper on UN Counter-terrorism Strategy

## AFRICA & MIDDLE EAST

### Ethiopia: Draft counter-terrorism law published

A new draft law on counter-terrorism has drawn expressions of serious concern from opposition parties and human rights advocates. The Bill contains, *inter alia*, broadly defined definitions of terrorist acts and offences the commission of which may lead to the imposition of the death penalty, the granting to the police of search powers and authority to intercept or conduct surveillance of communications without judicial warrant, and the imposition of a duty to denounce terrorist suspects under risk of criminal punishment.

[Draft Law](#)

[NGO Analysis](#)

### Uganda: Parliament rejects Bill which would allow arbitrary communications interceptions

On 15 May, the Parliament of Uganda rejected a proposed *Regulation of Interception of Communication Bill* advanced by the Security Minister as a tool in the fight against terrorism. The Bill would have given to the Security Minister the power to grant authorisations for interception of communications whenever the Minister believed a felony could be committed or information concerning threats to public safety, national security, or national economic interest would be at issue. The Government announced that it would review the Bill before reintroduction.

[Draft Law](#)

[Press Article](#)

### Zimbabwe: Anti-terror law used against leading human rights activists

Leading human rights defender Jestina Mukoko and 17 other activists have been charged with offences of terrorism by the Attorney General. On 5 May, the criminal court revoked bail but this was subsequently reinstated by the magistrate. On 11 May, two journalists, who had reported on the earlier abduction of the activists by the authorities, were arrested for one day, and a lawyer representing the detainees was arrested for improperly arranging bail. Both have been charged with criminal offences and released on bail.

[NGO Statement](#)

[Press Article 1](#)

[Press Article 2](#)

### Libya: Former CIA detainee reportedly commits suicide in Libyan prison

On 12 May, Ibn al-Sheikh al-Libi, also known as Ali Mohamed al-Fakheri, a former “high-value” CIA detainee, died while in detention in Libya, in a reported suicide. Ibn al-Sheikh al-Libi was captured fleeing Afghanistan in late 2001 and was subjected to enforced disappearance in the US secret detention system. He was said to be the “unnamed source” for US claims in 2002 and 2003 that Iraq was providing chemical and biological weapons training to al-Qaeda operatives, information allegedly extracted under torture. The reported suicide provoked international calls for Libyan authorities to carry out a full, impartial and transparent investigation of the death, and on both US and Libyan authorities to release information on Ibn al-Sheikh al-Libi’s detention, including in relation to his alleged torture.

[NGO Statement](#)

[Press Article](#)

### Iraq: Concern over execution of terrorism convicts and other human rights violations

On 3 May, twelve persons convicted on terrorism-related charges were executed in Iraq. Reportedly, an additional 128 persons have also been executed or are awaiting execution. On 29 April, the UN Assistance Mission in Iraq (UNAMI) published a report on the human rights situation between July and December 2008, in which it criticised the scope and application of the Kurdish Anti-terrorism law which provides for administrative detention.

[Report](#)

[UNAMI Statement](#)

[NGO Statement](#)

### **Israel: UN Committee against Torture concerned at Israeli counter-terrorism practices**

On 14 May, the UN Committee against Torture released its Concluding Observations on the fourth periodic report of Israel. The Committee expressed serious concern at the maintenance of the defence of “necessity” for the use of methods said to contravene the prohibition on torture or cruel, inhuman or degrading treatment in “ticking bomb” scenarios, and of provisions assuring impunity in these situations. The Committee denounced the existence of secret detention facilities and called for impartial investigations. It found violations of the Convention against Torture in the use and conditions of administrative detention for security-related detainees, lack of prompt presence of legal counsel, judicial review, and practices of solitary confinement aimed at facilitating “confessions”.

[Concluding Observations](#)

[State Report](#)

[ICJ Submission](#)

## **AMERICAS**

### **USA: Obama to regularise prolonged preventive detention for some Guantánamo detainees, and continue military commissions system**

On 21 May, President Barack Obama outlined broadly a number of counter-terrorism policies, including those related to the implementation of the closure of the detention facility at Guantánamo Bay. He indicated that some detainees deemed dangerous to national security would continue to be held indefinitely under a new programme of prolonged detention. He also affirmed that, while some detainees would be tried in ordinary federal courts, the US would maintain the use of military commissions, where evidentiary requirements are laxer, with procedural modifications aimed at improving certain fair trial guarantees. The new policies were widely denounced by human rights organisations as a threat to due process and rule of law.

[President's Speech](#)

[NGO Statement](#)

[NGO Statement 2](#)

[ICJ Statement 1](#)

[ICJ Statement 2](#)

### **USA: Senate report provides new details on illegal interrogations techniques**

On 17 April, the Senate Select Committee on Intelligence released a report documenting that both former National Security Adviser, Condoleezza Rice, and former Attorney General, John Ashcroft, had effectively approved, as early as in 2002, the policy of the CIA detention and interrogation of detainees programme, including interrogation methods such as water-boarding. The report contains a detailed analysis of the meetings, legal opinions and approvals of the CIA detention and interrogations policy during the Bush administration, and confirms the November 2008 findings by the Senate Armed Services Committee.

[Committee on Intelligence Report](#)

[Armed Service Committee Report](#)

### **USA: New administration standard for detention without trial tested in court**

Two recent rulings, issued in *habeas corpus* proceedings, challenged the new US position on its authority to detain persons in Guantánamo Bay. The administration had decided to limit detention without trial to individuals who were members of enemy armed forces at the time of capture and to those providing ‘substantial support’. On 22 April, Judge Reggie Walton of the US District Court of the District of Columbia largely accepted, in *Gherebi*, the Obama administration’s position that allowed for detention of persons who provide “substantial support” for the armed forces of the Taliban or Al Qaeda. However, on 19 May Judge John Bates’ ruling in the *Hamlily* case in the same jurisdiction determined that the laws of war required “direct participation in hostilities” as a basis for detention.

[Ruling \(Gherebi\)](#)

[Ruling \(Hamlily\)](#)

[Government Brief](#)

[Press Article](#)

### **USA: Court dismisses civil suit for torture by four former UK Guantánamo detainees**

On 24 April, the Circuit Court of the District of Columbia dismissed for the second time a civil lawsuit, *Rasul et al v. Myers et al.*, seeking compensation for torture and other international human rights and humanitarian law violations. The judicial panel ruled that the officers enjoyed qualified immunity from this civil lawsuit.

[Ruling](#)

### **USA: Supreme Court excludes superiors' liability for discrimination, ill-treatment and arbitrary detention of Muslims post 9/11**

On 18 May, the Supreme Court rejected a complaint seeking civil damages against former Attorney General, John Ashcroft, FBI Director Robert Mueller, and other US officers, filed by a group of Muslim Americans for discriminatory and arbitrary detention and ill-treatment in custody in the aftermath of 9/11. The Court, in a 5-4 decision, stated that the defendants were not responsible for the contested acts under supervisory liability and that they would have had to specifically order the discriminatory measures for liability to attach.

[Ruling](#)

[Press Article](#)

### **USA: Court rejects US administration's claim of state secret privilege in rendition lawsuit**

On 28 April, the Circuit Court of Northern California rejected a request by the Government, in the civil lawsuit *Mohammed et al. v. Jeppesen*, to dismiss the complaint by five rendition victims against a company accused of providing the CIA with transportation service in their programme involving torture, enforced disappearance and arbitrary detention. The Government argued that evidence should be protected for national security purposes by the "state secret" doctrine. The Court found that the doctrine could not be applied on a blanket basis to all evidence, but rather the trial court would have to test each specific piece of evidence to determine whether it is protected by the privilege. On 21 May, President Obama announced publicly that policies regarding use of the state secret doctrine would be subject to review.

[Ruling](#)

[President's Speech](#)

[ICJ/Redress Amicus Brief](#)

[NGO Statement](#)

[Press Article](#)

### **USA: Justice Department investigation to recommend that authors of CIA "torture memos" should not be prosecuted**

A report soon to be released by the Official of Professional Responsibility of the Department of Justice (DOJ) will reportedly recommend against criminal prosecution of three former Bush administration lawyers, John Yoo, Steven Bradbury and Jay Bybee, who authored memos outlining unlawful CIA interrogation techniques and their legal rationale. The report does criticise the lawyers for lapses in professional judgement. A number of human rights advocates have continued to call for the lawyers to be held accountable.

[Memoranda](#)

[UN HRCH Statement](#)

[NGO Statement](#)

[Press Article](#)

### **USA: Former Guantánamo detainee Boumediene resettled in France**

See [below](#), under "Europe and Commonwealth of Independent States".

### **Colombia: Judiciary protests at illegal monitoring of judges by secret services**

On 5 May, the Inter-institutional Commission of the Judicial Branch, composed of the Presidents of the highest institutions of the judiciary, denounced the illegal monitoring of members of the judiciary by the security services (DAS). The Commission called on the President to undertake a full investigation and to communicate the measures taken in order to assure non-repetition of these practices, and called on international human rights

bodies to help protect members of the judiciary. The monitoring of the judiciary is part of a broader practice of abusive interception by the secret service, which has targeted journalists and human rights defenders, including the Colombian Commission of Jurists, the ICJ affiliated organisation in Colombia.

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

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

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

### **Colombia: Human rights defender accused of terrorist collaboration freed; journalist labelled as “terrorists’ ally” in exile**

On 13 May, human rights defender, Martín Sandoval, was freed by Colombian authorities after six months of detention. Sandoval was accused of collaborating with the armed group FARC (*Fuerzas Armadas Revolucionarias de Colombia*) listed as “terrorist” organisation in the USA and the EU. Recently, a leading journalist writing about the internal conflict, Hollman Morris, went into exile after President Uribe characterised him as “allied with terrorists”.

[NGO Statement \(Sandoval\) \(S\)](#)

[Morris Interview \(French\)](#)

### **Chile: UN Committee against Torture criticises abuse of anti-terrorism law against indigenous communities**

On 14 May, the UN Committee against Torture published its Concluding Observations on the fifth periodic report of Chile. The Committee denounced the use and abuse of the Anti-terrorism Law against members of the indigenous communities in relation to acts of social protests. The Committee requested the country to provide detailed information on the abuse of such a law towards indigenous communities.

[Concluding Observations \(S\)](#)

## **ASIA - PACIFIC**

### **India: Mumbai attack - defense lawyer alleges client was tortured**

On 7 May, Mohammed Ajmal Kasab, accused in connection with the attacks in Mumbai of November 2008, pleaded not guilty to 86 charges, including terrorist offences. He revealed his age to be 21 after he claimed to be a minor and to be judged in a juvenile court. On 17 April, the defendant claimed that his declarations to the police were made under torture and ill-treatment. The Court has nevertheless admitted them as grounds for formulating the charges.

[Press Article 1](#)

[Press Article 2](#)

### **Sri Lanka: NGOs condemn failure of UN Human Rights Council to address human rights abuses**

On 27 May, the UN Human Rights Council concluded its 11<sup>th</sup> Special Session on Sri Lanka. International NGOs condemned the failure of the Human Rights Council to address the gross human rights violations perpetrated by the Sri Lankan Government in the course of the armed conflict with the Liberation Tigers of Tamil Eelam (LTTE). Between January 2009 and the announcement of the end of the conflict on 16 May, more than 7,000 civilians were reportedly killed and around 14,000 wounded. The Council disregarded in its final resolution calls, including by the UN High Commissioner for Human Rights, for independent investigations and accountability.

[Resolution](#)

[UN HRHC Statement](#)

[UN Experts Statement](#)

[EU Statement](#)

[NGO Statement](#)

[Press Article](#)

### **Malaysia: Terrorism suspect detained under anti-terrorism law; activists detained under same law freed**

On 8 May, Malaysian authorities announced the arrest and detention of Mas Selamat

Kastari under the Internal Security Act, which allows for indefinite administrative detention. The detainee is suspected by the Singaporean authorities to have planned a terrorist attack in Singapore airport. He escaped from detention in Singapore on 27 February last year. On 9 May, the authorities announced the release of three activists, lawyers Uthayakumar Ponnusamy and Manoharan Malayalam and secretary T Vasanthakumar, who had been held in administrative detention after organizing public protests. Vasanthakumar is reportedly subject to a curfew and a ban on speaking with the media.

[Internal Security Act](#)

[NGO Statement](#)

[Press Article](#)

### **Philippines: UN Committee against Torture finds human rights flaws in anti-terrorism law**

On 14 May, the UN Committee against Torture released its Concluding Observations on the second periodic report of the Philippines. The Committee expressed its concern at numerous provisions of the anti-terrorism law, the Human Security Act 2007. In particular, it raised concern over the broad definition of “terrorism” in the law, the fixed penalty of 40 years, the competence of various bodies authorized to review the detention of an individual, and the restrictions on freedom of movement. The Committee also recommended revisions on legislative provisions prohibition “extraordinary rendition”, which allow transfer after receipt of diplomatic assurances. The Committee additionally recommended revisions on the rules on administrative detention.

[Human Security Act](#)

[Concluding Observations](#)

## **EUROPE & COMMONWEALTH OF INDEPENDENT STATES**

### **UK: Police announces to limit use of search powers; proposed secret inquests withdrawn**

On 7 May, the Metropolitan Police Authority announced that they would limit the use of search powers under the Terrorism Act 2000, in consideration of the findings of the Strategic and Operational Policing Committee that the excessive use of search powers served to alienate the targeted communities. On 15 May, the Government announced that it would withdraw its plans to introduce secret inquests in matters of national security.

[Terrorism Act](#)

[Police Statement](#)

[Press Article 1](#)

[Press Article 2](#)

### **UK: Secret services fed information to Syria for arrest of Britons**

On 14 May, the newspaper *The Guardian* reported that information on the two UK nationals detained in Syria for alleged terrorism-related activities was provided to Syrian authorities by MI5, the UK internal intelligence services.

[Press Article](#)

### **France: Former Guantánamo detainee Boumediene resettled in France**

On 15 May, Guantánamo detainee Lakhdar Boumediene, an Algerian national, was admitted to France where his family lives, after France agreed to allow his resettlement on its territory. The release follows a 2008 ruling by a US federal court affirming the unlawfulness of his detention. Lakhdar Boumediene was arrested in Bosnia in 2001 with five other persons on suspicion of planning to attack the US Embassy and subjected to rendition to Guantánamo in defiance of an order by the Bosnian courts. All charges against him were formally dismissed by Bosnian authorities in 2004. National and international NGOs welcomed the decision of France and encouraged other European countries to accept Guantánamo detainees.

[US Statement](#)

[NGO Statement 1](#)

[NGO Statement 2](#)

[Press Article](#)

### **Italy: European Court of Human Rights stops expulsion to Tunisia**

On 5 May, the European Court of Human Rights determined that the expulsion of Ezzedine Ben Edris Sellem to Tunisia, where he had been convicted of terrorism offences, would violate the prohibition of torture and cruel, inhuman or degrading treatment or punishment, in contravention of Article 3 of the European Convention on Human Rights. The Court took account of the widespread use by Tunisian authorities of torture and other ill-treatment against terrorism detainees, established in the case *Saadi v. Italy*. The Court determined that the diplomatic assurances offered were not sufficient to obviate the risk to the complainant.

[Judgment \(French\)](#)

[Judgment \(Saadi v Italy\)](#)

### **Spain: Judge opens investigation into Guantánamo torture allegations**

On 27 April, Examining Magistrate Baltasar Garzón initiated criminal investigations for crimes of torture and war crimes under the principle of universal jurisdiction against unknown US military and intelligence officers and those who executed and planned the practices of torture in Guantánamo Bay. The investigations arise from claims of four former Guantánamo detainees, two of whom were acquitted in criminal proceedings for terrorism offences in Spain, as the evidence against them was determined to have been obtained through torture. In another ongoing investigation against six US administration lawyers, Examining Magistrate Eloy Velasco sent a request on 4 May to the US administration to determine whether official criminal investigations had been initiated against the authors of the “torture legal memoranda”.

[Order \(Garzon\) \(S\)](#)

[Order \(Garzon\) \(E\)](#)

[Order \(Velasco\) \(S\)](#)

[Press Article](#)

### **Spain: Court acquits ten on terrorism charges because of illegally obtained evidence**

On 30 April, the *Audiencia Nacional*, acquitted at first instance ten out of the fourteen persons accused of participation in a terrorist organisation. The suspects were accused of having helped persons involved in terrorist attacks to flee and of recruiting people for the Iraqi organisation *Ansar al-Islam*. The Court found evidence to be insufficient as some of it was obtained irregularly, after unlawful detention and alleged human rights violations including ill-treatment.

[Judgment \(S\)](#)

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

### **Spain: Constitutional Court reverses Supreme Court’s decision on electoral list**

On 21 May, the Constitutional Court overturned a ruling by the Supreme Court that had annulled the electoral list *Iniciativa Internacionalista – Solidaridad entre los Pueblos*. The Supreme Court’s decision had been directed at the participation of persons allegedly connected with the banned parties *Batasuna*, *ANV*, and *PCTV*. The Constitutional Court found deficiencies in the Supreme Court’s interpretation of the evidence and found the Court to have inappropriately inferred that the banned parties would conduct certain activities only on the basis that they retained an ideological platform similar to other proscribed organisations.

[Constitutional Court Judgment \(S\)](#)

[Supreme Court Judgment \(S\)](#)

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

### **Sweden: Migration Court upholds asylum for former Guantánamo detainee**

On 29 April, the Migration Appeals Court dismissed an appeal of the Migration Board against the Migration Court’s decision to grant asylum to Adil Hakimjan, a former Guantánamo detainee of Uighur origin. Adil Hakimjan was originally resettled to Albania in 2006 together with other four other Uighur detainees, from where he moved to Sweden to seek asylum.

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

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



## UNITED NATIONS & REGIONAL ORGANISATIONS

### UN: Security Council Member States call for fair procedural guarantees in listing

On 26 May, the UN Security Council's Counter-Terrorism Committee, the Al-Qaida and Taliban Sanctions Committee, and the Committee dealing with the proliferation of weapons of mass destruction briefed the Security Council on their activities. The majority of the Security Council members announced their intention to improve the due process guarantees contained in existing procedures for listing and de-listing individuals and organisations identified as connected with terrorism. During the meeting, the delegation of Liechtenstein endorsed certain findings of the ICJ Eminent Jurists Panel's report and stressed that human rights are a necessary basis for legitimate and effective action against terrorism.

[Meeting Minutes](#)

[Joint Statement](#)

[CTC Statement](#)

[1540 Committee Statement](#)

[EJP Report](#)

### EU: Council's Presidency puts forwards draft conclusions for resettlement of Guantánamo detainees

On 14 May, the Presidency of the European Council released Draft Conclusions on the resettlement of Guantánamo detainees in EU Countries with the aim of gaining approval by the Justice and Home Affairs Council in June. The Conclusions limit resettlements to detainees cleared for release by US authorities, who are not under criminal charge and who cannot be sent to the original countries because of the principle of *non-refoulement*. They also provide for a mechanism of exchange of information on the detainees among Schengen countries.

[Draft Conclusions](#)

### EU: European Commission proposes new system for terrorism lists after *Kadi* case

On 22 April, the European Commission released a proposal for a Council Regulation amending the existing procedures on freezing of assets of entities and individuals listed under the UN Security Council terrorism listing procedures. According to the proposal, the concerned persons or organisations will have a right to receive a statement of reasons for inclusion on the list and to provide their views to the European Commission. The proposal arises from the judgment of the European Court of Justice in the *Kadi* case ruling that the implementation of the Security Council list violated fundamental rights under EU law.

[Draft Regulation](#)

[Kadi Judgment \(ECJ\)](#)

### Council of Europe: Parties to Counter-terrorism Convention renew commitment to human rights

On 12 May, the States Parties of the Council of Europe Convention on the Prevention of Terrorism held their first consultation in Madrid. They adopted a Final Declaration in which they reiterated their commitment to promote democratic values and human rights as an essential component of any effective, long-term counter-terrorism strategy. The Parties invited other States to adhere to the Convention, which obliges parties to criminalize certain conduct, including promotion of terrorism.

[Final Declaration](#)

### Council of Europe: Parliamentary Assembly to address abuse of state secrecy

On 6 May, Swiss Senator Dick Marty and other MPs presented a resolution to the Parliamentary Assembly of the Council of Europe on abuse of state secrecy for reasons of national security. The draft resolution denounces the abuse of state secrecy claims to prevent accountability for serious human rights violations committed in pursuing counter terrorism objectives, including in Italy, the USA and the UK. The resolution asserts that in

these situations state secrecy cannot be invoked to prevent investigations and prosecutions of those responsible.

**Draft Resolution**

### **Organisation of American States: Summit's final declaration upholds respect of human rights while countering terrorism**

On 19 April, the Heads of State members of the Organisation of American States signed in Port of Spain (Trinidad and Tobago) a Declaration of Commitments in a number of areas, including counter-terrorism. The Heads of States committed to continue action against terrorism in compliance with international law, including international human rights law, international humanitarian law and international refugee law.

**Declaration**

## **IN BRIEF**

### **Redress publishes report on right to reparation for victims of renditions and arbitrary detention**

In April, the NGO *Redress* published a report on the right to reparation and the reintegration of victims of extraordinary rendition and arbitrary detention in the "War on Terror".

**Report**

### **Center on Global Counter-terrorism Cooperation publishes paper on UN Counter-terrorism Strategy**

In April, the Center on Global Counter-terrorism Cooperation published a Policy Brief where it outlines the basic facts of the UN Global Counter-Terrorism Strategy, highlights its achievements and shortcomings and makes recommendations for the way forward.

**Policy Brief**

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