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Committee on Legal Affairs and Human Rights

An overview of work of the Committee on Legal Affairs and Human Rights on issues relating to human rights and terrorism

Background information document
prepared by the Secretariat

Outline

1. UN Security Council and EU [terrorist] blacklists
2. Secret detentions and illegal transfers involving Council of Europe member states
3. State of human rights in Europe
4. Legal remedies for human rights violations in the North-Caucasus Region
5. The United States of America and international law
6. Proposed 42-day pre-charge detention in the United Kingdom
7. The protection of human rights in emergency situations
8. Requests for submission of comments in cases regarding terrorism before national and international jurisdictions
9. Human rights and the fight against terrorism

1. Summary of 2008 Marty report: UN Security Council and EU [terrorist] blacklists (Doc. 11454 + Addendum)

The term “blacklists” refers to the possibility whereby the UN or the EU may order sanctions targeting individuals or entities suspected of having links with terrorism. These sanctions include the freezing of assets and the prohibition of cross-border travel. While they are considered to be non-criminal, the sanctions can nevertheless have very drastic effects on the lives of those concerned; these effects are further augmented by the lack of due process afforded the sanctioned individuals. This report analysed the de-listing procedures and the means of appeal available to such individuals or entities, and examined whether or not the procedures were compatible with the guarantees of the European Convention on Human Rights (ECHR), as interpreted by the Strasbourg Court.

[United Nations Security Council and European Union blacklists, Report, 16 November 2007, Doc. 11454¹](#)

[United Nations Security Council and European Union blacklists, Addendum to Doc. 11454, 22 January 2008²](#)

- [Resolution 1597 \(2008\) on United Nations and European Union blacklists, 23 January 2008³](#)
- [Recommendation 1824 \(2008\) on United Nations and European blacklists, 23 January 2008⁴](#)

2. Secret detentions and illegal transfers involving Council of Europe member states

2.1. Summary of 2006 Marty report: Alleged secret detentions and unlawful inter-state transfers of detainees involving Council of Europe member states (Doc. 10957)

An analysis of the CIA “rendition” programme revealed a “spider’s web” across the world, of secret detentions and unlawful inter-state transfers. While the United States is without a doubt the creator of this network, secret detentions and inter-state transfers of detainees have occurred with the collaboration or tolerance of Council of Europe member states, who are duty-bound to comply with their obligations under the ECHR and the European Convention for the Prevention of Torture (CPT) to, *inter alia*, investigate serious allegations of human rights violations. The aim of this report was not to hold certain authorities “guilty”, but to ensure that the executive and legislative branches of member states thoroughly investigate unlawful activity that is incompatible with the fundamental principles of the Council of Europe, and that terrorism is vanquished without violating fundamental human rights.

[Alleged secret detentions and unlawful inter-state transfers of detainees involving Council of Europe member states, Report, 12 June 2006, Doc. 10957⁵](#)

- [Alleged secret detentions and unlawful inter-state transfers of detainees involving the Council of Europe member states, 14 June 2006, Doc. 10957 Addendum⁶](#)
- [Recommendation 1754 \(2006\) on alleged secret detentions and unlawful inter-state transfers of detainees involving Council of Europe Member states, 27 June 2006⁷](#)
- [Resolution 1507 \(2006\) on alleged secret detentions and unlawful inter-state transfers of detainees involving Council of Europe member states, 27 June 2006⁸](#)

¹ Available at <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc07/EDOC11454.htm>.

² Available at

<http://assembly.coe.int/Main.asp?link=http://assembly.coe.int/Documents/WorkingDocs/doc07/edoc11454add.htm>

³ Available at <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta08/ERES1597.htm>.

⁴ Available at <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta08/EREC1824.htm>.

⁵ Available at <http://assembly.coe.int/main.asp?Link=/documents/workingdocs/doc06/edoc10957.old.htm>.

⁶ Available at <http://assembly.coe.int/main.asp?Link=/documents/workingdocs/doc06/edoc10957add.htm>.

⁷ Available at <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta06/EREC1754.htm>.

⁸ Available at <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta06/ERES1507.htm>.

2.2. Summary of 2007 Marty report: Secret detentions and illegal transfers of detainees involving Council of Europe member states: second report (Doc. 11302 rev)

The report established, with a high degree of probability, that CIA secret detention centres had been located for some years in Poland and Romania, and possibly in other Council of Europe member states. Information from a number of sources, including the analysis of reliable aircraft data, permitted these places to be identified. These CIA secret detention centres were part of the High Value Detainees (“HVD”) programme, first publicly referred to by President Bush on 6 September 2006. The HVD programme was established by the CIA through the NATO framework, resulting in serious infringements of human rights. The Report stressed the need to combat terrorism through means consistent with human rights and the rule of law. The Report also condemned the fact that state secrecy and/or national security are invoked by certain countries to obstruct proceedings that attempt to ascertain the responsibilities of the respective authorities complying with the CIA programme. The existence of secret detention facilities was also noted in the Chechen Republic of the Russian Federation.

[Secret detentions and illegal transfers of detainees involving Council of Europe member states: second report, Report, 11 June 2007, Doc. 11302 rev.](#)⁹

- [Secret detentions and illegal transfers of detainees involving Council of Europe member states: second report, Appendix to the report, 19 June 2007, Doc. 11302 Addendum](#)¹⁰
- [Resolution 1562 \(2007\) on secret detentions and illegal transfers of detainees involving Council of Europe member states: second report, 27 June 2007](#)¹¹
- [Recommendation 1801 \(2007\) on secret detentions and illegal transfers of detainees involving Council of Europe member states: second report\), 27 June 2007](#)¹²

2.3. Summary of 2011 Marty report on state secrecy and national security: obstacles to parliamentary and judicial scrutiny of human rights violations

Secret services and intelligence agencies must be held accountable for human rights violations such as torture, abduction or renditions and not shielded from scrutiny by unjustified resort to the doctrine of “state secrets”. The report evaluates judicial or parliamentary inquiries launched after two major above-mentioned reports five years before, named European governments which had hosted CIA secret prisons or colluded in rendition and torture. Prosecutors in Lithuania, Poland, Portugal and Spain are urged to persevere in seeking to establish the truth and authorities in the United States are called on to co-operate with them. The report demonstrates that it is possible to put in place judicial and parliamentary procedures which protect “legitimate” state secrets, while still holding state agents accountable for murder, torture, abduction or other human rights violations.

[Abuse of state secrecy and national security: obstacles to parliamentary and judicial scrutiny of human rights violations, Report, 16 September 2011, Doc. 12714.](#)¹³

- [Resolution 1838 \(2011\) on abuse of state secrecy and national security: obstacles to parliamentary and judicial scrutiny of human rights violations](#)¹⁴
- [Recommendation 1983 \(2011\) on abuse of state secrecy and national security: obstacles to parliamentary and judicial scrutiny of human rights violations](#)¹⁵

⁹ Available at <http://assembly.coe.int/Documents/WorkingDocs/Doc07/edoc11302.htm>.

¹⁰ Available at <http://assembly.coe.int/main.asp?Link=/documents/workingdocs/doc07/edoc11302add.htm>.

¹¹ Available at <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta07/ERES1562.htm>.

¹² Available at <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta07/EREC1801.htm>.

¹³ Available at <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc11/EDOC12714.htm>.

¹⁴ Available at <http://www.assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta11/ERES1838.htm>.

¹⁵ Available at <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta11/EREC1983.htm>.

3. State of Human Rights in Europe

3.1. *Summary of 2007 Pourgourides report: State of human rights and democracy in Europe (Doc. 11202)*

While there has been much progress in the Council of Europe member states in the fields of human rights, rule of law and democracy, there is still a gap between standards as articulated on paper and actual practice. Violations of human rights continue to occur in Europe, and xenophobia and intolerance are increasing. The fight against terrorism is increasingly being used as a pretext to undermine or reduce fundamental human rights. The most effective method of closing the gap is by adopting a zero-tolerance approach. The Committee of Ministers of the Council of Europe should take a series of concrete measures, give priority to the most serious human rights violations, eradicate impunity and monitor member states' terrorism legislation and practice.

[State of human rights and democracy in Europe, Report, 28 March 2007, Doc. 11202](#)¹⁶

- [Recommendation 1791 \(2007\) on the state of human rights and democracy in Europe, 18 April 2007](#)¹⁷
- [Resolution 1547 \(2007\) on the state of human rights and democracy in Europe, 18 April 2007](#)¹⁸
- Related: [Progress of the Assembly's monitoring procedure, Monitoring Committee Report, 30 March 2007, Doc. 11214](#)¹⁹

3.2. *Summary of 2009 Däubler-Gmelin report: The state of human rights in Europe: the need to eradicate impunity (Doc. 11934)*

All perpetrators of serious human rights violations must be held to account for their actions, including the instigators and organisers of such crimes. Impunity must be eradicated both as a matter of individual justice and as a deterrent with respect to future human rights violations. Such crimes take many shapes and forms, including large-scale violations of human rights in conflict situations, killings of journalists, human rights defenders and witnesses by "unknown perpetrators", abuse committed by police officers and prison guards covered by colleagues, and different types of hate crimes whose authors profit from lax law enforcement by biased officials or judges. The Committee of Ministers of the Council of Europe is urged to intensify its work on elaborating guidelines on the fight against impunity, drawing in particular from the case law of the European Court of Human Rights, from its own work on execution of judgments and the pertinent resolutions and recommendations of the Parliamentary Assembly.

[The state of human rights in Europe: the need to eradicate impunity, Report, 3 June 2009, Doc. 11934](#)²⁰

- [Resolution 1675 \(2009\) on the state of human rights in Europe: the need to eradicate impunity, 24 June 2009](#)²¹
- [Recommendation 1876 \(2009\) on the state of human rights in Europe: the need to eradicate impunity, 24 June 2009](#)²²

¹⁶ Available at <http://assembly.coe.int/main.asp?Link=/documents/workingdocs/doc07/edoc11202.htm>.

¹⁷ Available at <http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta07/erec1791.htm>.

¹⁸ Available at <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta07/ERES1547.htm>.

¹⁹ Available at <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc07/EDOC11214.htm>.

²⁰ Available at <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc09/EDOC11934.htm>.

²¹ Available at <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta09/ERES1675.htm>.

²² Available at <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta09/EREC1876.htm>.

Following the Recommendation, the Committee of Ministers, in its [reply of 26 April 2010](#)²³ indicated that it considers the eradication of impunity to be a priority for Council of Europe action and that it has instructed the Steering Committee of Human Rights (CDDH) to examine the feasibility of guidelines in this field. Such [guidelines](#) have been drafted and were, subsequently, [adopted](#) by the Committee of Ministers on 31 March 2011²⁴.

4. Summary of 2010 Martyr report: Legal remedies for human rights violations in the North-Caucasus Region (Doc. 12276)

The situation in the North Caucasus region, particularly in the Chechen Republic, Ingushetia and Dagestan, constitutes the most serious situation in the entire geographical area encompassed by the Council of Europe in terms of human rights protection and the affirmation of the rule of law. The European Court of Human Rights has condemned the Russian Federation for serious human rights violations in the region in over 150 judgments and stresses the importance of the prompt and complete implementation of these judgments. The Report made a number of proposals aimed at putting a stop to impunity enjoyed by the perpetrators of human rights violations and restoring the people's trust in law enforcement agencies, without which it will not be possible to defeat the rise of extremism and terrorism, which the Report condemned in the most resolute terms, expressing its solidarity with the victims on all sides.

[Legal remedies for human rights violations in the North-Caucasus Region, Report, 4 June 2010, Doc. 12276](#)²⁵

- [Resolution 1738 \(2010\) on Legal remedies for human rights violations in the North Caucasus region, 22 June 2010](#)²⁶
- [Recommendation 1922 \(2010\) on Legal remedies for human rights violations in the North Caucasus region, 22 June 2010](#)²⁷

5. Summary of 2007 Lloyd report: The United States of America and international law (Doc. 11181)

While the United States continues to be committed to international law, the U.S. administration (at the time), especially since 11 September 2001 and during the “war on terror”, had disregarded key human rights and humanitarian norms. By unlawful detention and inter-state transfers, the continued application of the death penalty, and its attempts to undermine the International Criminal Court, the U.S. was not only tarnishing its reputation, but had harmed the cause of justice and the rule of law. The Report urged the U.S. to bring an end to this unacceptable situation, and the Committee of Ministers was asked to remind the U.S. Government of its obligations as an observer state to the Council of Europe, and to seek more information from the US with respect to the above matters.

[The United States of America and international law, Report, 8 February 2007, Doc. 11181](#)²⁸

- [Resolution 1539 \(2007\) on the United States of America and international law, 16 March 2007](#)²⁹
- [Recommendation 1788 \(2007\) on the United States of America and international law, 16 March 2007](#)³⁰

²³ Available at <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc10/EDOC12212.htm>.

²⁴ Available at [https://wcd.coe.int/ViewDoc.jsp?Ref=CM\(2011\)13&Language=lanEnglish&Ver=add&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.coe.int/ViewDoc.jsp?Ref=CM(2011)13&Language=lanEnglish&Ver=add&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864). See also [https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec\(2011\)1110/4.8&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec(2011)1110/4.8&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864).

²⁵ Available at <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc10/EDOC12276.htm>.

²⁶ Available at <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta10/ERES1738.htm>.

²⁷ Available at <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta10/EREC1922.htm>.

²⁸ Available at <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc07/EDOC11181.htm>.

²⁹ Available at <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta07/ERES1539.htm>.

³⁰ Available at <http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta07/erec1788.htm>.

6. Summary of De Vries Report: Proposed 42-day pre-charge detention in the United Kingdom (Doc. 11725)

Certain elements of draft counter-terrorism legislation in the United Kingdom did not seem to be compatible with the requirements of the European Convention on Human Rights and the Strasbourg Court's case-law. The detention of terrorist suspects for up to 42 days without charge, with limited judicial review would have led to arbitrariness, in breach of Articles 5 (right to liberty and security) and 6 (right to a fair trial) of the Convention. In addition, the proposed legislation was unduly complicated and was not readily understandable. Also, the proposal to involve the legislature in the extension of pre-charge detention in specific cases was deemed unacceptable. It is essential to maintain a clear separation of powers as regards judicial and legislative functions.

This draft legislation was not enacted.

[Proposed 42-day pre-charge detention in the United Kingdom, Doc. 11725](#)³¹

- [Resolution 1634 \(2008\) on Proposed 42-day pre-charge detention in the United Kingdom, 2 October 2008](#)³²

Following this report, the European Commission for Democracy through Law (Venice Commission) has, at the request of the Parliamentary Assembly, issued a report ([Report on counter-terrorism measures and human rights, adopted by the Venice Commission at its 83rd plenary session \(Venice, 4 June 2010\), Study no. 500/2008, CDL-AD\(2010\)022](#))³³.

7. Summary of 2009 Haibach report: The protection of Human Rights in emergency situations (Doc. 11858)

Several Council of Europe member states, especially Georgia and Armenia, had resorted to declaring a state of emergency, involving serious human rights violations – considered as a matter of concern by the Committee. Such declarations are permitted under the European Convention on Human Rights, but only “in time of war or other public emergency threatening the life of the nation”. They should never exceed what is required by the situation, and should always stay within international law requirements. These drastic powers – which involve restricting the rights of individuals – should only ever be used as a last resort. A country's legislature should have a central role in overseeing any such declaration and judges should be able to rule on its validity. Emergency powers should always be limited in time, featuring a “sunset clause”. Council of Europe bodies should closely scrutinise any declared state of emergency for signs of abuse, and to make sure that human rights are upheld.

[The protection of Human Rights in emergency situations, Report, 9 April 2009, Doc. 11858](#)³⁴

- [Resolution 1659 \(2009\) on the protection of Human Rights in emergency situations, 27 April 2009](#)³⁵
- [Recommendation 1865 \(2009\) on the protection of Human Rights in emergency situations, 27 April 2009](#)³⁶

³¹ Available at <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc08/EDOC11725.htm>.

³² Available at <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta08/ERES1634.htm>.

³³ Available at <http://www.venice.coe.int/docs/2010/CDL-AD%282010%29022-e.pdf>.

³⁴ Available at <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc09/EDOC11858.htm>.

³⁵ Available at <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta09/ERES1659.htm>.

³⁶ Available at <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta09/EREC1865.htm>.

8. Requests for submission of comments in cases regarding terrorism before national and international jurisdictions

8.1. Request for submission of comments before the Strasbourg Court in the form of a third-party intervention in case on the compatibility of UN Security Council [terrorist] Black Lists with the ECHR (12/2010)

On 7 October 2010 the Committee on Legal Affairs and Human Rights authorised Mr Marty (Switzerland, ALDE) to submit written comments before the European Court of Human Rights, in the form of a Third Party intervention, in the case of *Nada v Switzerland* (Application No. 10593/08), pending before the Grand Chamber. This request was not accepted by the Court's President. The document reproduces the exchange of correspondence which Mr Marty has had with the Court's President, as well as an extract from a press release concerning this case, issued by the Court's registry.

[Information note: Compatibility of UN Security Council \[terrorist\] Black Lists with European Convention on Human Rights requirements, 7 December 2010, AS/Jur/Inf \(2010\) 05³⁷](#)

8.2. Amicus curiae brief before the US Supreme Court in a case on state secrets: 2007

In 2007 Mr Marty filed an *amicus curiae* brief before the Supreme Court of the United States in the case *El Masri v United States of America*. The case concerned a person who was wrongly suspected of being a terrorist and who sought damages for his illegal abduction and detention. Mr El Masri's petition was not accepted by the Supreme Court (and consequently the brief was not considered by the Court).

[US Supreme Court case Khaled El Masri v USA - Brief for amicus curiae by Senator Dick Marty, Chairman of the Legal Affairs and Human Rights Committee and rapporteur of the Parliamentary Assembly of the Council of Europe, in support of the petitioner³⁸](#)

8.3. Amici curiae brief before the US Supreme Court in a case on state secrets: 2011

Recently, a number of international scholars, human rights experts/organisations, including Mr Marty, filed an *amici curiae* brief before the Supreme Court of the United States in another case on state secrecy where the petitioners, victims of extraordinary rendition, allege serious violations of international law, including torture, other cruel, inhuman and degrading treatment, and enforced disappearance.

[US Supreme Court case Binyam Mohamed et al v Jeppesen Dataplan, Inc - Brief of amici curiae international law scholars and human rights experts/organisations in support of the petition for the writ of certiorari³⁹](#)

9. Summary of 2011 Tomlinson report: Human rights and the fight against terrorism

The report's aim is to add an incremental contribution to the ongoing quest for protecting human rights when it comes to countering terrorism, by presenting an overview of the Council of Europe standards applicable to human rights in the fight against terrorism and dealing with selected human rights concerns in this context. Terrorism has a direct impact on human rights. It can destabilise and undermine entire societies, jeopardise peace and security and threaten social and economic development. Terrorism attacks the pillars of democracy and the rule of law upon which the respect of human rights is based. States must be in a position to take appropriate measures to fight terrorism. However, there is no need for a "trade-off" between human rights and effective counterterrorist action, as safeguards exist in human rights law itself. The European Convention on Human Rights, like other

³⁷ Available at http://assembly.coe.int/CommitteeDocs/2010/07122010_blacklists.pdf.

³⁸ Available at http://assembly.coe.int/committeedocs/2007/20070907_ElMasri.pdf.

³⁹ Available at http://www.omct.org/files/2011/01/21035/jeppesen_amicus_brief_supreme_court_final_january_2011.pdf.

international human rights instruments, can be applied in such a way as to allow states to take reasonable and proportionate action to defend democracy and the rule of law against the threat of terrorism. Terrorists are criminals and should be dealt with primarily by the criminal justice system, with in-built and well-tested safeguards to protect the innocent. Coercive administrative measures for preventive purposes should be of limited duration, only applied as a last resort and be subject to strict conditions, including minimum requirements regarding evidence and judicial or appropriate political oversight.

[Human rights and the fight against terrorism, Report, 16 September 2011, Doc. 12712](#)⁴⁰

- [Resolution 1840 \(2011\) on Human rights and the fight against terrorism, 6 October 2011](#)⁴¹

⁴⁰ Available at <http://www.assembly.coe.int/Mainf.asp?link=/Documents/WorkingDocs/Doc11/EDOC12712.htm>.

⁴¹ Available at <http://www.assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta11/ERES1840.htm>.