

**Joint Committee On Human Rights [Nineteenth Report](#)**

## 8 Extraordinary Renditions

148. Growing concerns about the phenomenon of extraordinary rendition, and in particular, allegations that British airports are being used for stopovers by CIA chartered aircraft operating renditions of suspects to jurisdictions where they will be interrogated under torture, led us to extend our inquiry to consider the obligations of the UK under UNCAT in respect of these allegations.[\[204\]](#) We heard oral evidence on the issue and sought and received additional written evidence on extraordinary renditions from a number of NGOs.

149. The existence of a practice of rendition to face torture is disputed. In a recent statement, the US Secretary of State, Condoleezza Rice, denied that the US transported detainees to other jurisdictions "for the purpose of interrogation using torture" or that it sent suspects to jurisdictions where it "believed" they would be tortured.[\[205\]](#) She nevertheless acknowledged and justified the extra-legal "renditions" process, and left open the possibility that suspects were being rendered to countries where torture is routinely practised, or where they may be subjected to inhuman or degrading treatment, or to other practices which fall short of the US Government's definition of torture, but which may nevertheless be prescribed by UNCAT.

150. At a European level, investigations into allegations of extraordinary rendition and of the complicity of European governments in such renditions are still ongoing. Some preliminary findings have emerged, however: the Interim Memorandum by Senator Dick Marty of Switzerland, Rapporteur to the Council of Europe Parliamentary Assembly on Allegations of Secret detentions in Europe, found clear evidence to establish that individuals were being abducted, detained and transported within Europe, and handed over to countries where they faced torture.[\[206\]](#) A European Parliament Temporary Committee of Inquiry into the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners began work in February and expects to produce its first interim report in May 2006. A number of European states including Germany, Italy and Spain are now undertaking official investigations into the possible use of their airports in extraordinary renditions.[\[207\]](#)

151. In the UK, Government Ministers have repeatedly stated their belief that renditions to torture are not taking place through UK airports or airspace.[\[208\]](#) These assertions are based on the assurances given by the US authorities, and by the absence of any formal requests from the US authorities to render suspects through the UK. The Foreign Secretary has stated that there have been no requests from the US government to effect renditions through UK airspace since 1998. In that year, two requests relating to renditions of suspects to face trial in the US were granted.[\[209\]](#) Also in 1998, one request to refuel an aircraft carrying two detainees to the US was denied.[\[210\]](#) In a letter to us, Mr Straw stated:

I have no reason to believe that suspected terrorists have been rendited through UK territory or airspace during the Bush Administration. None of the information published recently has demonstrated otherwise ... we see no value and have no intention of checking every flight transiting the UK which may have some connections with the US Government[\[211\]](#)

152. Evidence has emerged, however, that aircraft believed to have been involved in previous renditions have passed through the UK, stopping for refuelling purposes en route, to countries known to practise torture.[\[212\]](#)

153. Evidence to us questioned the sufficiency of the inquiries undertaken by the Government. Liberty and JUSTICE considered it unrealistic to expect that the United States Government would have sought specific permission to use the UK for extraordinary rendition and argued that a proactive investigation was needed to establish whether UK airspace or airports are being used in the practice of extraordinary rendition.[213]

154. We note the conclusions of the House of Commons Foreign Affairs Committee, which on 15 February published its views on extraordinary renditions in its Human Rights Annual Report. It regretted the Government's unwillingness to request information from the US Government concerning rendition flights,[214] and concluded that:

the Government has a duty to inquire into allegations of extraordinary rendition and black sites under the Convention Against Torture, and to make clear to the USA that any extraordinary rendition to states where suspects may be tortured is completely unacceptable.[215]

155. There has been pressure to take action to investigate renditions at operational as well as diplomatic levels. We note that the Chief Constable of Greater Manchester Police opened an inquiry into extraordinary rendition flights on behalf of the Association of Chief Police Officers (ACPO),[216] and we understand that this inquiry is still open.

### **Human rights compliance**

156. In regard to extraordinary renditions, as elsewhere, compliance with the Convention against Torture and other human rights standards requires more than passive non-cooperation in torture; it requires active investigative and law enforcement action to prevent torture or inhuman and degrading treatment. Credible allegations that UK airports or airspace is being used to render suspects to face torture engage the UK's positive obligations to prevent and investigate acts of torture under UNCAT, as well as under Article 3 of the European Convention on Human Rights, given force in domestic law by the Human Rights Act,[217] and under the customary international law prohibition on torture.

157. Under Article 3 of UNCAT, there is an obligation not to return anyone to a country where there are substantial grounds to consider that they will face a real risk of torture; this is reflected by similar obligations under Article 3 ECHR[218] and Article 7 ICCPR.[219] This obligation is also likely to apply where an individual is "rendered" through the UK by foreign intelligence agents, to face such a risk of torture outside the UK.[220]

158. Liberty and JUSTICE further suggest that extraordinary renditions may in themselves amount to torture, since "detaining someone where the detainee is aware that the purpose of the detention is to bring him to a place where he will be subjected to physical torture might in itself amount to torture as it will undoubtedly inflict severe mental suffering on the detainee".[221] This argument relies on an analogy with the case of *Soering v UK*, where it was held that the prolonged wait for the death penalty known as the "death row phenomenon", amounted to inhuman and degrading treatment in breach of Article 3 ECHR.

159. The Convention places a number of specific duties on states to investigate allegations of torture, both within the jurisdiction, and elsewhere. Under Article 12, there is a duty to investigate wherever there are reasonable grounds to suspect that an act of torture has been committed in the jurisdiction. Under Article 6, where persons alleged to have committed offences of torture or complicity in torture are present in the territory of the State, there is an obligation to take the suspect into custody or otherwise secure his presence in the territory, and make a preliminary inquiry into the facts, with a view to either prosecution or extradition in accordance with Article 7.[222] Therefore, the effect of UNCAT is that where there are credible allegations that an aircraft present at a UK airport is involved in the transport of a suspect to torture, or that persons present on the aircraft are involved in the transfer of suspects to torture, there is an obligation to conduct a preliminary investigation into its involvement in any possible offences of torture. Where this preliminary investigation unearths sufficient information to justify arrests, there is an obligation to prevent the aircraft from leaving UK territory, and to arrest any suspects present on the aircraft. Where there is sufficient evidence, the suspects must be either prosecuted, or extradited.

## The Chicago Convention

160. The principal international treaty which regulates civil aviation is the Chicago Convention on International Civil Aviation 1944 (The Chicago Convention). Under the Convention, if extraordinary rendition aircraft are identified as state aircraft, then in order to fly through UK airspace, or land at UK airports, they require prior authorisation, and must abide by the terms of such authorisation (Article 3(d)). If extraordinary rendition aircraft are identified as civil aircraft, then under Article 5 of the Chicago Convention, they must be permitted to fly through UK airspace and to stop for refuelling or other similar ("non-traffic") purposes at UK airports, without obtaining prior permission. However, the Chicago Convention expressly permits State authorities to search the aircraft on landing or departure, and to inspect relevant certificates and other documents relating to the aircraft (Article 16). Under Article 23, these include the journey log book of the aircraft, a list of passengers, their names and places of embarkation and destination, and a detailed description of any cargo. There is therefore nothing in the Convention which would prevent a police search of a civil aircraft stopped for refuelling at a UK airport, or the arrest of persons aboard the aircraft who were suspected of crimes of torture.

161. Furthermore, Article 4 of the Chicago Convention stipulates that states must not use civil aviation for any purpose inconsistent with the overall aims of the Convention.<sup>[223]</sup> Civil flights established to be transporting suspects to torture would be likely to be considered inconsistent with the aims of the Convention, and therefore outside its protection, in particular given the need to interpret and apply the Convention in light of the UK's obligations under UNCAT and under customary international law. Given the status of the prohibition on torture as a norm of higher international law or *jus cogens*, an interpretation of the Chicago Convention which permitted free passage to aircraft known to be involved in renditions to torture would be likely to render the relevant provisions of the Chicago Convention inapplicable, since under the Vienna Convention on the Law of Treaties, a treaty which conflicts with a norm of *jus cogens* is void.<sup>[224]</sup>

## STATUS OF AIRCRAFT

162. The status of aircraft alleged to be used in extraordinary renditions, as either State or civil aircraft, is unclear. The question is significant, since a State aircraft, though it will require permission to land in the UK, will not be subject to search by UK authorities, except by agreement. Whether an aircraft is classified as State or civil may depend on the nature of the aircraft. Where it is a military aircraft or lands at a military base for example, its status as a civil aircraft may be open to question. The Venice Commission on Democracy through Law, in its recent legal opinion on renditions, considered that where an aircraft, chartered by agents of a foreign State, represents itself as a civil aircraft, then it forfeits the right to claim State aircraft status under the Chicago Convention as well as the right to state immunity.<sup>[225]</sup> It nevertheless considered that aircraft presenting themselves as State aircraft would enjoy immunity and could not be searched.<sup>[226]</sup> The Secretary General of the Council of Europe, in a recent Report on these matters, recommended clarification of the law on human rights exceptions to State immunity, and co-operation between the Governments of Council of Europe states to achieve this.<sup>[227]</sup>

## THE GOVERNMENT VIEW

163. Although there has been some confusion as to the effect of international civil aviation law on the Government and police powers to investigate allegations of extraordinary rendition, it now appears to be accepted that the current law creates no barrier to investigation. Initial Government suggestions that the Chicago Convention prevented investigation of the matter<sup>[228]</sup> were later withdrawn. At report stage debates on the Civil Aviation Bill in the House of Lords, in response to amendments tabled by Baroness D'Souza which would have provided for express powers to require aircraft to land, and to board and search aircraft where they were suspected of involvement in extraordinary rendition, Lord Davies of Oldham argued that the amendments were unnecessary since such powers already existed under international civil aviation law. He stated:

The Chicago Convention is clear on this. We certainly have the right to investigate an aircraft, but, of course, we have to have good grounds for doing so. If credible intelligence of serious illegal activity comes to light regarding an

aircraft in flight, the Government can certainly require the aircraft to land. Article 3 of the Chicago Convention allows states to require aircraft to land if there are reasonable grounds to conclude that the aircraft is being used for any purpose that is inconsistent with the aims of the Convention.

If the aircraft is on the ground the control authorities—police, Customs and immigration—have a variety of powers to enter, take evidence and make arrests.<sup>[229]</sup>

164. In evidence to us, Ms Harman accepted there was an obligation to investigate allegations of flights transporting individuals to torture. She further accepted that the Chicago Convention should not "be a shield behind which acts preparatory to torture should take place".<sup>[230]</sup> She considered that the primary duty of investigation lay with the police, rather than with central government.<sup>[231]</sup> **We welcome the Government's acceptance that international civil aviation law permits thorough investigation of civil flights alleged to be involved in extraordinary rendition.**

165. The Government's position has been that whilst in principle it would be willing to investigate where there is evidence of extraordinary renditions passing through the UK, at present there is no such evidence.<sup>[232]</sup> It does not consider information that aircraft landing in the UK can be demonstrated to have been previously involved in extraordinary renditions, to be sufficient in itself to warrant further investigation. Mr Ingram stated, in respect of the aircraft disclosed to have landed at RAF bases: "there is no evidence to show that any of those aircraft were carrying any passengers of the type [alleged to be transported in renditions]".<sup>[233]</sup> Baroness Ashton of Upholland confirmed the Government's view that there was "no basis for further action".<sup>[234]</sup>

## Conclusions

166. One obstacle to obtaining clear evidence that a particular flight is transporting a detainee as part of a rendition is the current lack of a requirement for chartered civil aircraft passing through the UK to provide lists of passengers on board. Ms Harman confirmed that such information was not required or recorded.<sup>[235]</sup> We note, however, that there is nothing in the Chicago Convention which would prevent the UK from requiring transiting civil aircraft to provide such information. Given the potential for abuse of free passage for civil aircraft under the Chicago Convention, by aircraft involved in extraordinary renditions, **we recommend that the Government should take steps to require staff and passenger lists to be provided to the UK authorities when chartered civil aircraft land at UK airports, or transit UK airspace. In the long term, if effective unilateral Government action is not taken, there would be a case for amendment of the Chicago Convention, to require the provision of passenger lists.**

167. In relation to the question of whether there have been extraordinary renditions in the past few years using UK airspace or airports, and the extent to which the Government should initiate an investigation, we note that the Government has recently rejected the view of the House of Commons Foreign Affairs Committee that it is under a duty to enquire into the allegations of extraordinary rendition and black sites under the Convention against Torture. In its response to the Foreign Affairs Committee's Annual Report on Human Rights for 2005, the Government states that a "search of all relevant records" has not found any evidence of detainees being rendered through UK airspace since 11 September 2001, and that in the absence of such evidence it does not consider that there is a requirement under Article 12 UNCAT for it to carry out a further investigation.<sup>[236]</sup> This accords with the Government's view expressed in evidence to us, as described above.

168. We consider that there is now a reasonable suspicion that certain aircraft passing through the UK may have been carrying suspects to countries where they may have faced torture, or to have been returning from rendering suspects to such countries. This reasonable suspicion is in our view sufficient to trigger the duty to investigate, and to look behind the assurances received from foreign Governments. **It follows that we do not accept the Government's view that, by the means described in its response to the Foreign Affairs Committee, it has adequately demonstrated that it has satisfied the obligation under domestic and international human rights law to investigate credible allegations of renditions of suspects through the UK to face torture abroad. In order to satisfy the obligation to investigate in relation to possible renditions to face torture which may already have**

**taken place, we believe the Government should now take active steps to ascertain more details about the flights which it is now known used UK airports, including, in relation to each flight, who was on them, and their precise itinerary and the purpose of their journey. If evidence of extraordinary renditions come to light from such investigations, the Government should report such evidence promptly to Parliament.**

**169. We recognise that there are growing calls for an independent public inquiry into alleged use of UK airports in extraordinary renditions, and that the piecemeal way in which information has so far reached the public domain does not inspire confidence in the Government's willingness to investigate, but nevertheless we consider that such an inquiry would be premature. Whether a public inquiry is necessary should be determined in light of the extent to which inquiries by the Government leads to the publication of the detailed information required.**

**170. For the future, in addition to the steps which the Government has taken to make its position on extraordinary renditions clear to the United States authorities,<sup>[237]</sup> we believe the Government should establish a clear policy as to the action to be taken in cases where aircraft alleged to have been previously involved in renditions transit the UK. Where there are credible allegations arising from previous records that a particular civil aircraft transiting UK airspace has been involved in renditions, and where the aircraft is travelling to or from a country known to practise torture or inhuman or degrading treatment, it should be required to land. Where such an aircraft lands at a UK airport for refuelling or similar purposes, it should be required to provide a full list of all those on board, both staff and passengers. On landing, it should be boarded and searched by the police, and the identity of all those on board verified. Wherever appropriate, a criminal investigation should be initiated. Where an aircraft suspected of involvement in extraordinary renditions identifies itself as a state aircraft, it should not be permitted to transit UK airspace, in the absence of permission for UK authorities to search the aircraft. We consider that these steps are not only permitted by the current law, but required to ensure full compliance with the Convention Against Torture.**

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204 The Guardian, 12/9/2005, *Destination Cairo: Human Rights fears over CIA flights*, 12 September 2005; The Herald, *Britain to be Hub for CIA Terror prisoner flights*, 16 November 2005. Amnesty International, *Rendition and "Disappearances" in the "War on Terror"*, <http://web.amnesty.org/pages/stoptorture-renditions-eng> [Back](#)

205 Ev 92 [Back](#)

206 Parliamentary Assembly of the Council of Europe, Committee on Legal Affairs and Human Rights, *Alleged Secret Detentions in Council of Europe Member States*, Information Memorandum II AS/Jur (2006) 03 rev, 22 January 2006. See also *Alleged existence of secret detention centres in Council of Europe member states*, statement by Dick Marty, Rapporteur of the Committee on Legal Affairs and Human Rights, Strasbourg, 13.12.2005 [Back](#)

207 Ev 181 [Back](#)

208 The Rt Hon Jack Straw MP, Oral evidence taken before the Foreign Affairs Committee on 13 December 2005, HC (2005-06) HC 768i, Q23; Baroness Ashton of Upholland, Qq 137-180; Rt Hon Adam Ingram MP, Qq 236-270 [Back](#)

209 HC Deb., 12 December 2005, cols 1652-3W [Back](#)

2 210 10 HC Deb., 10 January 2006, Col 5WS [Back](#)

211 Ev 91 [Back](#)

212 In a letter of 6 March 2006 to Sir Menzies Campbell, Mr Ingram disclosed that aircraft known to have been chartered by the CIA landed on 14 occasions at two RAF bases, RAF Brize Norton and RAF Northholt: The Guardian, *Minister Admits Rendition flights used RAF bases*, 7 March 2006 [Back](#)

213 Ev 159-169 [Back](#)

214 Foreign Affairs Committee, First Report of Session 2005-06, *Human Rights Annual Report 2005*, HC 574, para 51 [Back](#)

215 *Ibid.*, para 52 [Back](#)

216 Ev 160, para 6 [Back](#)

217 *Soering v UK* (1989) 11 EHRR 439; *Chahal v UK* (1997) 23 EHRR 413; [Back](#)

218 *Chahal v UK, op. cit.* [Back](#)

219 Liberty, JUSTICE and REDRESS argue in their evidence that this obligation will be breached where the UK permits a transfer to torture by foreign agents through the UK. [Back](#)

220 See the comments of the Venice Commission (The Council of Europe Commission on Democracy through Law, Opinion on the International Legal Obligations of Council of Europe Member States in Respect of Secret Detention Facilities and Inter-State Transport of Prisoners, 17 March 2006, CDL-AD (2006) 009 [Back](#)

221 Ev 159-169 [Back](#)

222 Article 5.2 UNCAT provides for universal jurisdiction over crimes of torture, stipulating that states must establish jurisdiction over offences of torture, including complicity and participation in torture, and attempted torture, where the alleged offender is present within the jurisdiction, irrespective of where the offence has occurred. [Back](#)

223 The Preamble to the Convention notes that development of international civil aviation can "create and preserve friendship and understanding among the nations and peoples of the world" whilst its abuse can "become a threat to the general security" and states the Convention's aim to develop international civil aviation in a "safe and orderly manner." [Back](#)

224 Vienna Convention on the Law of Treaties, Article 53 and Article 64 [Back](#)

225 Venice Commission legal opinion, *op. cit.*, para 103 and para 148 [Back](#)

226 *Ibid.*, para 149 [Back](#)

227 Secretary General's report under Article 52 ECHR on the question of secret detention and transport of detainees suspected of terrorist acts, 28 February 2006, SG/Inf (2006) 5, para 71 [Back](#)

228 HL Deb., 12 October 2005, col 376 [Back](#)

229 HL Deb, 8 March 2006, col 844 [Back](#)

230 Q 165 [Back](#)

231 Q 168 [Back](#)

232 Lord Davies of Oldham, report stage debate on Civil Aviation Bill, *op. cit.*; Rt Hon Adam Ingram MP, Qq 236-270; DCA Qq 137-180 [Back](#)

233 Q 251 [Back](#)

234 Ev 85-88 [Back](#)

235 Q 180 [Back](#)

236 Response of the Secretary of State for Foreign and Commonwealth Affairs to the First Report from the Foreign Affairs Committee, Session 2005-06, *Annual Report on Human Rights 2005*, Cm 6774, paras 27 and 28 [Back](#)

237 *Ibid.*, para 29 [Back](#)

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