

## "Europe must open its doors to Guantánamo Bay detainees cleared for release"

[19/01/09] **The closure of the United States military detention centre at Guantánamo Bay seems at last in sight. President-elect Barack Obama has indicated that closing the camp is one of his priorities. But questions remain as to how this will be done. Europe should offer its help and accept a number of the remaining detainees.**

Since the 9/11 terrorist attacks on New York and Washington, over 700 detainees have been brought to Guantánamo Bay. The first arrived hooded and shackled, on 11 January 2002, seven years ago. Following international investigations, such as the one carried out by the Council of Europe's Parliamentarian Senator Dick Marty<sup>1</sup>, we now know that many detainees arrived at Guantánamo Bay following a series of enforced disappearances, secret detentions and unlawful inter-state transfers, sometimes encompassing stop-overs in countries notorious for their use of torture.

Closing Guantánamo Bay and its military commissions is a global imperative. I hope that President-elect Obama will fix a date for closure as soon as he takes up office. Guantánamo Bay has become a world-wide symbol of injustice and oppression which has tarnished America's international reputation and has served as a recruitment tool for future insurgents. The sad reality is that Europe has also been tarnished by the stain which Guantánamo leaves on the rule of law and fair trial procedures.

Close to 250 detainees remain in Guantánamo Bay. Where evidence exists against any of these men for having committed serious crimes, they must now be prosecuted in the US criminal justice system and be given a fair trial in line with international standards. If there is no evidence against them which will stand up in court, they must be released. Evidence obtained through the use of torture must be excluded.

Any form of continued preventive detention is unacceptable – these men must either be prosecuted or given their liberty. Those detainees who can safely go back to their own countries should be returned there. However, if there is a risk that they will suffer further ill-treatment in the country of their nationality, then the United States, Europe or other third countries should offer them asylum.

There are detainees, approximately 60, who cannot be repatriated. Some cannot be returned because they are stateless. Others are likely to face torture or persecution or other human rights violations if they are forcibly returned to their home countries. They are from places such as Algeria, China, Libya, the Occupied Palestinian Territories, Russia, Syria, Tajikistan, Tunisia, and Uzbekistan.

While the United States has created the Guantánamo problem and has the primary responsibility for correcting the injustices, there are cogent arguments for European assistance in closing the centre as soon as possible. To achieve this goal, Council of Europe member states should stand ready to accept a few of the small number of remaining detainees cleared for release and currently stuck in limbo.

I am not alone in making this appeal. In October last year, the Legal Affairs and Human Rights Committee of the Council of Europe's Parliamentary Assembly called on European governments to provide humanitarian protection for detainees at risk of torture. In November 2008, a coalition of NGOs convened a working group 2008 to advance collective efforts to find a solution for the remaining detainees.<sup>2</sup>

The European Union's Counter-Terrorism Coordinator, Gilles de Kerchove, has also said that the EU will need to help the United States as soon as possible by receiving detainees on their territory. Later this month, the EU's General Affairs and External Relations Council will discuss the role of EU member states in closing Guantánamo. I hope for some positive results from this meeting. So far, the European response has been hesitant.

The only European countries that have to date accepted non-citizen Guantánamo detainees are Albania and the United Kingdom. The UK has taken back all British nationals and four inmates who were formerly British residents, as well as pressing for the release of another two former British residents.

### PUBLICATION



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In 2006, Albania accepted eight detainees and granted them refugee status. Five are members of China's Uighur ethnic minority who were once captured – or bought from villagers reportedly for USD 5 000 or more - in Afghanistan or Pakistan.

In October 2008, a US federal court ordered the Bush administration to release the remaining Uighurs into the United States because the government had failed to find another placement for them. The government has appealed the ruling, and these men are still kept in detention.

At the end of 2007, I met the resettled Chinese Uighurs in Albania. They found their life in Tirana very difficult, with little support to help their integration into society. One detainee, Adel Hakimjan, is currently seeking residency in Sweden, where his sister lives. She is his only relative outside China. Adel argues convincingly that Albania should not be considered his first country of asylum because he had not chosen to come to Albania. The Swedish court will soon make a decision in his case.

It is encouraging to hear that recently Portugal, Germany and Sweden have intimated that they are willing to accept some Guantánamo detainees. In an open letter in December 2008, Portugal's Foreign Minister urged fellow EU states to accept some of these men. The French government has also called for the European Union to establish a common position on the Guantánamo prisoners. International organizations such as ICRC, IOM, and UNHCR could play a role, in accordance with their respective mandates, in assisting the detainees.

Closing Guantánamo Bay does not mean that past abuses suffered by detainees should be brushed under the carpet. Those responsible for devising and approving the interrogation systems or those involved in sanctioning torture should be brought to justice. Transparent accounting for policy and practice is needed. Lessons should be learned from the mistakes made in Guantánamo Bay, so that they are not repeated.

It is essential that innocent men who have been detained should have their names cleared and should receive compensation for their unlawful detention and ill-treatment.

At the same time, we should not forget that Guantánamo Bay may only be the tip of the iceberg when it comes to prisoners held beyond the rule of law by the United States. There are unfortunately indications of more secret detention centres and prisoners out there. Our attempts at closing extra-judicial prisons should not end with the camp on the island of Cuba. Council of Europe member states must keep this issue on the agenda with the new US administration.

I urge European governments to open their doors to a small number of men who fear persecution or torture if transferred to their home countries. Such assistance is both the right thing to do and of critical importance in our push for the prompt closure of Guantánamo Bay.

*Thomas Hammarberg*

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Notes:

1. See Resolution 1507(2006) and Recommendation 1754(2006) on "Alleged detentions and unlawful inter-state transfers of detainees involving Council of Europe member states (Rapporteur: Mr. Dick Marty) and see Resolution 1562(2007) and Recommendation 1801(2007) on "Secret Detentions and illegal transfers of detainees involving Council of Europe member states: second report" (Rapporteur: Mr. Dick Marty). ([back](#))

2. The Center for Constitutional Rights, Amnesty International, Reprieve, Human Rights Watch and the International Federation for Human Rights. ([back](#))

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