

## **P5\_TA(2004)0168**

### **Rights of Guantánamo detainees**

#### **European Parliament recommendation to the Council on the Guantánamo detainees' right to a fair trial (2003/2229(INI))**

*The European Parliament,*

- having regard to the proposal for a recommendation to the Council tabled by Sarah Ludford, on behalf of the ELDR Group, by Anna Terrón i Cusí, on behalf of the PSE Group, by Monica Frassoni, on behalf of the Verts/ALE Group, and by Marianne Eriksson, on behalf of the GUE/NGL Group (B5-0426/2003),
- having regard to the draft Treaty establishing a Constitution for Europe of 18 July 2003, prepared by the European Convention,
- having regard to the Transatlantic Declaration on EU/US relations of 1990 and the New Transatlantic Agenda of (NTA) 1995,
- having regard to the European Council Declaration on Transatlantic Relations annexed to the Presidency Conclusions of the European Council meeting in Brussels on 12-13 December 2003,
- having regard to the Conclusions and Plan of Action of the extraordinary European Council meeting in Brussels on 21 September 2001<sup>1</sup>, the Declaration by the Heads of State or Government of the European Union and the President of the Commission on the attacks of September 11, 2001 and the fight against terrorism made at the informal European Council in Gent on 19 October 2001<sup>2</sup>,
- having regard to the EU Guidelines on torture and the death penalty and the EU Guidelines on Children Affected by Armed Conflict, adopted by General Affairs Council in December 2003,
- having regard to UN Security Council Resolutions 1368 (2001), adopted by the Security Council at its 4370th meeting on 12 September 2001<sup>3</sup>, 1269 (1999), adopted by the Security Council at its 4053rd meeting on 19 October 1999<sup>4</sup>, condemning all acts of terrorism, irrespective of motive, wherever and by whom such acts are committed, and reaffirming that the suppression of international terrorism, including that in which national states are involved, is an essential contribution to the maintenance of international peace and security, and 1373 (2001), adopted by the Security Council at its 4385th meeting on 28 September 2001<sup>5</sup>,

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<sup>1</sup> <http://ue.eu.int/pressData/en/ec/140.en.pdf>.

<sup>2</sup> <http://ue.eu.int/pressData/en/ec/ACF7BE.pdf>.

<sup>3</sup> <http://www.un.org/Docs/scres/2001/res1368e.pdf>.

<sup>4</sup> <http://www.un.org/Docs/scres/1999/99sc1269.htm>.

<sup>5</sup> <http://www.un.org/Docs/scres/2001/res1373e.pdf>.

- having regard to the Universal Declaration of Human Rights, adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948<sup>1</sup>, to the Charter of Fundamental Rights of the European Union<sup>2</sup>, and to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)<sup>3</sup>,
- having regard to the International Covenant on Civil and Political Rights of 16 December 1966,
- having regard to the Third Geneva Convention relative to the Treatment of Prisoners of War and the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, both adopted on 12 August 1949, and having regard to Protocol I Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, adopted on 8 June 1977,
- having regard to the Vienna Convention on Consular Relations of 24 April 1963,
- having regard to the Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C of 31 July 1957 and 2076 of 13 May 1977,
- having regard to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment of 9 December 1988,
- having regard to the Convention on the Rights of the Child as adopted by the UN General Assembly in November 1989 and to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, as adopted by the UN General Assembly in May 2000,
- having regard to the Convention relating to the Status of Refugees of 28 July 1951,
- having regard to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the UN General Assembly in 10 December 1984,
- having regard to its resolutions of 17 May 2001 on the state of the transatlantic dialogue<sup>4</sup>; of 13 December 2001 on EU judicial cooperation with the United States in combating terrorism<sup>5</sup>; of 7 February 2002 on the detainees in Guantánamo Bay<sup>6</sup>; of 15 May 2002 on Reinforcing the Transatlantic Relationship: Focusing on Strategy and Delivering Results<sup>7</sup>; of 4 September 2003 on the situation as regards fundamental rights in the European Union<sup>8</sup>; of 19 June 2003 on a renewed transatlantic relationship for the third Millennium<sup>1</sup>;

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<sup>1</sup> <http://www.un.org/Overview/rights.html>.

<sup>2</sup> OJ C 364, 18.12.2000, p. 1.

<sup>3</sup> <http://conventions.coe.int/treaty>.

<sup>4</sup> OJ C 34 E, 7.2.2002, p. 359.

<sup>5</sup> OJ C 177 E, 25.7.2002, p. 288.

<sup>6</sup> OJ C 284 E, 21.11.2002, p. 353.

<sup>7</sup> OJ C 180 E, 31.7.2003, p. 392.

<sup>8</sup> P5\_TA(2003)0376.

of 4 December 2003 on the preparation of the European Council in Brussels on 12 and 13 December 2003<sup>2</sup>; and to its recommendation of 3 June 2003 to the Council on the EU-USA agreements on judicial cooperation in criminal matters and extradition<sup>3</sup>,

- having regard to the results of the hearing on Guantánamo: The Right to a Fair Trial held in Brussels on 30 September 2003,
  - having regard to Rule 49(3) and Rule 104 of its Rules of Procedure,
  - having regard to the report of the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy and the opinion of the Committee on on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0107/2004),
- A. whereas both the United States of America and the Member States of the EU have repeatedly reaffirmed their commitment to the democratic values which are the foundation of both the transatlantic community and solidarity: freedom, democracy, the rule of law and human rights,
- B. whereas the US military operation in Afghanistan was a consequence of the terrorist attacks of 11 September 2001 and whereas this operation enjoyed widespread support among the international community,
- C. whereas the majority of Guantánamo Bay prisoners were arrested in the context of the conflict in Afghanistan, yet an unknown number of detainees were also transferred to the Naval Base without having any connection with the Afghan conflict, e.g. from Bosnia-Herzegovina and from Iraq,
- D. whereas since January 2002 some 660 prisoners from some 40 countries have been transferred, first to Camp X-Ray and then to Camp Delta, in Guantánamo Bay Naval Base, in both cases deprived of any access to justice,
- E. whereas around twenty of the prisoners at Guantánamo Bay are nationals of an EU Member State and thus have the right to consular protection from their respective states of nationality, while several others are long-term legal EU residents meriting consular assistance,
- F. whereas the European prisoners also enjoy European Union citizenship, which under Article 20 of the EC treaty confers the right to consular protection from all EU states,
- G. whereas the US Administration opposes access to US courts by detainees held at Guantánamo Bay Naval Base, and the question whether Guantánamo Bay Naval Base constitutes part of the territory of the United States and whether the detainees, like US citizens, enjoy guarantees under the US Constitution is presently before the US Supreme Court, and whereas furthermore the detainees at Guantánamo Bay are being denied the

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<sup>1</sup> P5\_TA(2003)0291.

<sup>2</sup> P5\_TA(2003)0548.

<sup>3</sup> P5\_TA(2003)0239.

safeguards afforded by international human rights standards and international humanitarian law,

- H. whereas EU institutions, Member States and public opinion are increasingly concerned about conditions at the Guantánamo Bay Naval Base and about the physical and mental states of the detainees, and have called for the prisoners to be treated in accordance with the rule of law, regardless of their nationality or origin,
  - I. whereas the fight against terrorism cannot be waged at the expense of established, basic, shared values such as respect for human rights and the rule of law,
  - J. whereas both the US and the Member States are parties to the Third Geneva Convention relative to the Treatment of Prisoners of War and the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, and whereas Protocol 1 Additional to the Geneva Conventions and relating to the Protection of Victims of International Armed Conflicts forms part of international customary law, and whereas the US is a party to the International Covenant on Civil and Political Rights, which constitute the relevant legal framework within which to establish whether or not the detention of detainees held in Guantánamo Bay may be considered arbitrary,
  - K. whereas neither the Military Order issued by President Bush on 13 November 2001 on "Detention, Treatment and Trial of Certain Non-Citizens in the War against Terrorism" nor the subsequent Military Commission Orders issued by the Defense Secretary should be considered as an appropriate framework for implementing the due process and fair trial requirements of international law,
  - L. whereas every prisoner should be tried without undue delay in a fair and public hearing by a competent, independent and impartial tribunal,
1. Addresses the following recommendations to the Council:

***As regards the legal consideration of detainees held in Guantánamo Bay***

- (a) ask the US authorities to immediately put an end to the current legal limbo in which the detainees held in Guantánamo Bay have, since their arrival, been placed and to guarantee immediate access to justice in order to determine the status of each individual detainee on a case-by-case basis, either by charging them under the rules laid down in the Third and Fourth Geneva Conventions and the International Covenant on Civil and Political Rights (particularly Articles 9 and 14 thereof) or by releasing them instantly, and to ensure that those charged with war crimes receive a fair trial in accordance with international humanitarian law and in full compliance with international human rights instruments;
- (b) express its regret that an ad hoc International Criminal Court has not been yet established by the UN Security Council as the most expedient way of dealing with the present case;
- (c) urge the US administration to confirm that the ad hoc military commissions established in the abovementioned Military Order of 13 November 2001 and the

subsequent Military Commission Orders issued by the Defense Secretary as a "competent court" will meet all international law standards within the meaning of Article 5 of the Third Geneva Convention and Article 14 of the UN International Covenant on Civil and Political Rights;

- (d) consider therefore that any trial not conforming with standards under the International Covenant on Civil and Political Rights in respect of due process would be a direct violation and infringement of international law;
- (e) ask the US authorities to give official representatives of national states, relevant international institutions, family relatives and independent observers access as appropriate to sites of detention and free communication consistent with due legal process with the detainees, and to allow them to attend and to observe any military commission proceedings against the detainees;
- (f) call on all states whose nationals are held at Guantánamo Bay to take appropriate action according to the Geneva Convention;
- (g) call on the Member States and the Commission to implement EU measures, through concerted action by the diplomatic and consular missions of the Member States and the Commission (Article 20 of the EU Treaty), with a view to liaising with the US authorities at the highest level;
- (h) rectify the failure of the Council to discuss or decide on the submission of an 'amicus curiae' brief to the US Supreme Court on behalf of the European Union arguing for an interpretation of US law in respect of all 660 prisoners which conforms to Article 9 of the International Covenant on Civil and Political Rights;
- (i) insist that the US administration must allow 'habeas corpus' and due process for all prisoners that it is detaining anywhere under assumed executive powers, and make their names available to their families and legal representatives;
- (j) note with satisfaction that the American authorities have released a Spanish detainee from Guantánamo to stand trial in Spain; share the hope that this is a sign of change in the policy of the American authorities towards all detainees;

***As regards the possible impact on the EU-US partnership***

- (k) share the view that the transatlantic relationship is invaluable and irreplaceable and could be a formidable force for good in the world, as stated by the European Council, only if basic human rights - such as the right to a fair trial and the prohibition on arbitrary detention - are clearly respected as universal and non-negotiable and remain the core of the values and common interest that the EU and the US maintain;
- (l) recall that security is an all-encompassing collective concept that requires a multilateral approach, and that international treaties are the basic elements upon which the foundation of such a multilateral framework for human security and a renewed transatlantic partnership must be laid;

- (m) reiterate its call for the Council Presidency to raise the issue of the right of prisoners detained at Guantánamo Bay to a fair trial with the US authorities and to include this issue on the agenda for the next summit between the European Union and the United States;
- (n) come up with a concerted strategy, with the Commission's support, before the EU-US Summit in June 2004 consisting of a common position (Article 15 of the EU Treaty) and the necessary joint actions (Article 14 of the EU Treaty) of the EU and its Member States, also reflecting the views expressed by the European Parliament;
- (o) recommend to the forthcoming EU-US Summit the creation of a long-term collaborative framework and the launching of a joint Action Plan for the Fight on Terrorism, pointing out that international terrorism must be combated firmly, not only by military means but also by addressing the roots of the tremendous political, social, economic and ecological problems of today's world;
- (p) call upon the US to comply fully with its obligations under international human and humanitarian law with respect to proper determination of status of combatants, treatment of child, abolishing the death penalty and safeguarding the treatment of prisoners of war in the wake of the recent conflicts; in particular, urge the US once again to abolish the death penalty and to accede to the Rome Statute of the International Criminal Court;
- (q) call upon the US to comply with its obligations under the abovementioned Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and in particular Article 3 thereof, which prohibits the expelling, return ("refoulement") or extradition of a person to countries where there are substantial grounds for believing he or she would be subjected to torture;

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2. Instructs its President to forward this recommendation to the Council and, for information, the Commission, the parliaments of the Member States and the President and Congress of the United States of America.