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Guantánamo

Motion for a resolution

Tabled by ***Monica Frassoni, Daniel Cohn-Bendit, Kathalijne Maria Buitenweg, Jean Lambert, Raül Romeva i Rueda, Cem Özdemir, Hélène Flautre,***

on behalf of the Greens/EFA Group

with

Sarah Ludford, Ignasi Guardans Cambó, Marco Cappato, Anneli Jäätteenmäki, on behalf of the ALDE Group

Giusto Catania, Sylvia-Yvonne Kaufmann, Miguel Portas, Vittorio Agnoletto, Jens Holm, Willy Meyer Pleite, on behalf of the GUE/NGL Group

The European Parliament,

 having regard to the international, European and national instruments on human rights, fundamental freedoms and the prohibition of arbitrary detention, enforced disappearance and torture, such as the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984,

 having regard to transatlantic cooperation between the United States and the European Union and its Member States, including that concerning the fight against terrorism,

 having regard to:

- its resolution of13 June 2006 on the situation of prisoners at Guantánamo[1],
- its resolution of 16 February 2006, P6_TA(2006)0070, on Guantánamo[2],
- its recommendation to the Council of 10 March 2004 on the Guantánamo detainees' right to a fair trial[(2)],
- its resolution of 7 February 2002 on the detainees in Guantánamo Bay[(1)] ,
- the Council of Europe's parliamentary resolutions,
- the report of 15 February 2006 of the UN Commission on Human Rights,
- the statements by the UN Special Rapporteurs,
- the conclusions and recommendations of the UN Committee against Torture concerning the United States,
- the statement of 20 January 2009 by the President of the European Parliament,
- the statement of 19 January 2009 by the Council of Europe's Commissioner for Human Rights,

- the statement by the EU counter-terrorism coordinator,
- the statements by the European Commissioner for Freedom, Security and Justice and by the EU Presidency,

 having regard to the European Parliament resolution of 14 February 2007 on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners (Fava report) and having regard to the Council of Europe's activities on the same issue,

 having regard to Rule 103(4) of its Rules of Procedure,

A. whereas, in the aftermath of the terrorist attacks of 11 September 2001, in January 2002 the United States established a high-security detention facility at Guantánamo Bay, Cuba, where terrorist suspects have been detained, and whereas the United States has kept terrorist suspects in secret detention facilities around the world, including in EU Member States,

B. whereas prisoners at Guantánamo Bay and in secret detention facilities have been denied their fundamental human rights, including the right to a fair trial, and have been tortured,

C. whereas partial and limited rights, including the possibility of access to American civilian courts, have been recognised in a series of judgments by the US Courts, including the Supreme Court,

D. whereas four detainees have committed suicide at Guantánamo Bay, after being subjected to harsh interrogation techniques, such as waterboarding, which amount to torture and cruel, inhuman or degrading treatment,

E. whereas the former CIA director, Michael Hayden, has stated that the Agency has held almost 100 Al-Qaida suspects in secret detention facilities, a third of those detainees have been subjected to coercive interrogation and three, including Khalid Sheikh Mohammed, accused of being the 9/11 mastermind, have been waterboarded,

F. whereas prisoners at Guantánamo have been taken there by the US authorities on military and CIA flights which have often flown over EU territory and in some cases have also made stopovers in some EU Member States; whereas in some cases prisoners at Guantánamo have been kidnapped in some Member States under the extraordinary rendition programme, while others have been taken to third countries and have undergone torture in local prisons,

G. whereas some Member States have approached the US authorities requesting the release and repatriation of prisoners who are their nationals or who were previously resident on their territory; whereas officials of some Member States have had access to Guantánamo prisoners and have also interrogated them to verify the charges brought against them by the US authorities,

H. whereas a list published by the US authorities includes 759 past and present prisoners at Guantánamo; whereas 525 prisoners have been released, while 5 have died in custody; whereas there are now around 250 inmates at Guantánamo, of whom there are:

a number of detainees who have been determined to be suitable for release as they have never been charged and are not expected to be charged with any crimes, of whom approximately 30 have already been acknowledged by the United States as having been cleared of any suspicion, but who cannot be returned to their countries of origin because they are at risk of being persecuted or tortured or because their governments refuse to take them back (including 17 Uighurs, Muslims from China whom a US judge ordered to be freed within the United States in October; the Government is appealing the decision) (potential for resettlement),

a number of detainees whom the United States has decided not to prosecute but thinks must be detained or strictly supervised by their governments because they are potential threats (potential for resettlement),

a number of detainees who are considered 'dangerous' by the US authorities,

I. whereas the previous US Administration has declared that for years it made informal requests to EU Member States to collaborate in finding a common solution to the issue of Guantánamo prisoners who have not been charged or who have been acquitted and who cannot be repatriated to their own countries, and whereas the Portuguese Minister of Foreign Affairs has asked his EU counterparts to take a political decision to resettle them in the EU Member States and has declared Portugal's willingness to do so,

J. whereas the use of torture and other illegal methods means that 'evidence' gathered is inadmissible in court, making prosecutions and convictions for terrorism impossible, and whereas Guantánamo has become a global problem, as its mere existence has undermined the international community's credibility in the fight against terrorism,

1. Points out its repeated calls to close the Guantánamo Bay detention facilities and any other similar detention facilities directly or indirectly managed by the US authorities wherever they may be located, and consequently warmly welcomes the declarations by the US President, Barak Obama, and his executive orders to suspend the military commissions and to close Guantánamo within 12 months; welcomes the commitment of his Administration to reviewing its use of interrogation techniques and outlawing practices such as waterboarding;

2. Points out that the fight against international terrorism, which poses a threat to the basic and fundamental human rights that our societies enjoy, is one of the priorities of the European Union and the United States and can only be based on shared values such as respect for international human rights law, democracy and the rule of law, and calls on the European Union and the United States to strengthen transatlantic dialogue on a new common approach to tackling terrorism based on these common values;

3. Invites the US authorities to recognise the human rights and fundamental freedoms of the Guantánamo prisoners, on the basis of international and US constitutional law, so that every person is treated in accordance with international and human rights law and, if charged, is tried promptly in a fair public hearing by a competent, independent and impartial court of law or international tribunal; calls on the US authorities to abolish military commissions and not to adopt a law on indefinite detention in the United States;

4. Believes that, since the US authorities have created the problem, they are primarily responsible for finding a solution to ensure that the Guantánamo detainees are granted their human rights and fundamental freedoms, on the basis of international and US constitutional law, and to ensure that:

- they are tried properly and promptly in a fair public hearing by a competent, independent and impartial tribunal, and convicted and imprisoned in the United States if they are responsible for the crimes with which the United States has charged them,

- those who are not charged or who are acquitted should be given the choice either of being granted US residence or citizenship or being repatriated, or of being granted asylum or humanitarian protection by the United States, or in a third country, should they be at risk of persecution in their own countries,and should be given access to a redress and compensation mechanism in accordance with Article 14 of the UN Convention against Torture;

5. Points out that several EU Member States have been involved in, or have cooperated actively or passively with the US authoritiesin, the CIA's and US military's illegal transport of prisoners to, and/or

their detention in, Guantánamo and the 'secret prisons' acknowledged by President Bush as proven by some recently disclosed information concerning governments' authorisations of US requests for overflight and by government information on secret prisons and that EU Member States bear a particular share of political responsibility for the detention of those imprisoned in Guantánamo and in secret detention facilities;

6. Believes that the European Union and its Member States should express their willingness to accept detainees who have not been charged, who have been discharged or who have been acquitted and who are at risk of persecution in their own countries, and should grant them asylum or humanitarian protection if the United States refuses to do so;

7. Welcomes the fact that the Council, the EU Member States and the Commission discussed Guantánamo at the General Council meeting of 26 January and calls on them to reach a common position on the need for EU Member States to take in detainees who will not be charged with any crime but who cannot be returned to their countries of origin for fear of torture or other serious human rights violations; in so doing they should also provide for continued monitoring of the process of closing Guantánamo and of the fate of the Guantánamo prisoners and of those in secret prisons, to make sure that they are granted their human rights and fundamental freedoms, and for examination of potential requests by the US authorities; welcomes the visit to the United States by Mr Barrot and the Czech Presidency to discuss the Guantánamo issue;

8. Calls on the European Union, the Member States and the US authorities to investigate and fully clarify the abuses and violations of international and national law on human rights, fundamental freedoms, the prohibition of torture and ill-treatment, enforced disappearance and the right to a fair trial committed in connection with the 'war against terror', so as to establish responsibility, including responsibility for Guantánamo, secret detention centres and the extraordinary rendition programme, and to ensure that such violations will not recur in the future and that the fight against terrorism is pursued without breaching human rights, fundamental freedoms, democracy and the rule of law;

9. Calls on the EU institutions and the Member States to implement the recommendations contained in its resolution of 14 February 2007 on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners;

10. Instructs its President to forward this resolution to the Council, the Commission, the High Representative for the CFSP, the parliaments of the Member States, the NATO Secretary General, the Secretary-General and President of the Parliamentary Assembly of the Council of Europe, the United Nations Secretary-General and the President and Congress of the United States of America.

[1] http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2006-0254+0+DOC+XML+V0//EN&language=EN

[1] http://www.europarl.europa.eu/sides/getDoc.do?language=EN&reference=P6-TA-2006-0070&type=TA#def_1_1

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