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Guantánamo: imminent death penalty decision

Greens/EFA motion for a resolution

The European Parliament,

- having regard to its previous resolutions on the death penalty and notably those of 7 October 2010(1) on the World Day against the death penalty and of 10 July 2008 on the death penalty, particularly the case of Troy Davis, on Guantánamo, notably those or 13 June 2006(2) on the situation of prisoners at Guantánamo and of 10 March 2004 on the Guantánamo prisoners right to a fair trial, as well as those on alleged CIA flights and prisons on EU soil,

- having regard to the Joint study on global practices in relation to secret detention in the context of countering terrorism of 19 February 2010 by the UN Special Rapporteur on Torture, the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism and the Working Groups on Arbitrary Detention and Enforced or Involuntary Disappearances,

- having regard to Rule 122(5) of its Rules of Procedure,

A. whereas in response to the attacks of 11 September 2001 the United States responded by developing a global "war" framework under which its interpretation of the laws of war would apply to the exclusion of international human rights law,

B. whereas, in consequence, the United States administration has resorted to illegal practices under international law such as torture and other forms of ill-treatment, enforced disappearances, secret prisons, indefinite detention outside the criminal justice system and unfair trials by military commission, established by President Bush by way of a Military Order on 13 November 2001,

C. whereas in 2009 the Obama administration in stopped the use of military commissions, considering that they are not regularly established courts, their proceedings can be held in secret, their decisions cannot be appealed to the regular civilian court system, they lack the basic standards of legal independence and are highly discriminatory as they are exclusively established to treat foreign nationals,

E. whereas in Spring 2011 the US Government reversed its decision to try 'war on terror' suspects in front of civilian US courts after Congress had passed legislation that prohibits bringing any detainees from the US military prison at Guantánamo Bay, to the United States and also announced a new procedure for

continuing to hold those detainees, not charged or convicted but deemed too dangerous to be released,

F. whereas Abd al-Rahim al-Nashiri, a Saudi national, will be the first case to be tried in front of a military commission since President Obama ordered those trials to resume and whereas the government is seeking the death penalty on charges that Mr Al-Nashiri had a leading role in the attack on the USS Cole in Yemen on 12 October 2000 and on the French oil tanker MV Limburg on 6 October 2002,

G. whereas the option of the death penalty has to be approved by the "convening authority" of the military commissions, Navy Vice Admiral Bruce MacDonald, who is prepared to receive written submissions until 30 June,

H. whereas Mr. Al-Nashiri was arrested in Dubai, United Arab Emirates, by local security forces in October 2002, handed over into US custody one month later and held in Secret custody at undisclosed locations by the USA's central intelligence agency (CIA) for almost four years, before being transferred to military custody at Guantánamo in September 2006,

I. whereas during the period of nearly 4 years in CIA custody - according to public sources - he was held incommunicado, in solitary confinement, was subjected to torture, including by "water-boarding", as well as other cruel, inhuman or degrading treatment, such as shackling, hooding and nudity as well as to a number of "unauthorized" techniques, including being threatened with a handgun and a electric power drill, "potentially injurious stress positions" and the use "of a stiff brush [used in bathing] that was intended to induce pain", and "standing on al-Nashiri's shackles, which resulted in cuts and bruises",

J. whereas EU Member States have outlawed the death penalty on their territory, while the European Union has the abolition of the death penalty as a key objective and has adopted EU guidelines and supported initiatives on the international level for a moratorium on capital punishment,

K. whereas international human rights law, while recognizing that some countries retain the death penalty, prohibits the imposition and execution of a death sentence based on a trial that has not met the highest standards of fairness,

L. whereas in 2007 the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms called on the United States to disestablish the military commissions and in 2009 the UN Special Rapporteur on extrajudicial, summary or arbitrary executions urged the US not to conduct any capital prosecutions before military commissions,

M. whereas Mr Al-Nashiri has alleged that he was held in a secret CIA detention centre in Poland between 2002 and 2003 for several months and tortured during that time, whereas on 10 May 2011 he appealed to the European Court of Human Rights supported by several human rights organizations, requesting that the Polish Government intervene with the US authorities to try to stop the military commission prosecution from seeking the death penalty,

N. whereas according to the UN Special Rapporteur on Torture, Manfred Novak new information seems to confirm that Abd al-Rahim al Nashiri was also for some time between 2003 and 2005 held in a small jail in Bucharest, Romania,

O. whereas the Polish authorities removed deputy prosecutor Jerzy Mierzewski from the case he was investigating on the alleged torture of Abd al-Rahim al-Nashiri, at a secret CIA prison in Poland, citing an "administrative shuffle"; whereas his immediate superior Robert Majewski, was dismissed; whereas on 20 January 2011 the Polish prosecutor had officially recognized another prisoner, Abu Zubaydah, as a victim of secret CIA detention in Poland,

P. whereas according to reports the Polish state prosecutors had been considering bringing charges against members of the government at the time for their alleged involvement in secret CIA prisons located on Polish soil between 2002 and 2005, including former Prime Minister Leszek Miller, for violating Poland's constitution by helping to illegally imprison a number of people and participating in war crimes and crimes against humanity, charging equally that an intelligence centre, located in Poland but outside of Polish jurisdiction would be in breach of the Polish Constitution,

1. Reiterates its condemnation of the continuing violations of international humanitarian and human rights law by the United States government in upholding its practice of indefinite detention outside the criminal justice system and unfair trials by military commission;

2. Restates its long-standing opposition to the use of torture and ill-treatment as well as to the death penalty in all cases and under all circumstances and strongly criticizes the fact that no-one has been brought to justice for human rights violations to which Abd al-Rahim al-Nashiri and other prisoners held under the CIA secret program were subjected, either in Europe or in the United States;

3. Recognizes that Abd al-Rahim al-Nashiri has been accused of serious crimes while however expressing its deep concern that the US authorities in his case have violated international law for the last 9 years;

4. Calls on the 'convening authority' not to apply the death penalty on Abd al-Rahim al-Nashiri, on the grounds that the military commission trials do not meet the standards internationally required for the application of the death sentence;

5. Appeals to the particular responsibility of the Polish and the Romanian Governments to make thoroughly inquiries into all indications relating to secret prisons and cases of extraordinary rendition on Polish soil and to insist with the US Government that the death penalty should on no account be applied to Mr Al-Nashiri;

6. Calls on the High Representative Catherine Ashton and the Commission to actively support the Polish Government in any such move;

7. Insists that Mr Al-Nashiri and all other detainees in US custody should be charged in due time and tried according to international standards of rule of law or else be released; underlines, in this context, that the same standards of fair trial should be applied to all, regardless of national origin, descent or belief;

8. Calls on the Council and Commission to establish a mechanism for an independent investigation into any allegation of secret detention and "extraordinary rendition" with a view to bringing the perpetrators to justice;

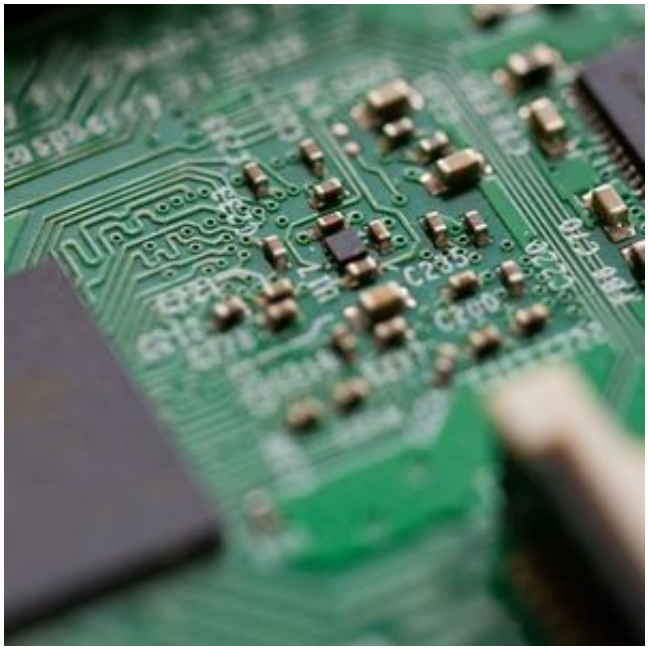
9. Calls on the Council and the Member States to take all necessary measures in order to prevent such crimes as secret detention, torture and ill-treatment and extra-ordinary rendition from taking place inside the EU in the future and reminds EU institutions and Member States of their duty not to collaborate in or to cover up such acts prohibited by international, European and national law;

10. Instructs its President to forward this resolution to the Convening Authority for Military Commissions, the US Secretary of State, the US President, the US Congress, the EU High Representative, the Commission, the governments and parliaments of the EU Member States, the UN Commissioner for Human Rights, the UN Secretary General and the President of the UN General Assembly.

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