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PROPOSAL FOR A RECOMMENDATION

pursuant to Rule 49(1) of the Rules of Procedure

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

by Marianne Eriksson, on behalf of the GUE/NGL Group

on the Guantanamo detainees' right to a fair trial

Recommendation on the Guantanamo detainees' right to a fair trial

The European Parliament,

- having regard to its resolution of 13 December 2001 on EU judicial cooperation with the United States in combating terrorism (B5-0813/2001),
 - having regard to its resolution of 7 February 2002 on the detainees in Guantanamo Bay (B5-0066/2002),
 - having regard to its report of 6 June 2003 on the EU-US judicial cooperation agreement (A5-0172/2003),
 - having regard to its report on the situation as regards fundamental rights in the European Union (2002) (A5-0281/2003),
 - having regard to the Third Geneva Convention relative to the treatment of prisoners of war, which was adopted on 12 August 1949,
 - having regard to the hearing on the Guantanamo detainees' right to a fair trial, which was held at the European Parliament on 30 September 2003,
- A. whereas the USA has adopted a President's executive order on military tribunals,
- B. concerned that in some respects the American and European approaches are incompatible and that this weakens the common fight against terrorism,
- C. whereas the capture and continued detention in the circumstances in which the prisoners are held in Guantanamo Bay and elsewhere outside the USA contravenes the Geneva Conventions as well as other international humanitarian instruments,
- D. whereas the US Government must respect the provisions of the Third Geneva Convention (1949), under which the detainees would be categorised as prisoners of war unless a competent tribunal, as provided for in Article 5 of the Convention, had determined otherwise,
- E. whereas in the absence of such determination it is essential for the matter to be dealt with in accordance with Article 14 of the United Nations International Covenant on Civil and Political Rights (1966), to which the USA is party;
- F. whereas Article 14 on the right to a fair trial must be respected – including the right to a fair and public hearing by a competent, independent and impartial tribunal established by law; the right to adequate time and facilities for the preparation of the defence and to communicate with counsel of one's own choosing; and the right to legal assistance without payment,

1. Recommends that Council urgently:

- establish a common position on matters relating to the second and third pillar,
- on the basis of this common position, start discussions with the USA at the highest political level on the matter of the Guantanamo detainees' right to a fair trial.