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Urgency resolution (art. 50)

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On behalf of the Green/EFA Group

**Guantánamo and the conditions of prisoners captured in connection with the war in Afghanistan**

A. Considering President Bush's Military Order of 13 November 2001 permitting the secret trials of detainees in Guantánamo Bay, Cuba, by a military commission who may adopt their own rules of evidence and conflict and pass sentence - which may be the death penalty - by a mere two-thirds majority, outside of American jurisdiction

B. Considering that this Military Order breaks with all provisions for a fair trial as guaranteed by the International Convention on Civil and Political Rights to which the US is a party, such as the presumption of innocence, choice of council, impartial and timely hearing, and right of appeal to a higher court

C. Considering that the US government has introduced the category of "unlawful combatants" - a terminology unknown in international law - while refusing to grant suspected al Qaeda fighters and members of the Taliban troops captured in Afghanistan the status of prisoners of war,

C bis. Considering that renounced lawyers like Richard Goldstone, first chief prosecutor at the war crimes tribunals for the former Yugoslavia and Rwanda, contest the legitimacy of forcefully taking those now detained in Cuba out of Afghanistan without an extradition order, as well as their status as combatants and calls for them to be treated as ordinary criminal suspects with all associated rights

D. Considering that among the 158 detainees there are 30 nationalities and numerous prisoners with a EU member States' nationality

D bis. Considering that additionally people being merely suspected to be al Qaeda supporters have been deported from Bosnia and maybe other countries to Guantánamo Bay

E. Considering information of alleged ill-treatment of prisoners in Guantánamo including reports that they were shackled, hooded and sedated during transfer, their beards being forcibly shaved and they being housed in small cages that do not protect against the elements

F. Considering that John Walker, the only American al Qaeda member so far captured in Afghanistan is held in a civilian detention centre and will be tried in a Virginia court with full legal representation

G. Considering Amnesty International reports that thousands of prisoners in Afghanistan lack food, medicine and shelter from the country's harsh winter

H. Considering reports that at the US-controlled Kandahar airport facility prisoners were gagged and blindfolded, with their hands and feet shackled and with all the prisoners tied together in a long line, while cells were made of concertina wire in unheated storage area and 24 hours lit by strong halogen lights

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I. Considering that the US is responsible under international law for the welfare of prisoners who are in its custody and that other governments, including Pakistan and Canada whose forces have detained and handed over prisoners share these responsibilities

J. Considering that Art 5 of the Geneva Convention of 1949 stipulates that those captured in war are presumed to be prisoners of war until an independent tribunal declares what their true status is

K. Considering that the Geneva Conventions provide for prisoners of war to be tried by the same courts partial which try members of the captor's countries forces

L. Considering the illegal deportation of 6 Algerians from Bosnian territory by US soldiers of the UN peace keeping forces in Bosnia (Sfor), after the highest Bosnian court had ruled their release from prison on the grounds of lack of evidence for alleged involvement in Al Qaeda activities

1. Underlines that the legal procedure foreseen for the Guantánamo prisoners by the US government represents a classic case of victor's justice and would, if upheld, set a very bad precedent for future progress on the impartiality of international law

2. Reiterates in view of the global implications of the issue and in order to take account of the number of nationalities and countries directly or indirectly involved, that prisoners accused of crimes in link with the 11 September attacks should be tried in front of an ad hoc international tribunal comparable to Den Haag and Rwanda

3. Calls on the United States to honour its obligations under international law and to ensure respect for the human rights of all persons in their custody, regardless of the nature of the crimes they are suspected of having committed,

4. Insists that those who are held in Guantánamo who are said to have been captured during the war in Afghanistan are presumed to be prisoners of war and that for any dispute about their status a competent tribunal must decide according to Art. 5 of the third Geneva Convention

5. Reiterates that Prisoners of war are afforded specific rights such as: conditions as favourable as those of US soldiers, no interrogation and - unless tried for war crimes - repatriation at the end of active hostilities and draws attention to the fact that they cannot be tried merely for having taken up arms against enemy combatants in the context of conflict

6. Insists that any detainee who is suspected of a crime, whether or not they are prisoners of war, must be charged with a criminal offence and tried fairly or released

7. Vividly protests that the US army in disrespect for the rulings of the highest Bosnian court took matters in its own hands and deported the 6 Algerians to Guantánamo

8. Condemns this act of 'self justice' as a clear abuse of the status of the UN peace keeping force, discrediting the impartiality of the UN and obstructing the efforts of the international community to rebuild democratic and accountable legal structures in countries struck by civil war; calls on the European Council to criticise the US action in clear terms

9. Instructs its President to forward the following resolution the Council, the Commission, the Secretary General of the United Nations, the International Committee of the Red Cross, the Government, the Congress and the Senate of the United States of America, the Government of Canada and the Government of Pakistan.