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MOTION FOR A RESOLUTION

with request for inclusion in the agenda for the debate on cases of breaches of human rights, democracy and the rule of law

pursuant to Rule 122 of the Rules of Procedure

on Guantánamo: imminent death penalty decision

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on behalf of the ALDE Group

European Parliament resolution on Guantánamo: imminent death penalty decision

The European Parliament,

- having regard to the international, European and national instruments on human rights and fundamental freedoms and on the prohibition of arbitrary detention, enforced disappearances and torture, such as the International Covenant on Civil and Political Rights of 16 December 1966 and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984 and the relevant protocols thereto,
- having regard to United Nations General Assembly Resolution 62/149 of 18 December 2007 calling for a moratorium on the use of the death penalty, and United Nations General Assembly Resolution 63/168 of 18 December 2008 calling for the implementation of the 2007 General Assembly resolution 62/149,
- having regard to its previous resolutions on the death penalty and notably those of 7 October 2010 on the World Day against the death penalty¹ and of 10.7.2008 on the death penalty, particularly the case of Troy Davis², on Guantanamo, notably those of 13.6.2006 on the situation of prisoners at Guantanamo³ and of 10.3.2004 on the Guantanamo prisoners' right to a fair trial⁴, as well as those on alleged CIA flights and prisons on the EU soil, particularly in adopting the report of its temporary committee on 14 February 2007,
- having regard to its resolution of 4 February 2009 on the return and resettlement of the Guantánamo detention facility inmates,
- having regard to the letter sent by its President to national parliaments on the follow-up by Member States to Parliament's resolution of 14 February 2007,
- having regard to Protocol No 6 to the Convention for the protection of human rights and fundamental freedoms concerning the abolition of the death penalty, of 28 April 1983,

¹ RSP/2010/2855

<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2010-0351>

² RSP/2008/2618

<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P6-TA-2008-0368>

³ RSP/2006/2572

<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P6-TA-2006-0254>

⁴ INI/2003/2229

<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P5-TA-2004-0168>

- having regard to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, of 15 December 1989,

(case of Abd al Rahim Hussayn Muhammed al Nashiri and risk of undergoing death penalty)

- A. whereas the US government wants to seek the death penalty at the upcoming military commission trial of a Saudi Arabian man, Abd al Rahim Hussayn Muhammed al Nashiri, held at the US detention facility in Guantánamo Bay; whereas to do so it needs the approval of an official known as the 'convening authority', and a decision is expected within weeks,
- B. whereas Abd al Rahim Hussayn Muhammed al Nashiri was apparently arrested in Dubai, United Arab Emirates, by local security forces in October 2002, handed over to US custody a month later and held in secret custody at undisclosed locations by the USA's Central Intelligence Agency (CIA) for almost four years, during which time he was allegedly subjected to torture and other ill-treatment and to enforced disappearance, before being transferred to military custody at the US Naval Base in Guantánamo Bay in Cuba, in September 2006, where he remains,
- C. whereas al-Rahim al-Nashiri has consequently been in US custody for nearly nine years but, despite being named on an indictment in US federal court only months after his arrest in 2002, he was not brought promptly before a judicial authority and brought to trial without undue delay, as required by international law, and was instead detained in secret until he was transferred to Guantánamo in 2006,
- D. whereas during the period of nearly 4 years he spent in CIA custody he was apparently held incommunicado, in solitary confinement, at undisclosed locations and he was allegedly subjected to torture, including by "water-boarding", as well as other cruel, inhuman or degrading treatment, such as shackling, hooding and nudity, potentially injurious stress positions, standing on his shackles resulting in cuts and bruises, the use of a stiff brush intended to induce pain, and being threatened with a gun and an electric power drill,
- E. whereas on 20 April 2011, the US Department of Defence announced that Abd al Rahim al Nashiri had been charged under the Military Commissions Act of 2009 with, among other things, "murder in violation of the law of war", and "terrorism", being accused of having had a leading role in the attack on the USS Cole in Yemen on 12 October 2000 in which 17 US sailors were killed and 40 others wounded, and in the attack on the French oil tanker MV Limburg in the Gulf of Aden on 6 October 2002 in which a crew member was killed,
- F. whereas no date has yet been set for his trial by military commission and the prosecution has recommended that the death penalty be an option at the trial, but this must be approved in advance by the "convening authority" of the military commissions, an official appointed by the US Secretary of Defence,

- G. whereas the current convening authority, retired Navy Vice Admiral Bruce MacDonald, has indicated that he is prepared to receive written submissions on the death penalty issue until 30 June and that he will make his decision after that,

(Death penalty and the EU)

- H. whereas the European Union is strongly committed to working towards the abolition of the death penalty everywhere and is striving to achieve universal acceptance of this principle,
- I. whereas the EU is the leading institutional actor in the fight against the death penalty worldwide and its action in this area represents a key priority of its external human rights policy, whereas the EU is also the leading donor in support of efforts by civil society organisations around the world to bring about the abolition of the death penalty,
- J. whereas the death penalty is the ultimate cruel and inhuman and degrading punishment, which violates the right to life as enshrined in the Universal Declaration of Human Rights and whereas the detention conditions created by the death penalty decision amount to torture that is unacceptable to states respecting human rights,
- K. whereas the EU is working towards moratoria on the application of the death penalty by third countries and, in due course, abolition and ratification of the relevant international UN and other instruments and in particular, the Second Optional Protocol to the International Covenant on Civil and Political Rights, which provides for the abolition of the death penalty,
- L. whereas international human rights law recognizes that some countries retain the death penalty but it prohibits the imposition and execution of a death sentence based on a trial that has not met the highest standards for fairness,
- M. whereas the European Parliament has already expressed its criticism and called the US to review the military commissions system, as it fails to meet international fair trial standards – notably in relation to fair trial, procedural safeguards, independence, non-discrimination - and whereas any use of the death penalty after such trials would violate international law,
- N. whereas in 2007 the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms called on the USA to abolish the military commissions and in 2009 the UN Special Rapporteur on extrajudicial, summary or arbitrary executions urged the USA not to conduct any capital prosecutions before military commissions,

(Polish involvement in the case and enquiries)

- O. whereas Abd al-Rahim al-Nashiri has alleged that for several months in 2002 and 2003 he was held in secret CIA detention in Poland and that he was tortured during this period and whereas on 10 May 2011 he appealed to the European Court of Human Rights with the support of Human Rights NGOs, requesting that the court order the Polish Government to intervene with US authorities to try to stop the military commission prosecution from seeking the death penalty,

- P. whereas on 24 May 2011 the Polish authorities removed deputy prosecutor Jerzy Mierzewski from the case he was investigating on the alleged torture of Abd al-Rahim al-Nashiri, as well as of another Saudi national, Abu Zubaydah, at a secret CIA prison in Poland, citing an "administrative re-shuffle", whereas his immediate superior Robert Majewski, was dismissed, whereas on 20 January 2011 the Polish Prosecutor had officially recognized Abu Zubaydah as a victim in Poland's CIA secret prison investigation, while both the Polish and US governments have denied that he was illegally imprisoned and tortured in a secret prison in Poland, whereas media report that the Polish state prosecutors had been considering bringing charges against members of the government in power at that time for their alleged involvement in secret CIA prisons located on Polish soil between 2002-2005, including former Prime Minister Leszek Miller, for violating Poland's constitution, helping to illegally imprison a number of people and with participating in crimes against humanity¹,
- Q. whereas media report also that legal experts consulted by the Polish prosecutors on the case clarified that there is no law that would allow a foreign intelligence centre to be located in Poland but be outside the jurisdiction of the Polish Government and that the operation of such a centre would breach the Polish constitution and that if prisoners were held at such a place, they would potentially be able to qualify as victims of war crimes and crimes against humanity, whereas they also came to the conclusion that "enhanced interrogation techniques," such as water-boarding, used by the US to extract information, do not comply with international law²,
- R. whereas EU Member States cannot allow torture on their soil and the transfer of persons to third states where they risk being subjected to the death penalty and/or torture, whereas consequently Poland could not allow the torturing and rendering of persons to the US reasonably knowing that the US foresees the death penalty and torture in such cases, whereas consequently Polish authorities should do what is in their power to ensure fair trial on the enquiries related to CIA extraordinary renditions and prisons, defend the rights of victims of human rights violations and bring those responsible for these abuses to justice and ensure that persons who have been held on their territory and are now at Guantánamo Bay awaiting military commissions proceedings are not condemned to the death penalty,
- (EU and Guantánamo)*
- S. whereas the European Parliament has repeatedly called for the closure of the Guantánamo Bay detention facility, for bringing to fair trial those persons held there who are responsible for criminal acts, for the resettlement in third countries of any detainees cleared for release and for the EU and the international community to encourage and help the US to find solutions on the matter,

¹ <http://www.presseurop.eu/en/content/news-brief-cover/683991-cover-over-cia-torture-centres>

² <http://www.wbj.pl/article-54800-polish-officials-may-face-charges-over-secret-cia-prisons.html?typ=wbj>

(War on terror)

- T. whereas notwithstanding the evidence that extremely serious human rights violations and crimes under international law such as torture, ill-treatment, incommunicado detention and enforced disappearances have taken place in the “war on terror”, few have been brought to justice on the matter, either in the US or on EU soil, with the partial exception of those convicted in the Milan Abu Omar trial, as Member States authorities have continued to shun their responsibilities to hold accountable those persons implicated in the CIA extraordinary renditions and secret prisons programmes,
1. Reiterates its long-standing opposition to the use of torture and ill treatment and to the death penalty in all cases and under all circumstances and emphasises once again that abolition of the death penalty contributes to the enhancement of human dignity and the progressive development of human rights;
 2. Calls on the US authorities to abolish and not to implement the death penalty including in the case at stake of Abd al-Rahim al-Nashiri, and calls on the Council, the Commission and the Member States to make strong representations to the US to ensure that he is not executed;
 3. Reiterates its call to the US authorities to review the military commissions system to ensure fair trial, to close Guantánamo, to prohibit in any situation the use of torture, ill-treatment, incommunicado detention and enforced disappearances and reminds EU institutions and Member States their duty not to collaborate in, or cover up, such acts prohibited by international, European and national law;
 4. Calls on EU and Member States authorities, as well as the US authorities, to conduct full, fair, effective, independent and impartial inquiries and investigations into human rights violations and crimes prohibited by international, European and national law and to bring to justice those responsible, including in the framework of CIA extraordinary renditions and secret prisons programme;
 5. 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 and Senate, the High Representative of the Union for Foreign Affairs and Security Policy, the Council, the Commission, the governments and parliaments of the EU Member States, the UN Secretary-General, the President of the UN General Assembly and the governments of the UN member states.