

**Guantánamo: imminent death penalty decision**

**European Parliament resolution of 9 June 2011 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 (ICCPR) 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 Resolutions 62/149 of 18 December 2007 calling for a moratorium on the use of the death penalty and 63/168 of 18 December 2008 calling for the implementation of General Assembly Resolution 62/149,
  - having regard to its previous resolutions on the death penalty, in particular those of 7 October 2010 on the World Day against the death penalty<sup>1</sup> and of 10 July 2008 on the death penalty, particularly the case of Troy Davis<sup>2</sup>, on Guantánamo, in particular those of 13 June 2006 on the situation of prisoners at Guantánamo<sup>3</sup> and of 10 March 2004 on the Guantánamo prisoners' right to a fair trial<sup>4</sup>, and on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners, in particular that contained in the report of its Temporary Committee, adopted on 14 February 2007<sup>5</sup>,
  - having regard to its resolution of 4 February 2009 on the return and resettlement of the Guantánamo detention facility inmates<sup>6</sup>,
  - having regard to the letter sent by its President to the 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 of 28 April 1983, concerning the abolition of the death penalty,
  - having regard to the Second Optional Protocol to the ICCPR, seeking to bring about the abolition of the death penalty, of 15 December 1989,
- A. whereas the US Government intends to seek the death penalty at the forthcoming military commission trial of a Saudi Arabian man, Abd al-Rahim Hussayn Muhammed al-Nashiri, who is currently being 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

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<sup>1</sup> Texts adopted, P7\_TA(2010)0351.

<sup>2</sup> OJ C 294 E, 3.12.2009. p. 80.

<sup>3</sup> OJ C 300 E, 9.12.2006. p. 136.

<sup>4</sup> INI/2003/2229.

<sup>5</sup> OJ C 287 E, 29.11.2007, p. 309.

<sup>6</sup> OJ C 67 E, 18.3.2010, p. 91.

expected within weeks,

- B. whereas al-Rahim al-Nashiri has been in US custody for nearly nine years, and whereas, despite being named in an indictment submitted to a 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 being transferred to Guantánamo in 2006,
- C. whereas during nearly four years in CIA custody he was apparently held incommunicado, in solitary confinement, at undisclosed locations and was allegedly subjected to torture, including ‘water-boarding’,
- D. whereas on 20 April 2011 the US Department of Defense announced that Abd al-Rahim al-Nashiri had been charged under the Military Commissions Act of 2009 with, *inter alia*, ‘murder in violation of the law of war’, and ‘terrorism’ on the basis of his alleged 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,
- E. whereas the case of Abd al-Rahim al-Nashiri, a Saudi national, will be the first to be tried before a military commission since President Obama ordered the resumption of such trials, whereas no date has yet been set for his trial by military commission, and whereas the prosecution has recommended that the death penalty be an option at the trial, although this must be approved in advance by the ‘convening authority’ for the military commissions, an official appointed by the US Secretary of Defense,
- F. whereas the current convening authority has indicated that he is prepared to receive written submissions on the death penalty issue until 30 June 2011 and that he will make his decision after that,
- G. whereas the European Union is strongly committed to working towards securing moratoriums on the application of the death penalty by third countries, in the first instance, and the eventual abolition of the death penalty everywhere, and is striving to achieve universal acceptance of this principle,
- H. whereas international human rights law recognises that some countries retain the death penalty, but prohibits the imposition and carrying-out of a death sentence on the basis of a trial that has not met the highest standards of fairness,
- I. whereas it has already voiced its criticism and called on the US to review the military commissions system, as it fails to meet international standards regarding fair trials,
- J. whereas in 2007 the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms called on the US to abolish the military commissions, and whereas in 2009 the UN Special Rapporteur on extrajudicial, summary or arbitrary executions urged the US not to conduct any capital prosecutions before military commissions,
- K. 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,

- L. 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 fight against terrorism, few people have been brought to justice in this connection, either in the US or in the EU,
1. Notes the close transatlantic relationship based on shared core values and respect for basic, universal and non-negotiable human rights, such as the right to a fair trial and the ban on arbitrary detention; welcomes the close transatlantic cooperation on a wide range of international human rights issues;
2. Reiterates its indignation and outrage at all mass terrorist attacks, and its solidarity with the victims of such attacks and its sympathy for the pain and suffering of their families, friends and relatives; reiterates, however, that the fight against terrorism cannot be waged at the expense of established basic shared values, such as respect for human rights and the rule of law;
3. 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 the abolition of the death penalty contributes to the enhancement of human dignity and the progressive development of human rights;
4. Calls on the US authorities not to impose the death penalty on Abd al-Rahim al-Nashiri, and calls on the High Representative, Catherine Ashton, the Council Presidency, the Commission and the Member States to raise the issue as a matter of urgency with the US authorities and to make strong representations to the US in an effort to ensure that Abd al-Rahim al-Nashiri is not executed;
5. Reiterates its call to the US authorities to review the military commissions system to ensure fair trials, to close Guantánamo, to prohibit in any circumstances the use of torture, ill-treatment, incommunicado detention, indefinite detention without trial and enforced disappearances, and reminds the EU institutions and Member States of their duty not to collaborate in, or cover up, such acts prohibited by international, European and national law;
6. Views with regret the US President's decision of 7 March 2011 to sign the executive order on detention and the revocation of the ban on military tribunals; is convinced that normal criminal trials under civilian jurisdiction are the best way to resolve the status of Guantánamo detainees; insists that Mr al-Nashiri, and all other detainees in US custody, should be charged promptly and tried in accordance with international standards of the rule of law or else released; emphasises, in this context, that the same standards concerning fair trials should apply to all, without discrimination;
7. Calls on the EU and Member States authorities, as well as the US authorities, to ensure that full, fair, effective, independent and impartial inquiries and investigations are carried out into human rights violations and crimes under international, European and national law, and to bring to justice those responsible, including in the framework of the CIA extraordinary renditions and secret prisons programme;
8. Welcomes the fact that a number of Member States have accepted Guantánamo detainees

for resettlement, and calls on more Member States to cooperate with the US Government to this effect;

9. 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 Vice-President of the Commission/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.