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REPORT ON GUANTANAMO BAY
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Introduction

This report is proposing, as a continuation of the reports presented respectively in Washington in July 2005 and in Brussels in July 2006, during sessions of the OSCE Parliamentary Assembly, to take stock of the situation of the detainees of the US Guantanamo Bay base. Like the earlier reports, it has been established from critical examination coming from many sources: official reports from the US Administration; information coming from the media; reports from intergovernmental organisations; reports from non-governmental organisations; information provided by lawyers acting for certain detainees, and so on. It is also based on official talks, both at the State Department (DoS) and at the Defence Department (DoD) before and after the visit to the Guantanamo Bay Detention Facility on 20 June 2007, and on the information collected at the time of the visit. It should be remembered that a first visit to the facility had been authorised and carried out in March 2006. As at the time of the previous visit, no private conversations with the detainees were allowed.

An initial observation is required: since July 2006, the situation has developed significantly both at the political level (the Democrats currently have a majority in the House of Representatives and in the Senate) and at the legal level. If calls for the closure of the Guantanamo Bay camp have multiplied in recent years, emanating from Heads of States, Heads of Governments, and many international and non-governmental organisations, the closure debate is now widespread within the United States, including at the highest level.

One will remember that President George W. Bush, facing international and internal pressure, stated on several occasions in 2006 that he wanted to close the camp and to bring the detainees to court. At the time, he asserted that he was ceaselessly asking countries whose nationals were in the camp to repatriate those who were not to be tried by "*Military Commissions*". He also put on record that many countries were refusing to repatriate their nationals, and that others were not providing sufficient insurance guaranteeing that these people would be well-treated, maintained in detention or at least strictly controlled, or that they would take no further part in terrorist activities.

Today, the candidates for his succession are raising the problem and have stated their positions. Thus, Hillary Rodham Clinton, Barack Obama, John Edwards and Christopher J. Dodd, candidates for the Democrat Party nomination, have unequivocally come down in favour of closure. Diane Feinstein, a Democrat Senator, brought a bill before the Senate on April 30th last year asking for the centre to be closed. This bill was sponsored by the Democrat candidates referred to above, and by the Democrat Senators Edward M. Kennedy and Sheldon Whitehouse. On the Republican side, the unanimity in favour of keeping the

centre has crumbled. Thus, Senator John McCain, candidate for the Republican Party nomination, has decided in favour of closure and the transfer of certain detainees to Fort Leavenworth (Kansas) in the United States. On the other hand, Rudolph W. Giulani, the former Mayor of New York, has come to no conclusion on the question, while Mitt Romney has declared himself to be in favour of extending the Guantanamo Bay Detention Facility.

Robert Gates, the current Defence Secretary, asked in March 2007 for the closure of the camp and the transfer of the detainees to United States territory while specifying that certain detainees should never be released. More recently, the ex-Secretary of State, Colin Powell, who in 2004 was still defending the treatment in force in Guantanamo Bay, has called for the closure of the prison as soon as possible, believing that it had become *"a major problem for the US in the eyes of the world"*. In fact, as we mentioned in our previous reports, Guantanamo Bay remains a focal point for anti-US grievances in the world and is tarnishing the United States' image, in friendly countries as well.

This observation seems to fail to convince a number of Republican leaders, who believe that the facility should remain operational for as long as the "war against terrorism" has not been won. They especially emphasise the fact that it would be dangerous for the security of US citizens to transfer "the United States' worst enemies" on to their territory, into high-security military prisons, such as for example, Fort Leavenworth (Kansas), Kentucky's Fort Knox, Marine Body Bases Camp Lejeune (North Carolina) or Lackland Air Force Bases (Texas). On the one hand, because they could avail themselves there of the US laws and the rights that would be conferred on them, *habeas corpus* in particular. And on the other, because, in the event of release, they would be immediately on the spot for indulging in new terrorist activities. This thesis is widely contested by the Democrats who, on the contrary, believe that such transfer is the only solution for bringing about, in the short run, the closure of the Guantanamo Bay Detention Facility, which remains the butt of ceaseless international criticism.

During a hearing devoted to Guantanamo Bay, organised by the U.S. Helsinki Commission (one of the rare House of Representatives/Senate Joint Commissions) on June 21st last year, its presidents, Congressman Alcee L. Hastings and Benjamin L. Cardin, as well as the leader of the Democrat Group in the House of Representatives, Steny H. Hoyer, all voted in favour of closure. Your Rapporteuse was invited to testify before this Commission.

This report incorporates all of these elements. It consists of four sections. Section I is devoted to the trend of the Guantanamo Bay detainee numbers. Section II will evoke, without going into detail, the file's current legal complexities. Section III will analyse the data collected at the time of the visit of 20 June 2007 relating to the development of the detention conditions and the interrogation techniques. Lastly, Section IV will be devoted to the follow-up of the conclusions and recommendations made in our previous report.

Section I. Detainee Numbers Trend

1. Compared to our last visit, the number of detainees has considerably diminished. There currently remain, according to the information given by the detention centre's authorities, roughly 380 detainees.

Many detainees have, indeed, already been released or transferred to their countries of origin or to other destinations. In July 2006, Chinese detainees belonging to the Turkish-speaking and Moslem minority of Ouïgours, coming from the Xinjiang Province, were released and transferred to Albania, where they obtained political asylum, rather than to China. About fifteen Ouïgours are probably still being held in Guantanamo Bay. Some Bahrainis have also been released. In August 2006, a detainee of Turkish extraction was released and transferred to Germany, where he was born. In September 2006, eight Kuwaiti detainees were released and transferred to their country. According to the Pentagon, in September 2006, a total of 320 detainees had been released and transferred to 26 different countries. In October 2006, a Bahraini, an Iranian and two Pakistanis were transferred to their respective countries. At the same time, the US Authorities returned ten or so detainees of Moroccan nationality to Morocco. Five detained Moroccans had already been released in August 2004. This transfer movement accelerated in 2007. Thus in February 2007, seven detainees were transferred to Saudi Arabia. At the time of our visit, 25 detainees were waiting to be transferred. Shortly thereafter, two Tunisian detainees were transferred to their country of origin where they would stand trial.

2. According to the US Authorities, some 385 detainees have thus been released or transferred to their countries of origin or to other countries since the opening of the detention centre at the beginning of 2002. Some of these transfers were the subject of long and tough negotiations with the countries of origin or reception. Some of these negotiations are still ongoing, in particular with Mauritania, Yemen, Saudi Arabia and Afghanistan, these last two countries being engaged in a "political reconciliation process" which should, at least theoretically, facilitate the transfer of their nationals who are still being held at Guantanamo Bay. Our US contacts emphasised the fact that all transfers were the subject of meticulous examination on a case-by-case basis.

As we have already indicated, the US Authorities are reaffirming their concern of not transferring detainees to countries that do not respect basic human rights or that practise inhuman or degrading treatment. Such was the case, mentioned above, of the Ouïgours detainees transferred to Albania rather than China, which, however claimed their extradition, asserting that they were terrorists of Chinese extraction. The US Authorities also emphasise the fact that they demand guarantees from the receiving countries so that the detainees suspected of belonging to a terrorist organisation are subjected to legal measures. The fear remains, indeed, of their being released for want of tangible evidence and of seeing them rejoining the *Jihad* to fight against the United States and their allies, in Iraq, in Afghanistan or elsewhere. According to our contacts in the Pentagon, 29 released and transferred detainees have indeed returned to the fight. The detention centre's second-in-command confirmed this situation to us during a briefing.

3. Whilst the transfers pose many problems, a new element has however arisen since September 2006.

Indeed, in September 2006, 14 detainees held by the CIA in places kept secret were transferred to Guantanamo Bay awaiting trail by "*Military Commissions*". According to the Pentagon, these are particularly dangerous individuals for the security of the United States. Identified by the CIA, their names have been made public. It is a question of:

- Khalid Cheikh Mohammed: born in Kuwait into a family of Pakistani extraction, he was arrested in Pakistan on 01 March 2003. The Al-Qaeda Number Three, he is regarded as the supposed "brain" behind the attacks of September 11. He is also suspected of being at the origin of the planned "Bojinka" terrorist attack in Asia in the Nineties and was on the FBI's most wanted terrorists list;

- Riduan Isamuddin, called Hambali: arrested on 14 August 2003 in Thailand, this Indonesian is suspected of being the Al-Qaeda representative in Southeast Asia and the "brain" of the regional terrorist network, *Jamaah Islamyah*. He was wanted by the Indonesian security forces in connection with the Bali attack of 12 October 2002, and with the one against the Djakarta Marriott Hotel on 05 August 2003;

- Abou Zoubeida: arrested on 28 March 2002 in Pakistan, this Palestinian, who grew up in Saudi Arabia, was a close accomplice of Bin Laden. According to the US Authorities, he ran one of the training camps in Afghanistan;

- Ramzi ben al-Shaiba: arrested on 11 September 2002 in Pakistan, this Yemeni was a member of the Hamburg (Germany) cell and is regarded as one of the supposed co-ordinators of the attacks of September 11. He is thought to have been involved in thwarted attacks against US airline companies;

- Moustapha Ahmae al-Hawsawi: suspected of having played a key part in the financing of the attacks of September 11 and in the transmission of information to Khalid Sheik Mohammed and to the other participants;

- Lillie, alias Mohammed Nazir Ben Lep: this Malaysian was one of Hambali's assistants and is thought to have been involved in the attack on the Djarkarta Marriott Hotel in 2003;

- Walid ben Attash, alias Khallad: arrested in 2003, this Yemeni is thought to have taken part in the attack on the US naval vessel USS Cole in October 2000 (17 dead). He is also suspected of having taken part in the attacks of September 11 and of having planned an attack against the US Consulate in Karachi, Pakistan;

- Majid Khan: this Pakistani who had lived with his family in Baltimore in the United States before returning to his country of origin in 2002, is suspected of having prepared attacks against US service stations;

- Abdel Rahim al-Nachiri: arrested at the end of October 2002 in the United Arab Emirates, this Saudi is suspected of being responsible for the Al-Qaeda operations in the Gulf. He is in particular thought to have organised attacks against the US embassies in Kenya and in Tanzania in August 1998 (224 dead) and the one against the USS Cole in October 2000;

- Abou Faraj al-Libi: arrested in 2005, he is suspected of being an agent of Bin Laden in Libya;

- Zubair: this Malaysian is suspected of being member of the terrorist network *Jamaah Islamiyah* and of having acted alongside Hambali. He is thought be the author of a planned attack in Los Angeles, which did not in fact come about;

- Ahmed Khalfan Ghailani: arrested on 25 July 2004 in Pakistan, this Tanzanian is suspected of having taken an active part in anti-US attacks in Kenya and Tanzania;

- Gouled Hassan Dourad: this Somali was a member of a network based in Mogadishu and linked to Al-Qaeda;

- Ali Abd al-Aziz Ali: nephew of Khaled Sheik Mohammed and cousin of Ramzi Youssef, one of the "brains" of the attacks on the World Trade Centre in 1993, he was suspected of preparing an attack against the US consulate in Karachi at the time of his arrest.

These 14 detainees have been brought before a *Combatant Status Review Tribunal* (CSRT) that has examined their "*Enemy Combatant*" status. The hearings proceeded in camera and the Pentagon published their findings after blue-pencilling them for security reasons.

More recently, in April 2007, the Pentagon has announced the transfer to the Guantanamo Bay Detention Facility of an Iraqi member of Al-Qaeda, Abd al Hadi Al-Iraqi, a close accomplice of Usama Bin Laden, who spent about fifteen years in Afghanistan and who is thought to have been in direct liaison with the principal leaders of the terrorist organisation, such as Ayman al-Zawahiri, Khalid Sheik Mohammed, Abu Faraj al-Libi, Hamza Rabi'a and Abd al-Rahman al-Mujair. The party in question is thought to be one of the most senior Al-Qaeda terrorists, a member of its military Commission, who would have supervised many actions and the paramilitary training of militants, before 11 September 2001. The circumstances of his arrest are not known.

Shortly after our visit, it was confirmed to us that a Somali and a Kenyan, both suspected of being Al-Qaeda members, had been transferred to Guantanamo Bay.

4. These transfers to Guantanamo Bay of incontestably dangerous individuals demonstrate the Executive's manifest will to congregate there the terrorists responsible for the most significant actions against the security of the United States and captured in various theatres of operation. Under these conditions, we note that the profile and the average dangerousness of the detainees are changing. The transfers of detainees of less importance

and the arrival of these new profiles clearly demonstrate the underlying will to confirm the utility of one or more detention centres of this kind.

5. When announcing these transfers, President Bush recognised for the first time that certain suspects had been lengthily held and interrogated by the CIA abroad. According to him, the interrogation of detainees in secret by the CIA has enabled the lives of many people in the United States and throughout the world to be saved He also mentioned that the Pentagon had published a new manual (*Army Field Manual 2-22.3*) in September 2006, which defines the methods of treating and interrogating detainees. He furthermore declared that the CIA's interrogation programme constituted an *"essential tool in the war against terrorism"*. Indeed, the captured terrorists know the workings of the networks. They are, in theory, aware of the places where the *jihadists* are to be found as well as their attack plans. According to President Bush, this intelligence could not be found anywhere else, and the security of the United States depends on its being obtained. Those people are purported to provide a better idea of Al-Qaeda's structure, funding, communications and logistics.

6. One can wonder about the way in which the confessions were obtained by the CIA's interrogators. On this subject, many human rights organisations, lawyers (mostly US) of certain detainees, and US personalities have denounced methods that are connected with torture, such the exposure to extreme temperatures, "*water-boarding*" (simulated drowning), forced positions and nudity, etc.

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It should also be remembered that the US Authorities have always denied that the interrogation techniques, including those described as "aggressive", were comparable to torture. They have asserted that these techniques had been subject of considerable questioning for five years because of their "inappropriate" nature or, even more so, because of the abuses and exactions identified at Abou Graib for which US soldiers have been prosecuted and convicted.

Thus, for the first time since the opening of the detention camp in 2002, it contains dangerous or alleged *jihadists* such as those who have been just transferred to it. It has been the consistent view of the United States Administration that there were very dangerous people at Guantanamo Bay before 2006. This situation had been denounced by many human rights organisations and by the lawyers of certain detainees. It should be remembered that the "*Combatant Status Review Tribunals*" ("CSRTs") had however confirmed the "*Enemy Combatant*" status of 393 detainees who seem not to have had access to the documents (mostly "classified") justifying the continuation of that status.

7. The number of releases or transfers since 2002 indeed demonstrates that many individuals were sent to Guantanamo Bay under, to say the least, debatable conditions. Very recently, Professor Mark Denbeaux, of Seton University Hall, confirmed that which many observers had already pointed out, namely that 5% of the detainees had been captured by the US forces in Afghanistan and that the majority of the other detainees had been captured or delivered by the Northern Alliance in Afghanistan or by the Pakistani Secret Service in return for "*bounties"*[1]. On this subject, it should be noted that the NGO *Amnesty International* is currently conducting a very active campaign in Europe in favour of the release of a Sudanese cameraman of Qatari Al Jazira television channel, arrested by the Pakistanis security forces at

[1] Capitol Hill Hearing, Panel I of a hearing of the Senate Committee on Armed Forces, 26 April 2007.

the Afghan border in December 2001 and handed over to the American army in January 2002. The interested party was transferred to Guantanamo Bay forthwith. We would recall that at the time of our previous visit in March 2006, General Jay Hood, at the time the commander of the detention centre, had declared that the number of particularly dangerous detainees did not exceed 80. It is furthermore today a figure of the same order that is quoted for detainees likely to stand trial before the new "*Military Commissions*" set up after Congress had passed the "*2006 Military Commissions Act*".

Section II. The "*2006 Military Commissions Act*" And Its Consequences

1. In the legal field, the situation seems clearer today but in fact, the imbroglio remains. The tug-of-war between the Supreme Court of the United States and the Executive, which is persisting in its will to have a number of detainees tried by "*Military Commissions*" while asserting its will to transfer other detainees to their countries of origin or to other destinations as soon as possible, is far from over. The extra-judicial logic introduced by the Bush Administration for trying terrorism suspects continues to be called into question on all sides. We should remember on this point that we are in the logic of military rather than a civil court. Moreover, as the political situation has changed as a result of the latest legislative elections, the relations between the Administration and Congress are complicated. Although Iraq still has top priority in the political debate today, the question of Guantanamo Bay continues, as we have underlined above, to be the subject of frequent new developments and to be the talk of the town.

2. We would recall that on 30 December 2005, the US President had signed the "*Detainee Treatment Act*", which was adopted by the Senate and by the House of Representatives. This Act, because of an amendment put forward by the Republican Senator Graham, removed all jurisdiction from the Federal Courts for reviewing the situation of the detainees of Guantanamo Bay, contrary to the decision of the Supreme Court, which had found in June 2004 in the *Rasul v Bush* case that it was recognised that detainees had the right to ask the US Courts to rule on the legality of their detention (right of recourse known as *habeas corpus*). By this amendment, the United States Government had given itself the right to hold the detainees of Guantanamo Bay indefinitely. In fact, the *habeas* review was replaced with review in the DC Circuit of CSRT determinations. At the time, the "*Detainee Treatment Act*" had been adopted in the parliamentary committees on the nod.

At the beginning of January 2006, on the basis of this new Act, the US Administration addressed a motion to the courts seized of the *habeas corpus* cases in progress, requiring of them that any recourse tabled in favour of the detainees be definitively rejected. The *Centre for Constitutional Rights and Justice* (C3RJ), organisation member of the *International Human Rights Federation* (FIDH), which represents many detainees, asserted forthwith that any hope of justice was, under these conditions, denied and that this situation constituted a flagrant violation of the United States Constitution.

At the time, President Bush had also asked Congress to adopt a bill intended to clarify the rules applicable to members of the US personnel specialising in the war against terrorism by drawing up "*a list of the precise, recognizable acts that would be regarded as crimes in terms of the War Crimes Act*". It should specify that those who applied these rules were fulfilling the obligations of the United States in accordance with the common Article 3 of the

Geneva Conventions, which prohibits "*outrages upon personal dignity",* in particular *humiliating and degrading treatment"*[2]. Moreover, he had asked Congress indeed to specify that captured terrorists could not use the Geneva Conventions as legal grounds for prosecuting US personnel before the US Courts.

3. In its decision returned on 29 June 2006 on the subject of the action brought by a detainee, Salim Ahmed Hamdan, the Supreme Court held that Article 3 of the Geneva Conventions applied to "*Enemy Combatants*". In the same decision, the Court invalidated the system of "*Military Commissions*" set up by the Defence Department (DoD) under President Bush's "*Executive Order*" of 13 November 2001[3]. The Court held that these commissions were unconstitutional for want of authorisation by Congress and for lack of conformity with the military Code of Justice that regulates in particular the organisation of the courts martial on US territory.

Following that decision, President Bush submitted a bill to Congress in September 2006 that would authorise "*Military Commissions*" to try people suspected of being terrorists and which would clarify the rules governing the methods used by US interrogators for the purpose of obtaining intelligence from detainees on terrorist groups. It should be remembered that in 2002, President Bush had declared that the members of Al-Qaeda and the other detainees suspected of terrorism captured at the time of the war in Afghanistan were "*Enemy Combatants*" who could not benefit from the protection of the Geneva Conventions.

On 06 September 2006, the Pentagon issued a directive that the US army was to respect Article 3 of the Geneva Conventions, which prohibits torture. The directive in question was to apply to detainees placed under the responsibility of the Pentagon and therefore did not cover detainees interrogated by CIA agents in secret prisons abroad.

4. On 29 September 2006, the Senate of the United States thus adopted, by 65 votes to 34, the bill laying down the rules for the interrogation and trial of foreigners suspected of terrorism. The legislative enactment, which the House of Representatives had passed on the previous day by 253 votes to 168, was promulgated by the President on October 17th. This "*Act on military commissions and the treatment of detainees*" ("*2006 Military Commissions Act*") is, as we have mentioned earlier, the consequence of the invalidation by the Supreme Court of a previous mechanism for trying detainees.

The detractors of this Act assert that it legalises a barely watered-down version of the methods used by the United States after the terrorist attacks of 11 September 2001. It allows, indeed, the indefinite detention of any person described this time as an "*Unlawful Enemy Combatant*". This designation, registered for the first time in a piece of legislation, includes any person of foreign nationality who "*materially and intentionally*" supports "*terrorist groups*" with arms, money or other forms of assistance. Once detained, these people will have

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[2] Article 3 stipulates clearly that which is and remains prohibited, in any time and place:

(a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(c) Outrages upon personal dignity, in particular, humiliating and degrading treatment;

(d) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

[3] The Presidential Directive was enshrined in the 2001 Patriot Act.

no legal remedy based on the legislation applicable to the United States for appealing the validity of their detention, even if they have not been charged.

It creates military tribunals called "*Military Commissions*" for the purpose of trying foreign "*Unlawful Enemy Combatants*" suspected of being terrorists, detained to date at Guantanamo Bay beyond any legal framework. The composition of the military tribunals is detailed in the piece of legislation. A military lawyer is assigned to the defence of any person accused of criminal acts, and the latter will also have the right to call upon the services of a civil lawyer.

The Act stipulates that military prosecutors will have the right to use, in certain circumstances, evidence obtained under constraint or by hearsay in order to convict foreigners. US terrorist suspects, on the other hand, will continue to appear before federal courts, where all the rights of defence are guaranteed. But the Act also stipulates that if the defendant claims that a statement has been made under constraint, it could not be allowed as evidence unless the judge determines that it "would be in the interest of justice and equity this information to be introduced". The legislation prohibits the "*Military Commissions*" from using testimonies obtained by interrogation techniques comprising "*cruel, unusual or inhuman treatment or punishment*". But its retroactivity is set at 30 December 2005, and "confessions" obtained before that date can therefore be used in evidence. This clause thus juridically protects CIA agents who had used methods comparable to torture before that date, and consequently, the managers who had approved them. 30 December 2005 is the date on which President Bush promulgated a budgetary extension for the DoD that included a provision, known under the name of the McCain Amendment, concerning the rules to be followed with regard to the treatment of detainees.

Whilst the Act prohibits in future "*cruel or inhuman treatment*", defined as "*torture*", and techniques inflicting "*serious physical or mental pain*", it however allows the use of confessions obtained by a certain form of coercion. In fact, it leaves the President room for manoeuvre for deciding the techniques that US investigators can legally use in their interrogations[4]. Provisions that seem manifestly intended to protect CIA investigators from prosecution for war crimes.

Furthermore, the piece of legislation also prohibits the detainees from appealing their detention, a clause considered to be contrary to the Constitution by the Democrats and by certain Republicans. A limited appeal against the judgement remains however possible, to the special group set up to scrutinise the judgements of the "Military Commissions", then to a Federal Civil Court in Washington D.C., and finally to the Supreme Court, but it can relate only to the conformity of the procedure followed. The only concession granted to detainees in exchange: they would have the right to have access to certain documents retained against them in so far as those documents present no national security risk.

All the Republican Senators, with a single exception, voted for this Act, as did 12 of the 44 Democrat Senators. Several of those who voted for, however, expressed the wish that the Supreme Court should invalidate the more contestable clauses of this piece of legislation at a later date.

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[4] The piece of legislation authorises the President to give an interpretation to the provisions of the Geneva Conventions authorising the use of interrogation techniques described as "*lesser*", namely those ranging between "*cruelty*" and "*minor abuses*".

It should be remembered that the latter rejected, on 02 April 2007, the appeal of dozens of detainees who were demanding the right to seize a federal court in order to contest their detention without charge. Whereas a majority of four judges was necessary for the Court to be seized of those cases, only three judges had expressed their will to examine the merits of those appeals. Two other judges believed that it was too early for the Court to recognise its jurisdiction, the detainees not having exhausted the internal appeals, while admitting that if the procedures were to be further delayed, the court should act quickly to ensure that neither the function nor the rationale of the recourse of *habeas corpus* were discredited. At the time of writing, the US authorities are intending to arraign 60 to 80 detainees before the "Military Commissions" and to return approximately 85 other detainees to their countries of origin. The Supreme Court's decision therefore related to all the other detainees, consequently offered the prospect of unlimited detention without charge.

Two months earlier, on 20 February 2007, the Federal Court of Appeal of Washington had rejected the applications presented in the name of the detainees seeking to guarantee them the recourse of *habeas corpus*.

Remember that in 2004, by 5 votes to 4, the Supreme Court had declared that the supposed terrorists should be able to contest their detention. The US Government had then set up a procedure for "*reviewing the enemy combatant status*". The detainees, denouncing that administrative procedure where they appeared without legal representation, had lodged new appeals that had culminated in the aforementioned decision of February.

5. On Friday, 30 March 2007, a first detainee, the Australian David Hicks, after pleading guilty, was sentenced to nine months of imprisonment by a "Military Commission". It was the very first conviction by a military tribunal. Under the auspices of a detainee exchange agreement between the United States and Australia, David Hicks will serve his time in a prison in the town of his birth, Adelaide. The party concerned had spent more than five years in the Guantanamo Bay Detention Facility. The agreement reached between David Hicks and the US military prosecutors stipulates that the Australian will not have the right to speak to the Press for one year and that he will have to refund all of his royalties to the Australian government if he decides to write a book on his lengthy detention in Guantanamo Bay.

A second detainee, Omar Khadr, the only Canadian detainee in Guantanamo Bay, captured in 2002 in Afghanistan at the age of 15, now 20 years old, appeared on 24 April 2007 before another "Military Commission". The party concerned, a minor at the time of the facts with which he is reproached, namely the assassination of a US military male nurse in Afghanistan, plotting, material support for terrorism and espionage, was sentenced to life imprisonment. On 04 June, a military judge declared the charges brought against Omar Khadr non-admissible, because he had been declared an "*Enemy Combatant*" by a military jury at Guantanamo Bay a few years earlier and that only "*Unlawful Enemy Combatants*" could be tried by a "Military Commission" under the terms of the new Act on military tribunals, signed in 2006 by the US President. A colonel who was leading the military defence asserted furthermore that none of the detainees had been declared an "*Unlawful Enemy Combatant*" and that, consequently, the system should be reviewed.

The military judge's decision referred to above did not entail Omar Khadr's release. The Pentagon saw it as a purely "technical" question, easy to resolve, and not a precedent that threatened the "Military Commissions" system. But the judge's decision however gave

renewed hope to the defence counsels and the human rights organisations, who or which believe that Omar Khadr and the other detainees should stand trial before ordinary US courts.

Another military judge has ordered that the only other detainee of Guantanamo Bay currently accused of a crime, the Yemeni Salim Ahmed Hamdan, accused of having been Usama Bin Laden's driver and bodyguard, "did not pertain to this court" under the new legislation.

These decisions constitute a reverse for the Pentagon, which was hoping to accelerate the treatment of the Guantanamo Bay cases.

6. It seems that, according to the information published by the *New York Times* on Thursday April 26th, the US Authorities were intending to limit the intervention of the hundreds of lawyers who were defending the detainees, believing that the civil lawyers' visits were causing "*major problems and threats for the camp's security*". An application in this sense had been lodged, according to the American daily newspaper, before the United States Court of Appeal, seeking to replace the current provisions, introduced in 2004, governing the intervention of lawyers on the Guantanamo Bay base. This application would seek to reduce the number of visits that a lawyer could make to his or her client, whereas the current rules do not limit the number of authorised visits. Still concerning these visits, a lawyer who wanted to assume the defence of a detainee would now have only one interview at his or her disposal. Military lawyers and intelligence agents could also have access to the e-mails sent by the lawyers to their clients. Until now, according to the US daily newspaper, these messages had been "*inspected*" without being read. The new measures would enable the government's representatives to prevent the lawyers from having access to the evidence used by the "Military Commissions" to determine whether or not detainees were "*Unlawful Enemy Combatants*".

Many lawyers have denounced this application and have accused the government of wanting to make Guantanamo Bay a "*legal black hole*" once again. The U.S. Authorities withdrew this request prior to oral argument in this case.

Within the framework of the current system, the prosecutors are expecting, as indicated above, to arraign at least 80 detainees of Guantanamo Bay. It is not excluded that new legal obstacles will come to disturb the workings of the "Military Commissions". In this respect, we should remember that there is a general principle of law contained in Article 6 of the European Human Rights Convention according to which a detainee has the right to stand trial "within a reasonable period of time". The fact that a large number of detainees have been there for four or five years constitutes a manifest overrun of any such reasonable period of time.

In any event, as we have pointed out above, it is a question of an internal choice based on the logic of a military court. The quality of the legal arguments of the supporters and opponents alike must be measured in the light of this choice. It still remains that the problem of the closure of the detention centre has become, as we mentioned in the introduction, one of the great subjects of political debate in the United States.

Section III. Contested Detention Conditions And Interrogation Techniques

1. Many human rights organisations continue to denounce interrogations techniques comparable to torture, despite the official denials. They believe, indeed, that the blur surrounding these techniques authorises every abuse, such as sleep deprivation or exposure to extreme temperatures. For *Human Rights Watch*, for example, the piece of legislation mentioned above "*rewrites essential parts of the Geneva Conventions and removes the detainees' most fundamental right, that of being heard*".

It should be remembered that the detainees' lawyers protested in July 2006 against the US authorities' desire to examine all documents in the detainees' possession, including those protected by the confidentiality of client/lawyer exchanges. This measure followed upon the suicide of three detainees, a Yemeni and two Saudis, on 10 June 2006. According to the US authorities, it was a question of determining whether they had been helped and whether other suicides were in the pipeline. It was thus that the documents in the detainees' possession (personal notes, family letters, and legal documents) were seized. Only the documents of the three detainees who committed suicide and of eleven other detainees were read and translated. It was observed that the detainees had used the paper meant for the exchanges with their lawyers for the purpose of communicating between themselves.

On the basis of this observation, the US authorities applied to the court, at the beginning of July 2006, for authorisation to study all the documents, filing for that purpose the same application in each of the dozens of cases brought before the federal justice system by detainees contesting their detention. The application related to detainees as a whole, all together, according to the lawyers, in a "*guilty by association*" theory, without any element being provided to show any particular detainee's complicity in the suicides. It should be recalled that the commander of the detention camp at that time, Rear Admiral Harry Harris Jr., had described these suicides as "*acts of despair"* and as *"asymmetrical acts of war directed against the United States*". His remarks had caused lively protests on the part of the lawyers and many human rights organisations.

In any event, and despite the drastic surveillance measures taken to avoid new suicides, a Saudi detainee, named Abdoul-Rahman bin Ma' ada bin Dhafer al Aameri, put an end to his days in his cell on 30 May 2007. This suicide was the fourth recorded among the detainees since the opening of the detention camp in January 2002.

In April 2007, there were 13 hunger strikers in Guantanamo. This strike had started in January or February and continued intermittently, with the detainees on hunger strike being fed against their will by the use of probes. According to a military spokesman, the forced feeding was not intended to break the hunger strike. It was a question of a medical procedure for the purpose of generating the necessary heat for sustaining good health. According to the same spokesman, that hunger strike movement "seems to have coincided with the significant number of media come to cover the trial of David Hicks, named "the Australian Taliban", which took place at the end of March 2007. "*As soon as the media left, the number of hunger strikers sharply fell*", he added, also specifying that "*the hunger strike is a tactic taught in the Al-Qaeda training manual*".

At the end of January 2007, a detainee of Bahraini extraction had explained to his lawyer why a score of detainees of Camp 6 had gone on hunger strike in order to protest against the living conditions in this new high-security quarter opened in December 2006.

It should be recalled that hunger strikes in Guantanamo Bay are recurrent. The first took place in the spring of 2002, and the movement particularly developed during the summer of 2005, reaching a peak of 131 strikers in September 2005. A few months later, there were still 84 of them, and in May 2006, the number of strikers increased to 89. As we mentioned in our previous report, the strikers were fed by a thin gastric probe, yellow in colour, as used in the majority of hospitals, which is gradually inserted into a nostril until the end reached the stomach, to which mashed potatoes were then directed under pressure. The army medical officers considered this technique to be "safe", but it was painfully and humiliatingly applied, according to the detainees' lawyers. Certain ex-detainees claim that this forced feeding had caused major lesions and haemorrhages, which was contested by the army medical officers at the time of their visits to the medical centre. This has been enlarged and is completely adapted to the provision of care under the best conditions, and its team of psychiatrists has been strengthened since our last visit.

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2. The Camps 5 and 6 that we visited are two modern buildings that comprise nothing but isolation cells. They have been built on the model of the US medium-security prisons and endowed with the most sophisticated surveillance equipment. The construction of Camp 6, completed in December 2006 and currently comprising 168 cells, cost 37 million dollars (or 28 million euros). Camps 5 and 6 have been built to receive the most dangerous detainees, those coming from the CIA's secret prisons in particular. They have been adapted to ensure maximum security. The central part of the buildings comprises, as in the US prisons, metal table and chair units secured between themselves. Only the guards use this central part. At the time of our visit, many water bottles intended for the detainees were stored on the tables. Security grills and cameras were visible everywhere. In Camp 5, the Imam's cell is clearly identified by a panel bearing his photograph and the wording "Imam", which enables him to direct the prayers in a regular fashion from his cell.

In Camp 6, visitors are shown a typical cell, of approximately three by four metres. The rectangular cells have no windows giving access to daylight. They have neon lighting. At night, according to the explanations with which we were provided, the light is changed to night-light. The doors are equipped with glazed apertures down to the ground, unlike Camp 5, where the glazed apertures go halfway down. The cells are equipped with a mattress placed on a concrete base and a low-frame steel basin and a WC. The detainees have some "objects of comfort" (toothbrush, toothpaste, linen, etc) and a Koran. They are locked up for 22 hours out of 24. Five wire-fenced areas of more or less 20m² are available for the detainees for the two hours of "recreation" envisaged by the camp's regulations.

The guards, unarmed when in direct contact with the detainees, wear a safety vest intended to ward off possible knife thrusts or attacks by blunt objects, rubber gloves, neck protections and at times surgical masks.

According to the detainees' lawyers, the light is permanently on in those high-security quarters. Some claim that the guards intentionally slam the doors and offer the library trolley at any time of the day or night in order to deprive the detainees of their sleep. Moreover, they assert that the temperatures in the isolation cells can undergo profound variations in both

directions. Furthermore, according to the lawyers, the detainees of a particular quarter report that their guards come to speak to them at their prayer time and take their refusal to answer as insubordination justifying the intervention of a "reaction team" tasked to put an end to it by force.

As conversations with detainees were not allowed, it was impossible for us to check these allegations. Some lawyers also assert that the heads of the unsubmissive are shaven and their beards cut by force, which the officers in charge of the camp deny. We cannot confirm these allegations. The officers emphasise, furthermore, the attention paid to detainee relations. For this purpose, a team of specialists (a "*Behavioural Science Consultation Team*") has been set up. This is responsible for ensuring in particular that no exaction is committed against the detainees by the guards, who, in addition, receive specific training according to the tasks that are assigned to them.

3. An *Amnesty International* report published at the beginning of April 2007 has denounced the above Camp 6, because the detainees are kept in isolation there, under even harder conditions than in the maximum-security prisons in the United States, whereas according to the NGO in question, the allocations seem more related to the places available than to the detainees' behaviour. The officers in charge of the camp have formally denied these allegations.

However, it would seem, according to various sources, that certain detainees are carrying out a permanent "guerrilla war" against their guards, despite the Draconian security measures. This supposedly results in sprays of "bodily fluids" (saliva, faeces, sperm, urine, blood coming from the haemorrhoids, vomit) on the guards. An intense "pounding", according to the officers in charge of the detention camp, who scrupulously accounted for more than 432 "sprays of bodily fluids" between July 2005 and August 2006. We were unable to obtain any information on more recent incidents.

6. There is something that deserves to be said. Between our two visits (March 2006 and June 2007) to the detention camp, the tension has increased. The hunger strikes have multiplied as well as the verbal and physical aggression against the guards. This tension intensified after the suicides of three detainees in June 2006. Since then, the fact of making a successful attempt on ones own life is the subject of a tenacious fight between the detainees and the military authorities. Hitherto, the guards had always succeeded in preventing suicides, fearing the impact of detainee deaths in the Moslem world. For that, various tactics had been used: multiplication of the patrols, forced feeding of the hunger strikers, and the reading out of passages of the Koran condemning suicide.

On 16 May 2006, a riot erupted in Camp 4. According to the testimonies reported in the press, the detainees laid an ambush for the guards. After covering the floor of their barrack room with excrement and simulating a suicide to attract the guards, they attacked them with makeshift weapons[5] until the soldiers opened fire with rubber bullets and deployed smoke grenades. According to the officers, it was at the time of the search of the barrack rooms and the examination of the Korans placed at the disposal of the prisoners that the most serious confrontations had occurred.

[5] These were shown to us at the time of the briefing prior to our visit to the various camps.

. We should remember that Camp 4 is the least strict quarter, where detainees wearing white, regarded as "co-operative", were living in ten-strong barrack rooms and circulating freely within the enclosure where the wire fences were covered with a green synthetic fabric. Following these confrontations, which, still according to the official version, caused major damage to the infrastructures, Camp 4 had been temporarily closed and the detainees transferred to other camps.

We noted that Camp 4 was open again but that the number of detainees per barrack room had been reduced to five. Cameras were visible everywhere. Posters in particular reproducing Article 3 of the Geneva Conventions and the camp's Standing Regulations had been put up, as well as photocopies of anodyne articles coming from the press of certain Moslem countries. A classroom for teaching the language or for learning to read had been arranged. It comprised metal tables fixed to the ground and plastic chairs. Securing rings equipped with straps for restraining the detainees' feet were visible on the floor. This classroom, in which there was a small screen, also served as a cinema room. According to the camp authorities, nearly 300 films, mostly old documentaries or sports movies, were available for the detainees. Carefully selected books and magazines were regularly offered to the detainees. Potting trays have been placed at the detainees' disposal for growing their own vegetables. At the time of our visit to Camp 4, we did not notice any particular reaction from the detainees.

The May 2006 riot enabled the degree of solidarity between the detainees to be measured and also those who resisted the pressure of the self-proclaimed "leaders" to be identified. However, it seems, according to our sources, that many prisoners are still under the thumb of a "political leader".

7. On the other hand, according to the comments of the Islamic advisor whom we had already encountered at the time of our first visit, the tension was now lower. Hope seems to have sprung up again since the transfer of many detainees and the visit by a Saudi delegation. The agitators are now only a minority and most of them have been identified. He however recognised the existence of a "covert leadership" that exerted social pressure on all of the detainees. When the leaders organised actions, they were neutralised and sent to Camp Echo camp, but others soon replaced them. One should point out that the Islamic advisor in question teaches one or two expressions in Arabic to the guards each day in order to enable them to identify certain messages coming from the detainees. The latter communicate between themselves from one camp to another. According to him, at night when all is calm, the voices of the prisoners can easily be heard from camp to camp. We were able to check at the time of our visit to Camps 5 and 6 that the detainees inveigh against the guards and communicate between themselves.

In addition to the prospect of a possible transfer, the climate in certain camps seems to have changed because the detainees have perceived real improvements in their everyday lives: organisation of language lessons, learning to read, film shows and the display of news (see above). However, the social pressure remains strong and few detainees dare to oppose the instructions given by the "leaders".

8. The Chaplain whom we met, who, he told us, took care of the spiritual and mental health of the guards and of all those who were in charge of the interrogations, had no contact with the detainees. He organised the religious services, Catholic and Protestant alike. He believed that he played a part in stress management because he was often in the front line

ahead of the stress management unit. If he detected unusual or depressive behaviour among the guards, he would immediately report it. To the question of knowing whether he were sometimes confronted with aggression in certain guards who drew pleasure from their relation of power over the detainees, he answered that situations of that kind were rare but that if he detected any such behaviour, it was his duty to report it to the hierarchy forthwith.

The officer in charge of the guards pointed out that each guard could be identified by the detainees by means of the number sewn on to his uniform and that any complaint emanating from a detainee was duly investigated. Daily briefings were organised to remind the guards, in particular with newcomers, that they had to comply with a number of rules.

9. We must once again note that the Guantanamo Bay Detention Facility continues to provoke a considerable number of questions and reactions. We have, in our previous report, responded to questions on the quality of the intelligence collected from the detainees, and on their degree of dangerousness. With regard to this latter point, the fact that a large number of detainees have been released or transferred clearly shows that many of them were in Guantanamo Bay almost by chance because of their suspect frequentations or because they were in the wrong place at the wrong time.

On the other hand, the detainees who had just been transferred to the detention centre from the CIA's secret prisons were incontestably men who were directly involved in terrorist operations or at least suspected of belonging to the Al-Qaeda movement. The majority of them had probably already delivered important information and should, if the legal imbroglio were to be unravelled, stand trial before the "Military Commissions" in the near future.

One can however wonder once again whether Guantanamo Bay is primarily a detention centre or a site for intelligence gathering. One has, indeed, the feeling that uncertainty remains among the officers of the Southern Command of the Army (SOUTHCOM), even if the detention centre authorities continue to assert that the intelligence obtained from the detainees has enabled many lives to be saved and better knowledge to be acquired of the workings of the Al-Qaeda-related terrorist groups. Currently, nearly 115 detainees are thought to be interrogated on a regular basis. It is thought that intelligence useful for the military operations in progress in Afghanistan is being gathered. According to the manager of the centre's information services, certain Afghan detainees were still giving information on the complicated topography of particular places in Afghanistan. We are not able to confirm or deny what he said. We can base ourselves only on the official sources available. It is however proven that the majority of the prisoners now only undergo a few interrogations per annum and one can consequently wonder about the quality of the intelligence obtained after three or four years of detention.

10. We stressed in our previous report certain deficiencies in the gathering and sharing of the intelligence. We would recall the lack of co-ordination between the various intelligence agencies, even rivalry between them, as well as the withholding of classified information from foreign intelligence services. This situation generates negative consequences, since each agency does not necessarily know the intelligence acquired by the others, or even – worse still – involuntarily provides important clues to the detainees about what is already known about them.

According to our sources, the DoD readily shares its intelligence with other services, whereas the CIA, for example, keeps the most important intelligence to itself. This confusion

is also expressed in the fact that the analysts issue decidedly unequal reports, with neither standardisation nor supervision of the written results, and that these could not be regarded as "finished products" from the intelligence point of view. Stemming from the interrogations, many these reports would be read by only a few people, or even not at all. Moreover, it should be remembered that the initiatives to create a centralised database were only taken two years after the establishment of the detention centre, with the result that much of the intelligence was only belatedly to be found in it.

At the time of our visit in March 2006, we noted that the level of the people in charge of the interrogations was very variable. Most of them were reservists or people working under fixed-term contracts. A person had hardly mastered the subject or a language spoken by the detainees than he or she was already replaced, a situation that creates instability that certain detainees could turn to their advantage. This instability is hardly propitious for the creation of a climate of trust with the interrogators and does not encourage the detainees to co-operate, as they are fully aware that they will have someone else in front of them in a few months' time. We drew attention to this personnel rotation problem in our previous report.

It would seem that most of the contracting parties, male or female, at Guantanamo Bay are *strategic debriefers*, trained to obtain information from defectors or from co-operative detainees – seldom the profile of certain alleged terrorists belonging to the Al-Qaeda movement. However, carrying out an interrogation is no impromptu affair: years of experience are required. According to our sources, with a few exceptions, most of the interrogators sent to Guantanamo Bay do not have those skills. Moreover, increasingly young interrogators are currently there who have only basic knowledge of the complex Al-Qaeda movement. After the reading a couple of books on the subject, they receive four weeks of training at the Pentagon in conducting interrogations, then disembark at Guantanamo Bay, equipped with no other qualifications. Faced with such interlocutors, who often show themselves to be too vague, certain detainees (in particular Saudis), who already despise the Americans, feel that they have the upper hand. To that is added the fact that many interrogators start from the principle that the detainees will never co-operate and therefore feel, psychologically, that they have lost in advance.

It is difficult to check these assertions as the interrogators are bound by professional secrecy. According to our sources, they are however reliable. In any event, they stimulate essential reflection, as we mentioned in our previous report, on enhanced co-ordination between the intelligence services and the sharing of intelligence necessary for the fight against international terrorism.

Section IV. Conclusions and Recommendations

A. Conclusions

1. We note that the current US Administration is continuing to favour the military option in the fight against terrorism. As we indicated in our previous report, its entire legal argumentation rests on this term of "war" and generally contrasts with the European approach and with that of the majority of the OSCE participating States, which criminalize terrorism and favour the normal criminal procedures. In the US perspective, the procedures envisaged by the "*2006 Military Commissions Act"* therefore enshrine an implacable logic even though they are contested by many human rights organisations and by the detainees' lawyers. However, we note that the American legal world has regained some power. From now on, the legal issues are clearly on the table: no-one can envisage, at this stage, whether the "Military Commissions" will function normally within the framework of the aforementioned Act or whether new legal developments are to be expected. The latest development dates from last 29 June, when the Supreme Court declared itself ready to examine the application of prisoners of Guantanamo Bay who believe that they have the right to contest their detention before federal judges. It should be remembered that in April 2007, this same Court had refused to consider those detainees' applications. The judges let it be known that they would hear two appeals during the next session, which will begin next October. The situation is thus far from being completely clarified;

2. We note that the US Administration has taken account of the idea formulated in Recommendation 10 of our previous report, namely that an international committee of legal experts should thoroughly reflect on a possible development of international law with regard to the general question of the "new categories of combatant" and the recent trend of international terrorism;

3. We also note that the internal political debate in the United States on the question of the closure of the Guantanamo Bay Distinction Facility has intensified and that political developments on the subject are to be expected;

4. It seems today obvious to us that with the transfer, even the release of many detainees, and the arrival of individuals with an undeniably more dangerous profile, the prison is changing its status, the more so as considerable financial means have been invested in the construction of a high-security camp (Camp 6) and the imminent conversion of new infrastructures intended for the "Military Commissions". It should however be stressed that the budget for these infrastructures, the construction of which is on the drawingboard, has been reduced by the Secretary of State for Defence, Robert Gates;

5. We note however that the transfer of detainees who are no longer dangerous is at the heart of the concerns of the US leaders; that efforts in this sense are deployed by the State Department and the DoD, efforts that often encounter refusal from the countries that have nationals in Guantanamo Bay, either because they do not want to assume their responsibilities, or more often, because they believe that the conditions imposed on them by the US Administration are too heavy in the light of their own legislation, particularly in the humanitarian field. Many of these countries are incapable of controlling the ex-detainees' movements and do not have sufficiently secure penitentiary infrastructures to guarantee that the latter will not return to the combat;

6. One of the recommendations of the July 2006 report of suggested to the OSCE participating States that still had nationals in Guantanamo Bay that they should negotiate the transfer of their nationals, or possibly receive non-nationals on their territory, possibly with the assistance of qualified international organisations (ICRC, etc). Your Rapporteuse has taken the initiative of sending letters in this sense, including ones to the OSCE non-participating States, but which have nationals in Guantanamo Bay. With regard to the reception of nationals, the answers are generally of similar vein. In the majority of cases, they are favourable and confirm that negotiations or transfers are in hand. These negotiations are sometimes difficult. Thus, China has demanded on several occasions that detainees of Chinese extraction be repatriated and has deplored the fact that the United States have transferred some of its nationals to Albania. Other countries, such as Bahrain or Kuwait, are disposed to assume their responsibilities and confirm that negotiations are in hand with the US Authorities. Algeria, subject to an agreement on the practicalities of the transfers, has given its assent. Still other countries, such as Yemen, are demanding that the United States provide the evidence and information relating to the culpability of the prisoners but is ready to make the necessary gestures in order that their nationals be repatriated. The same applies to Kazakhstan, which wishes to receive its nationals with the proviso that they have not been found guilty of terrorist activities. With regard to the letter relating to the reception of non-national detainees, the replies received were extremely variable. They were often of a diplomatic nature. Thus, the Member States of the European Union gave adverse opinions invoking legal or political reasons. Other countries evoked their lack of means, particularly in terms of surveillance. On the other hand, Albania, which has already received detainees of Chinese extraction, has recently let it be known that it will favourably examine the possibility of receiving other non-national detainees on its territory, insofar as its limited capacities allow. The transfer of detainees who are no longer regarded as "*Enemy Combatants*" is important because keeping them in Guantanamo Bay is likely to accentuate their radicalism and therefore their possible recruitment by Islamist networks. The hypothesis of placing them under the responsibility of an international organisation that would agree to negotiate their reception in third countries could be rapidly explored. A transferable detainee who would taken in hand by each Member State of the European Union would be tantamount to settling the problem of the 25 detainees on standby.

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B. Recommendations

Your Rapporteuse:

1. Notes that despite international pressure and the view expressed by many Heads of State and Heads of Government, the Guantanamo Bay Detention Facility is still operational;

2. Takes note that the question of its closure is the subject of important debates in the United States between Democrats and Republicans and that the candidates for the presidential elections of 2008 have made up their minds on this problem;

3. Takes note that the number of detainees is constantly reducing because of transfers to their countries of origin or to third countries and that negotiations between the United States and the countries that have nationals in Guantanamo Bay are ongoing;

4. Notes that a number of supposedly dangerous detainees have been transferred to Guantanamo Bay from the CIA's secret prisons, for the purpose of standing trial there by "Military Commissions";

5. Notes that the said "Military Commissions" were set up after the vote for the "*Military Commissions Act*" (MCA) in September 2006 by the legislative power of the United States, but that their workings are still encountering many objections of a legal nature;

6. Recommends that the US Authorities should do all that they can to ensure that the detainees' rights to a fair trail are preserved, within the framework of the aforementioned Act;

7. Notes, after her visit to the Guantanamo Bay Detention Facility, that the US Authorities are henceforth treating detainees consistently with Common Article 3 of the Geneva Conventions, as well as all applicable U.S. law, including the prohibitions on torture and cruel, inhuman of degrading treatment, and are assuring them, in fact, a status equivalent to that of "prisoners of war";.

8. Recommends that the US Authorities should take special care that detainees on the verge of being transferred or released way can escape the pressure, even the control, of the most radical detainee groups;

9. Recommends that the US Authorities should honour their commitments with regard to the elementary guarantees envisaged by international humanitarian law;

10. Recommends that the OSCE participating States that still have nationals in the Guantanamo Bay Detention Facility should redouble their efforts so that the latter are transferred as soon as possible on to their own soil in order possibly to stand trial there if it appears that they might be guilty of terrorist activities;

11. Suggests that efforts be redoubled by facilitating contacts between the US Authorities and certain international organisations that could, within the framework of their competences, play a part in the transfer of certain detainees; a small team of international experts approved by the US Authorities could be involved in the transfer modalities;

12. Recommends that the US Authorities should do their utmost to facilitate the declassification of relevant information in the fight against terrorism and undertake to share useful information with the OSCE participating States;

13. Recommends once again the creation of an international commission of legal experts tasked to reflect on a possible development of international law with regard to the general question of "new categories of combatants" and of the recent trend of international terrorism; this international commission should ask itself whether additional instruments are necessary in future in order to counter or prevent these new threats to international peace and security, including the international status of the

detainees of these new asymmetrical conflicts, considering the legal blur and the current practices;

14. In consequence of the foregoing, exhorts the US Authorities to do their utmost to ensure that the Guantanamo Bay Detention Facility, which is continuing to harm the democratic reputation of the United States, be closed and that the detainees be transferred without delay.

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