ORIGINAL: FRENCH
30 June 2006

REPORT ON GUANTANAMO BAY
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Introduction

This report is proposing, as an extension of the one addressed to the President of the OSCE Parliamentary Assembly at the time of the Washington session in July 2005, to take stock of the situation in the Guantanamo Bay Detention Facility and to make new recommendations. It has been established from critical examination emerging from many sources: official reports from the U.S. 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 United States State Department and Defence Department, as well as on the data collected at the time of the visit to the Guantanamo Bay Detention Facility in March 2006.

Since July 2005, the Guantanamo Bay Detention Facility has incessantly been at the centre of the concerns not only of human rights organisations, but also of institutions such as the European Parliament[1] and the European Commission. On 27 February 2006, a report on the situation of the people held in Guantanamo Bay, prepared by five independent experts, was submitted to the Human Rights Commission of the United Nations.

The U.S. Administration has been called upon to answer criticisms emanating from these various organisations. Following a court decision on 23 January 2006, the US Ministry of Defence was constrained in March 2006 to publish interrogation reports, plus a list of 558 names. A new list of 759 names was published on 17 May 2006.

This report is not revisiting the objections of a legal nature that have been widely discussed in many documents. In Section I, it presents the observations and comments relating to the detention conditions, the interrogation techniques, the quality of the information obtained, and the medical follow-up of detainees, which stem from the visit to Guantanamo Bay by an OSCE Parliamentary Assembly delegation in March 2006. The allegations of human rights violations and torture advanced by the aforementioned organisations and by lawyers acting for certain detainees, as well as the U.S. Administration's arguments, have each time been taken into account. Section II presents the conclusions and the recommendations.

[1] On 16 February 2006, the European Parliament called on the US Administration to close the Guantanamo Bay detention facility and insisted that every prisoner should be treated in accordance with international humanitarian law and tried without delay in a fair and public hearing by a competent, independent, impartial tribunal. On 13 June 2006, a new resolution was voted calling on the US to close Guantanamo Bay.

I. ASSESSMENT OF THE VISIT TO THE GUANTANAMO BAY DETENTION FACILITY: OBSERVATIONS AND COMMENTS

The one-day visit to the facility, solicited for nearly a year, took place in March 2006. It was preceded by talks at the State Department and at the Ministry of Defence. At Guantanamo Bay, the delegation was able to have talks with officers of every rank, guards, doctors and nursing staff, kitchen staff and an Islamic advisor, and also with the interrogators themselves. The conditions of the visit precluded any private talks with detainees. The delegation also had access to a number of documents concerning the management of the facility, the infrastructures, and certain detainee files.

A. Detention Conditions

After the exactions noted in detention centres in Afghanistan and Iraq, strict measures have been taken to avoid such acts in Guantanamo Bay. General Jay Hood, the Detention Facility's Commanding Officer at the time of the visit, declared that he was taking particular care to avoid such acts. To this end, he has set up a Joint Task Force Standardisation Team, which is acting as an internal audit at all levels (interrogation, security, medicine, kitchen, etc).

Visits to various internment camps were instructive in more ways than one. According to the experts accompanying the OSCE Parliamentary Assembly delegation, who had visited Guantanamo Bay on several occasions, the current detention conditions have nothing in common with those of the X-Ray Camp that had been set up in a largely makeshift manner in 2002. They are today closer to those of "traditional" American prisons.

According to the information gathered at the time of the visit, the facility was holding 490 detainees. As the X-Ray Camp was closed, there are currently five distinct detention blocks in Camp Delta, named Camps 1, 2, 3, 4 and 5, plus a Camp called Echo. An additional building called Camp 6 is under construction in Camp Delta. Camp 1 contains 42% of the detainees; Camps 2 and 3 respectively 1% and 2% of the detainees; Camp 4 has 39% of the detainees and Camp 5 contains 16% of the detainees considered to be the most dangerous.

Made of steel, the detention blocks can accommodate 48 detainees in individual cells, separated by thick, tightly-meshed wire fencing, and with better protection from the sun than in the initially open camp in 2002. The cells have a minimum of conveniences (running water and toilets). An arrow painted on the ground indicates the direction of Mecca. Each detainee receives a copy of the Koran in his own language, a prayer mat, a *misbah*, some sheets, some soap, and dress that included sandals. The call to prayer is broadcast five times per day in the camp by means of loudspeakers and is followed by periods of prayer by all of the detainees.

During prayer time, yellow cones are placed in the camp's corridors to remind the guards to carry out their tasks in silence and not to disturb the detainees' prayer.

The delegation had a long meeting with the detention facility's Islamic advisor. He contended that he had many contacts with the detainees. He also organises training sessions for the members of the military personnel with the aim of initiating them into the Moslem

culture. In fact, he seems to serve as an interface between the detainees and the facility's Commanding Officer.

The detainees receive and send mail on a regular basis. In 2005, the number of letters sent and received (by post or via the ICRC) amounted to 18,580. All letters are subject to military censure, which has been a matter of complaint for detainees and their lawyers. The latter have denounced the fact that certain letters did not reach their recipients, or only after considerable delay.

Delta Camp 4 visited by the OSCE Parliamentary Assembly delegation, whose wire fencing is covered by a green synthetic fabric, contains the rooms of ten detainees who are circulating freely. These, dressed in white, are talking to each other and seemed to be concerned with their own occupations. They had been selected by the interrogators or by the guards as they had shown themselves to be co-operative. Playgrounds (mini-soccer, volleyball) were arranged in the centre of the camp. Camp 5 came across as a permanent, star-shaped structure.

The detainees receive *halal* meals three times per day. The menus offered choices according to taste (vegetarian) and according to any possible detainee medical needs. On certain days, supplements are envisaged for the detainees of Camp 4.

Generally, the security measures are exceptionally pronounced. They are hardly different from the standards in force in the American prison system. The guards (male or female, with very many of the latter) apply the security instructions to the letter.

Contrary to what occurs in the American prison system, where the guards are encouraged to get to know the prisoners better, in Guantanamo Bay, verbal contact with detainees is prohibited. Exchanges are purely utility, often based on gestures. According to statements of the people in charge of the camp, the male and female guards are insulted on a daily basis. Detainees in orange dress are transported in chains from their cells to the interrogation centres by soldiers using small carriages.

B. Medical facilities and health follow-up policy of detainees

The hospital for detainees is fitted, like all military hospitals, with modern, good-quality medical equipment. It has about twenty beds (possibly about thirty, according to need). The care dispensed to the detainees, including dental care, is the same, according to the army medical officers that were questioned, as that enjoyed by the soldiers on the base.

Certain allegations from detainees and detainee lawyers testify to the slow application of medical and dental care and contend that certain detainees had been deprived of such care for punitive and/or coercive reasons. The delegation was unable to check these allegations.

At the request of the OSCE Parliamentary Assembly delegation, additional information was received concerning the detainees' medical practices and diseases. This information showed that nearly 500 detainees had had 2,500 medical contacts per month, and that access to the facility's medical services was possible 24 hours a day and seven days a week.

Concerning the pathologies. Since 2002, there had been 275 surgical operations, primarily orthopaedic, linked to combat wounds. Common or garden surgical operations had been carried out, such as appendectomies, cures of groin and umbilical hernias, tonsillectomies and haemorrhoid treatments. There is monitoring of chronic pathologies, such as: hypertension, gastro-intestinal disorders, diabetes, coronary artery diseases and cardiac decompensations. Regular monitoring is carried out concerning ocular diseases and dental care. All the necessary diagnostic examinations had been carried out, even as far as the use of CT Scanners.

With regard to mental disorders, a more specialist service regularly monitors 8% of the incarcerated population. 18% of this population has been, at a given moment, diagnosed as having mood disorders. In comparison, 20% of the United States prison population suffers from mood disorders. 12% of the detainees of Guantanamo Bay have developed anxiety disorders and nearly 17% psychotic disorders, which is distinctly higher than the American prison population (of which more or less 6% suffer from psychotic disorders). Personality disorders have been noted among 35% of the detainees, which is also high.

This medical report indirectly shows the important impact of prolonged detention on the detainees' mental health.

The main medication used in the hospital for detainees is as follows:

- Antidepressants, anxiolytics and sedatives such as Amitriptyline;
- Benzodiazepines such as Clotiazepam;
- Proton pump inhibitors (Omeprazole);
- Anti-inflammatory non-steroids, such as Ibuprofen, Meloxicam (Mobic), Naproxen (Naprosyn);
- Antihistamines (Loratadine);
- 2nd level pain killers such as Cyclohexane (Tramadol);
- Antipsychotics (molecules used, not mentioned).

The hospital's pharmacy is entirely comparable, in stocks and in products alike, to that of a normal, small-scale hospital.

According to information coming from lawyers of the *Constitutional Law Centre* (CLC), an organisation which is at the origin of most of the litigation concerning detention without trial , a hunger strike in alternation has been observed since July 2005 by dozens of detainees (210 according to the lawyers, 200 according to the Pentagon) as a sign of protest against their unlimited detention and the non-observance of the Geneva Conventions.

Conforming with the practice enforced in American prisons, the detainees are actually fed by drip or by mouth if their condition requires it. Certain sources indicate that the hunger strikers are attached to their beds. Others that the guards leave them at least one free hand. The army prefers to talk of detainees being "fed involuntarily" rather than "fed by force".

According to information gathered in situ, a small number of detainees (three were hospitalised in March 2006) have been fed by force, i.e. by use of digestive probes inserted through the nose. This kind of probe, a specimen of which the delegation was able to procure, is identical to the one used in hospitals all over the world. According to US authorities, most of the strikers seem to have given up their action of their own free will. Certain members of

the medical staff confided to the delegation that the detainees thanked them for being fed, thus allowing them to escape a hunger strike that was imposed on them by their leaders.

On 06 October 2005, the spokesman of the Pentagon indicated that the lawyers' concerns "were exaggerated", the detainees striking on a rotation basis. It was confirmed to us, in March 2006, that no death as a consequence of this hunger strike had been recorded.

It should be mentioned that a team of the ICRC, which is not permanently present at Guantanamo Bay, pays a visit there every six weeks and that between those stays, short visits take place. It should be remembered that the members of the ICRC are the only people, except the lawyers, who have direct contact with the detainees.

Faced with this hunger strike, the ICRC had communicated its position to the American authorities in October 2005. The ICRC was opposed to any feeding by force, on the basis of the declarations of the World Medical Association (WMA) of Tokyo and Malta (1975 and 1991) specifying that doctors should not lend themselves to forced-feeding practices but should inform hunger strikers of the sometimes irreversible consequences of their action.

This practice was also denounced by the British weekly medical magazine, *The Lancet*, in a petition that was signed by 263 doctors practising in Great Britain, Ireland, the United States, Australia, Germany and Italy. This initiative followed upon testimonies of former detainees of Guantanamo Bay contending that they had been force-fed at the time of a hunger strike.

Beyond the hunger strike, it should be noted that this type of detention has confronted medicine with serious ethical problems. Until June 2004, according to human rights organisations such as the *Physicians for Human Rights* group, the doctors responsible for advising the interrogators in Guantanamo Bay had access to the detainees' medical files, which enabled them to be informed of any possible psychological faults and to exploit them.

Another aspect has been criticised: the use of teams of behavioural science advisers to design the interrogation techniques. A report by the medical doctor in charge of health policy in US jails recommended, at the beginning of July 2004, that the army should discontinue the practice of using doctors and psychiatrists for this purpose. Complaints for violation of medical ethics were lodged at the beginning of the summer of 2004 by several of the detainees' lawyers against the medical doctor of Guantanamo Bay , for tolerating a system in which carers withdrew medication from detainees if the latter were not sufficiently co-operative.

According to various sources, there could have been about forty attempted suicides in the camps since 2002. Certain detainees were suffering from behavioural disorders even before they were transferred to Guantanamo Bay. Others, under the effect of isolation, plus conditions of prolonged detention, combined with frequent interrogation, may have been driven to attempt suicide. Certain sources report that a dozen suicide attempts may have been ascribed to a single detainee, which somewhat obscures the use of these statistics.

At the time of the visit, none of these attempts had resulted in death. According to the lawyers of certain detainees, suicide attempts have been reclassified as "manipulative self-injury behaviour". On 18 May 2006, it is thought that four detainees had tried to commit suicide, while several others had attacked the warders who sought to intervene. On 10 June

2006, three detainees committed suicide. These first deaths in Guantanamo Bay stress that it is more urgent than ever to declassify the information related to the reasons of those detentions. Since the end of May 2006, several dozens of detainees have taken part in a new hunger strike.

C. Interrogation Techniques

As indicated in the previous report (July 2005), most of the criticisms relate both to the conditions of detention and to the methods of interrogation employed by the U.S. Army. Since 2002, these criticisms have been recurring. They are not coming only from human rights organisations. The previous report has already mentioned that the FBI, in its report of 10 May 2005, had expressed reservations about the interrogation techniques authorised by the Defence Secretary on 02 December 2002, and then redefined on 16 April 2003.

The U.S. Authorities have always denied that the interrogation techniques used to obtain information, including those described as "aggressive", were akin to torture. They have however recognised that a limited number of cases of abuse or ill-treatment had been noted and sanctioned. At this time, according to official sources, more than 100 American soldiers have been the subject of court martial proceedings and judgements. Some of these sentences have been heavy, others lighter (demotion or simple reprimand). According to American sources, no serious sanction has been handed down to soldiers on duty in Guantanamo Bay.

In the aftermath of the tragic events of 11/9, discussions took place in the United States in certain official circles and the press on the possible use of techniques that could be compared to certain forms of torture. The simple manifestation of these discussions, in the emotional climate of the time, insinuated the idea that torture was no longer completely taboo. These discussions have incontestably provoked negative reactions against the United States.

The U.S. Authorities emphasise the fact that their position with regard to torture is clear. It is governed not only by American criminal law, but also by the obligations contracted under the terms of treaties prohibiting torture[2]. However, the application of these obligations and even the definition of torture and other cruel, inhuman or degrading treatment or punishment in a situation of conflict were, in 2002 and 2003, the subject of the greatest confusion on the ground, accompanied by the vindictive public attitude of certain political leaders.

This question was at the heart of the debate that took place in the American Senate on 05 October 2005. On 15 December 2005, President Bush accepted the McCain amendment to the Defence Department's programming bill that prohibits cruel, inhuman or degrading treatment or punishment in the case of people held by the Defence Department and placed under the guard or control of the Government of the United States anywhere in the world, thus codifying the prohibition of such treatment and clarifying certain rules that were tending to cause confusion.

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[2] In particular the "Convention Against Torture And Other Cruel, Inhuman Or Degrading Treatment Or Punishment" of 10 December 1984 (coming into force on 26 June 1987).

Nevertheless, allegations of ill-treatment and torture of the detainees of the American prisons in Afghanistan, Iraq and in Guantanamo Bay are recurrent and are helping to propagate a negative view of the United States in the world. Certain particularly cruel images coming from the prison of Abou Ghraib, now closed, continue to be shown all over the world and nurture anti-American propaganda.

The report of the experts of the United Nations, submitted on 27 February 2006 to the Human Rights Commission in its Chapter III headed "Torture And Other Cruel, Inhuman Or Degrading Treatment Or Punishment", enlarges precisely on the fact that the treatment inflicted on the detainees of Guantanamo Bay approach the definition of torture such as appearing in the Geneva Conventions. It should be stressed that the experts' report was founded almost exclusively on discussions with former detainees (who are particularly to be found in the United Kingdom), on answers given by lawyers representing other detainees, on declassified information and on answers provided by the American Authorities.

On 10 March 2006, the government of the United States retorted point by point via a memorandum disputing the allegations of the United Nations experts, who had refused to go to the site because of the ban on private discussions with the detainees.

It should be noted that the allegations of ill-treatment and torture were generally based on a limited number of testimonies of former released or transferred detainees, whose same names repeatedly appear in the aforementioned reports, and on the testimonies of their lawyers. According to the experts, many of the remarks made by the detainees were not necessarily reliable. Once released, certain detainees tend, for political or venal reasons, to exaggerate possible acts of ill-treatment, for obvious reasons.

It is not furthermore always the case. Certain Afghan detainees have extolled the United States for the humane treatment that they received, for the care that was lavished on them, for the quality of the food and for the relative comfort of the cells equipped with electricity and running water. Recently, some released Yemenis have admitted to being treated humanely. Others, on the other hand, have denounced barbarian acts of torture

Generally, it should be noted that many testimonies agree and that the most aggressive interrogation techniques have caused debate even within the U.S. armed forces, as proven by the memorandum dated 18 June 2004 from Alberto J. Mora, General Counsel of the United States Navy[3].

Following such debate, Guantanamo Bay is now in the spotlight, and is frequently visited by American members of Parliament, journalists and lawyers.

It should also be remembered that the U.S. Authorities have always contended that many detainees have been specially trained to learn how to resist interrogation and systematically to accuse their guards of ill-treatment and torture.

[3] Revealed by the *New Yorker* on 27 February 2006

According to the statements of the interrogators whom we encountered, among the most aggressive authorised interrogation techniques (sensory and sleep deprivation, confiscation of elements of comfort, wearing of a hood, position of stress, total isolation for a prolonged period, etc) have been abandoned in favour of non-violent and non-coercive psychological techniques.

The delegation was able to witness an interrogation via a video link but was unable, in fact, to draw any conclusion from it: the detainee dressed in orange, rather passive, was seated and was able to eat and drink during the interrogation.

The people in charge of Guantanamo Bay contend that currently 125 detainees still have usable information and that 35 of them are regularly questioned. These interrogations are currently carried out by 32 people of both sexes, all of whom work under contract signed with the Pentagon. Each interrogator is accompanied by an interpreter and an analyst. The interrogators are Pentagon-trained. Some of theme have a solid knowledge of the detainees' culture and thought processes, understand or practise Arabic or other languages spoken by the detainees. In contact with the detainees, certain interrogators admit to having been able to develop their own knowledge.

D. Relevance of the Information Obtained and the Evidence Adduced in Support

To the question of knowing the quality of the information obtained after three or four years of detention, the answers were positive. According to interrogator statements, information was still coming from Afghanistan, from Iraq, or from intelligence services, which may in particular have enabled a terrorist network in Italy to be dismantled. This information sometimes mentions a detainee's name or alias. Sometimes it enables a detainee to be identified and his statements to be checked during the many interrogations to which he has been subjected since his arrival at Guantanamo Bay.

It should however be noted that, according to our sources, certain detainees (dressed in white) are now only rarely interrogated (once a year in certain cases). This could mean that they are waiting to be released or transferred or that they have relapsed into total dumbness.

The American Authorities emphasise the fact that the information gathered since 2002 by means of interrogation have led to a better understanding of how terrorist networks operate, the type of armament, the recruitment, and the ramifications. According to certain experts, Guantanamo Bay has not however enabled an exhaustive database on Al-Qaeda to be established.

The same applies to the evidence that was shown to the delegation. Some of this evidence was overwhelming (notebook with recipes for manufacturing explosive devices, detailed description of targets, false identity papers, counterfeit money, etc), other was weak (in particular the many watches of the Casio F-91W brand, known to be used by Al-Qaeda) and would not be enough to prove their guilt before a civil court, not to mention the problems linked with homonyms. Certain detainees claim, indeed, to have been captured by mistake, their name evoking that of a supposed Al-Qaeda member. Others proclaim their innocence even though they were, according to the U.S. Authorities, in a military operation zone at the time of their capture.

E. Degree of Detainee Dangerousness

According to the statements of the people in charge of the facility, a number of detainees (nearly seventy) are clearly particularly dangerous militants. If they were returned to freedom, they would join the Jihad to fight the United States and their allies. Out of approximately 270 transferred or released detainees, about fifteen individuals had been recaptured, after offending again and committing acts of terrorism. This justifies, according to the U.S. Authorities, the maintenance in detention of those who have clearly expressed their intention to resume the fight against the United States and their allies, if they were released. It was in particular the case, according to certain sources, of the Taliban members sent back to Afghanistan.

The delegation was apprised of seven files of detainees considered to be dangerous. Among those there were in particular an Al-Qaeda member, a training specialist for the manufacture of explosives; a member of an Afghan terrorist cell who had orchestrated an attack against a journalist, and Al-Qaeda members who had developed a prototype of an explosive device adapted to shoes to blow up aeroplanes, as well as a limpet mine for attacking ships.

More precise information on other detainees could not be obtained. It seems clear that certain detainees have been radicalised during their lengthy incarceration. Others, once released and bathed in glory because of their presence in Guantanamo Bay, had no choice but to join the Jihad, to avoid being considered as American collaborators by their social environment.

Only the military authorities are qualified to determine the degree of detainee dangerousness. Our interlocutors emphasised the fact that many detainees already had been released or transferred to their countries of origin, but that certain countries had refused their repatriation. The authorities fear above all that certain released detainees would join the networks to continue the fight against American forces.

It would seem that alternative solutions are on the drawingboard. All options are open but nobody is calling for the closure of the short-term facility. The State Department has stressed its will to reduce the number of detainees as rapidly as possible. President George W. Bush stated on 07 May 2006 that he personally wanted to close Guantanamo Bay and bring the detainees before the courts, without however mentioning either a closing timetable or his ways and means. During the EU-USA summit in Vienna on 21st June 2006, President Bush declared that he “would like to end Guantanamo” and that the United States wanted to send the detainees back to their home countries. He added that they would be either tried in local courts or in US courts.

According to official information, there are today nearly 460 detainees remaining in Guantanamo Bay (for recall, there were 490 in March 2006).

Following a petition from the American news agency, Associated Press (AP), a Federal judge, pursuant to the Freedom of Information Act *(*FOIA), ordered the U.S. government, on 23 January 2006, to reveal the identities of the detainees mentioned in the 558 hearings conducted in Guantanamo Bay. Following this decision, the Pentagon was constrained to publish 5,000 pages of interrogation reports. These documents revealed, for the first time, the names and nationalities of 317 detainees. Only the names of the officers taking

part in the hearings had been effaced. It should be recalled that nearly 900 detainees have stayed in the facility since its opening in 2002. This figure is approximate. Until March 2006, the Pentagon had never provided any list as such, neither of the individuals held in Guantanamo Bay, neither at the time nor previously, nor moreover of those who had been released. The Pentagon always held the view that secrecy had to be maintained to protect the detainee's life and to prevent his family from being subject to reprisals if he co-operated with the Americans.

In 2005, a federal judge had already ordered an investigation among the detainees. At the time, the people in charge had asked each one if he wanted his identity to be revealed to the AP: 317 detainees had received the questionnaire, 202 had not answered, 63 had answered in the affirmative, 17 had answered negatively and 35 had returned the form unanswered. The judge had ruled that the Pentagon's justifications lacked substance and that even the 17 detainees who had opposed it could not reasonably expect to remain anonymous when they had called upon the courts to challenge their detention.

Among the detainees still incarcerated in Guantanamo Bay, none had been convicted. Only ten of them, accused of plotting against the United States or of complicity, have been subjected to examination and designated to appear before a special military court, called a Military Committee. The first Military Committees were constantly interrupted by the lawyers' remedy at law and none reached their conclusion. The Supreme Court should without delay embark on an examination of the legality of those courts.

Since the Supreme Court's decision of 28 June 2004, many detainees have brought *habeas corpus* actions before the American civil courts. They regularly receive (three of four times a year) visits from their civil lawyers. The latter are usually accompanied by an interpreter. According to the statements of certain lawyers, the facility's interpreters translated badly, or worse, deformed the clients' remarks.

On 20 April 2006, the Pentagon published a list of 558 names of people who were or had been detained in Guantanamo Bay. A new list of 759 names was published on 17 May 2006. This new list contains the names, nationalities, identification numbers, dates and birthplaces of approximately 200 detainees whose status had not been examined because of their earlier transfer or release. An observation is called for: no known Al-Qaeda leader appears on this list, no leader of a known Islamic terrorist group or of the former Taliban regime, in power in Afghanistan until 2001. Among the 125 Afghans appearing on the list, some are identified only by a single name ("Hafizullah", "Nasibullah" or "Sharbat"). As there are many homonyms in Afghanistan and Pakistan, it is not excluded that a number of individuals may have been arrested by mistake or that they may have given false names. Various sources contend that certain detainees have been arrested then sold by the Pakistani secret services to the coalition forces. Few detainees had been captured with weapons in hand. Many of them were detained only because they were living in a house associated with the Taliban or because they were working for an organisation related to the Taliban regime.

According to the U.S. Authorities, the only way of knowing the names of certain detainees who usually had no papers at the time of their arrest is by interrogation. They admit that the list can be partially false but emphasis the fact that the interrogations have made it possible to obtain interesting information on the structures of Al-Qaeda, on its financing, recruitment and training mechanisms, and on the NGO's that lend it assistance.

It appears once again that the U.S. intelligence agencies could have obtained many more results if they had agreed to share the information more, and more quickly, with the intelligence agencies of the countries engaged in the fight against terrorism.

The previous report had already mentioned the fact that many countries had referred investigators to locations, under very informal conditions, for the interrogation their nationals. Thanks to the information thus obtained, investigations could be carried out and were able to lead to considerable results. But the co-operation between the foreign and American secret services remained too frequently deficient and even at times difficult. The information provided by the former was not always correctly used by the latter, if not neglected. One should once again emphasise the need for co-operation between the intelligence services and the police specialising in the fight against Islamic terrorism, the more so as it involves complex, mobile groups, with international ramifications.

If the Guantanamo Bay Detention Facility no longer constitutes a mine of information, the American Authorities implicitly admit that its true utility lies perhaps elsewhere. Indeed, the interrogations have enabled the provision of invaluable indications about Islamic extremism, on the roots of the hatred of America, and on the careers of candidate terrorists.

The Joint Task Force Guantanamo is to some extent a Defence Department laboratory for training interrogators and analysts in anti-terrorism techniques. After their passage in Guantanamo Bay, sources indicate that interrogator teams have gone to continue their work in Afghanistan and Iraq. The interrogation camp has thus morphed into a reconditioning camp for an army, which for too long has neglected the intelligence and patient learning of its enemy's customs and habits.

Be that as it may, the U.S. Authorities believe that the continued detention of a number of supposed terrorists in Guantanamo Bay is essential for preventing new attacks against the United States and their allies that are engaged in the "global war on terror".

II. CONCLUSIONS AND RECOMMENDATIONS

A. CONCLUSIONS

1. To understand the U.S. Administration's attitude in the Guantanamo Bay file, one must remember the importance of the 11/9 attacks against the territory of the United States. Since that date, the United States have considered themselves to be in a state of war against international terrorism. And the Executive's response is enshrined in history. One can discern in it the heritage of a 1798 act (*Enemy Alien Act*), which has never been repealed. At the time, this legislation gave the president the capacity to detain without an arrest warrant any "enemy alien" originating from a country at war with the United States. This legislation was applied during the two world wars and during the cold war. On each occasion, it should be remembered that the legal institutions, including the Supreme Court, confirmed the Executive's decisions. The Vietnam War constituted a turning point. And today, the American legal system has become much more critical. One just has to remember the Supreme Court's decision in 2004, which didn't share the Executive's opinion on the constitutionality of the detention of "enemy combatants" in Guantanamo Bay.

2. The expression “Global war on terror” poses a problem with many experts. It is used only by the United States and by a number of OSCE participating States. In countries that criminalize terrorism and discriminate in favour of criminal procedures, it is not. The military option, according to these criticisms, is excessive and is likely to confer greater legitimacy on Jihad terrorists than they already have. From which level of violence can one talk of war? In addition, war has a beginning and an end, and an identifiable enemy, whereas the “Global war on terror” is a long war, which is likely to extend over decades, as even the U.S. Authorities avow. That is the nub of the question. All legal argumentation of the U.S. Administration is reposed on this term of “war”.

3. On several occasions, our American interlocutors emphasised the *sui generis* nature of this war, which resembles neither a traditional conflict nor a police operation carried out with the use of armed forces. Terrorist organisations act from the territory of Sovereign states and are able to generate threats, which, up to now, concerned Nation States. Whether they are allowed or whether they impose themselves on the sovereign territory, it is impossible to dissuade these entities from acting, as they have nothing to lose and they conceal the origin of their attacks. Nor can one negotiate with them, since they are usually not looking for compromise with the adversary, but annihilation thereof.

4. While this observation is accepted, experts believe nevertheless that the terrorist threat must be put into perspective. Islamic terrorists certainly do constitute a danger, a nuisance, but they are not a real threat to our civilisation and our way of life as long as they have no weapons of mass destruction. It remains that Usama Bin Laden has become an emblematic figure of the Salafist Jihad world and that the Al-Qaeda label has became a referent in the whole world for the most radical Islamic elements. If the destruction of the Afghan sanctuary incontestably dealt a very hard blow to Usama Bin Laden and his accomplices, the Al-Qaeda-related networks were not eradicated as a result. The Jihad terrorists remained capable of conducting spectacular operations. The attacks of London, Madrid, Egypt, Bali, etc have shown that no country is truly safe, especially if the perpetrators of these attacks have no direct operational ties with Al-Qaeda but are inspired by its methods and by an ideology that is widespread in certain milieus.

5. The question that repeatedly arises concerns the status of the people captured at the time of armed operations in the context of the “global war against terrorism”. In this context, the presumed terrorists captured (qualified as “enemy combatants”) and detained in Guantanamo Bay are not considered by the U.S. Authorities as prisoners of war and therefore do not benefit from the protections of the Geneva Conventions of 1949. This situation has been widely denounced by the human rights organisations. The latter particularly emphasise the fact that the deprivation of liberty of prisoners of war and civilian prisoners for an indefinite period in order to be able to continue to interrogate them is incompatible with Clause 17 (3) of the 3rd Geneva Convention, and with Clause 31 of the 4th Geneva Convention.

6. In response to these criticisms, the U.S. Authorities have recalled that on many occasions the Geneva Conventions, drawn up shortly after the second world war and since then constantly refined, in particular by the two additional Protocols of 1977 and

2005[4], clearly stipulate that the following are to be considered as detainees of war: 1) Members of the armed forces of a Party to the conflict, as well as members of militias or volunteer corps forming part of such armed forces (2) Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfil the following conditions (a) that of being commanded by a person responsible for his subordinates;(b) that of having a fixed distinctive sign recognizable at a distance; (c) that of carrying arms openly; (d) that of conducting their operations in accordance with the laws and customs of war. The problem at the heart of the debate is therefore to know whether the Geneva Conventions and international humanitarian law apply to this new category when they concern the detention and the treatment of people who have been arrested at the time of an international armed conflict.

7. There is incontestably some legal haziness surrounding this question[5]. And one can legitimately wonder whether the Geneva Conventions apply to an international terrorist organisation such as Al-Qaeda. It is, indeed, difficult to sustain the notion that the members of this organisation are identified with a State. The Taliban could, at a stretch, be regarded as regular forces of a State, in this case Afghanistan until October 2001. But the Taliban regime had clearly established an active partnership with Al-Qaeda. On the other hand, the members of this organisation come from many countries and are, in addition, not easily identifiable because of the use of various names and false documents. Al-Qaeda is, indeed, a non-state organisation that has nothing to do with any national liberation movement. It is made up of cells, organised in fluid and mobile networks, without territorial bases, which are reconstituted as soon as they are dismantled. This organisation cannot therefore be regarded as being a Party to the Geneva Conventions. It does not recognise those conventions, nor does it respect the standards of conduct that they espouse. It carries out its operations in obvious violation of the laws and customs of war, in particular by targeting innocent civilians.

8. Under these conditions, the U.S. Authorities believe that they have the right to detain the supposed terrorists for the time necessary to shed light on their individual situations, in particular to find the proof that they are indeed associated with an international terrorist organisation and represent a permanent threat against the United States and their allies.

9. One thing appears evident. Since 11/9, international terrorism has taken on a new dimension with the emergence of international terrorist organisations of a military nature for which no precedent exists. Recruitment of the members of these organisations knows no borders. Their goals are often diffuse. They let fly at various types of targets, individual or collective, in many countries. Not traditional, their methods are capable of causing mass destruction. International law must adapt to this new situation and one should wonder whether additional instruments could be necessary in future for countering or preventing these new threats to international peace and security.

[4] The three additional Protocols were signed but not ratified by the United States.

[5] See the opinion of the Council of Europe's Commission of Venice of 17 December 2003 on the possible need for the Geneva Conventions to be developed.

10. If it appears that the Geneva Conventions do not apply in the case of "enemy combatants", international humanitarian law and human rights continue nevertheless to apply, which moreover is not disputed by the U.S. Authorities. The latter, as we have stressed above, refute the charges of torture and cruel or degrading treatment.

11. The U.S. Authorities contend that they want to transfer a large number of detainees to their countries of origin as soon as possible. Which poses a serious problem when these countries refuse to receive their nationals or, more seriously, when it is proven that torture is practised in their prisons. Six Chinese detainees pertaining to the Moslem minority of Ouïgours originating from the province of Xinjiang were thus released and transferred, under the terms of long negotiations, in Albania rather than in China where they were likely to be persecuted. According to our sources, negotiations are being conducted with other countries, in particular with Saudi Arabia, Bahrain, Kuwait and Turkey, in order to transfer to them some of their nationals who are still detained in Guantanamo Bay. Out of six detainees of Turkish nationality, five have been released but negotiations are still in progress for the transfer of the sixth, who is still considered as an "enemy combatant". On 18 May 2006, about fifteen Saudi detainees were indeed released and repatriated to Riyadh. A governmental representative in Kabul said very recently that the United States were about to extradite the 96 Afghan detainees from Guantanamo to Afghanistan where they would be judged.

12. An internal political debate is in progress at various levels, particularly between the State Department and the Pentagon. It seems obvious, according to comments received by the delegation, that members of these administrations are wondering today about the need for maintaining the detention facility and, even more, on its real effectiveness in the fight against terrorism. It should also be said that American public opinion too seems to be increasingly divided. A poll published on 11 May 2006 by the *Program on International Policy Attitudes* (PIPA) of the University of Maryland, showed that 63% of the respondents believed that the United States should change its treatment of the detainees in Guantanamo Bay in order to conform to the views of the UN Human Rights Commission. In the international community, more and more voices are being raised to demand the closure of Guantanamo Bay. Angela Merkel, Chancellor of the Federal Republic of Germany, as well as other European political leaders, have clearly expressed their views in this sense.

13. The Rapporteur has addressed a letter to the Defence Ministers of countries which have forces operating in the framework of the International Security Assistance force in Afghanistan (ISAF) in order to know the fate of any possible prisoners captured during military operations. Generally it appears from the answers obtained that most countries did not proceed to arrests and that other countries have handed over the detainees to the Afghan authorities. Some countries have a memorandum of understanding with the Afghan authorities ensuring that they will treat the detainees in accordance with the provisions of international law. According to our sources, the reality of the practice on the ground leads to prisoners being entrusted to the American forces The varied contents of the answers show *de facto* the uncomfortable nature of the legal situation. This also stresses the urgent need to co-ordinate procedures amongst NATO countries as well as with OSCE countries that are not members of

NATO but participate to ISAF. It is essential to set up a working group to avoid that differences in procedures lead to serious incidents.

B. RECOMMENDATIONS

Your Rapporteur:

1. Notes that the Guantanamo Bay Detention Facility is continuing seriously to harm the reputation of the United States, is helping to tarnish their image in the world and enabling their enemies to devalue the fight against terrorism by substantiating the idea that it is incompatible with the respect for the Rule of Law and for Human Rights;

2. Notes that the recommendations of the report of July 2005 have had their effect on the way in which the facility is functioning;

3. Notes, after her visit to Guantanamo Bay, that the U.S. Authorities are henceforth treating detainees as "protected people" within the meaning of CG III Clause 4, even if the status of prisoner of war is officially denied them;

4. Takes note of the publication of several detainee lists by the United States Ministry of Defence;

5. Recommends to the U.S. Authorities that they transfer a number of detainees towards their countries of origin as soon as possible by accelerating the negotiation of those transfers which sometimes encounter refusal that is prejudicial to detainees about to be released; also recommends to avoid sending detainees back to countries where they might be tortured or be exposed to cruel, inhuman and degrading treatments;

6. Suggests participating States (OSCE and NATO) which still have nationals detained in Guantanamo Bay to negotiate with US authorities in order to accelerate the transfer of their detainees and if necessary, to do so with the assistance of concerned international organizations;

7. Recommends to the U.S. Authorities that they clarify their commitments with regard to the elementary guarantees envisaged by international humanitarian law. Treating detainees in accordance with their rights is the best way of showing that the fight against terrorism does not contradict respect for human rights;

8. Recommends that the information obtained at Guantanamo Bay be the subject of evaluations and exchanges within a new International Task Force, composed of the intelligence and police services of the participating States, thus ensuring better co-operation in the fight against terrorism;

9. Recommends that the U.S. Authorities do their utmost to facilitate the declassification of relevant information in the fight against terrorism and commit themselves to sharing useful information with the OSCE States; this is all the more imperative as three detainees committed suicide on 10 June 2006.

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

11. Suggests that other international missions, amongst others from the OSCE, be welcomed to Guantanamo Bay within a broader framework in order to continue the work started by this report;

12. Calls on all the concerned countries to organize the transfer-flights quite legally and suggests to the OSCE participating States to start a dialogue with the United States and the European Union in order to assist some countries in the war on terrorism that have detaining facilities the security of which still has to be improved;

13. Takes note that the Supreme Court of the United States repudiated on June 29th the U.S. Administration's plan to put Guantanamo Bay detainees on trial before military commissions, ruling broadly that the commissions were unauthorized by federal statute and violated international law;

14. In consequence of the foregoing, recommends to the U.S. Authorities to announce as soon as possible the disbandment of the Guantanamo Bay Detention Facility by laying down in July 2006 already, an accurate and detailed timetable for the transfer of the detainees and for the organisation of the practical modalities of the closure. According to your rapporteur, it is realistic to have this timetable run from July 2006 until December 2007, at the latest.