Parliamentary Assembly
Assemblée parlementaire
https://pace.coe.int

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 1340 (2003)[1]

Rights of persons held in the custody of the United States in Afghanistan or Guantánamo Bay

Parliamentary Assembly

1. The Parliamentary Assembly:

1.1. notes that some time after the cessation of international armed conflict in Afghanistan, more than 600 combatants and non-combatants, including citizens from member states of the Council of Europe, may still be held in United States' military custody – some in the Afghan conflict area, others having been transported to the American facility in Guantánamo Bay (Cuba) and elsewhere, and that more individuals have been arrested in other jurisdictions and taken to these facilities;

1.2. notes that a number of children are being held in Guantánamo Bay, including a "handful" of children between 13 and 15 years of age transferred from the Bagram Air Base in 2003, and a 16-year old Canadian national transferred at the end of 2002;

1.3. believes that children should only be detained as a last resort and that they require special protection; that the continuing detention of these young people is a most flagrant breach of the United Nations Convention on the Rights of the Child.

2. The Assembly is deeply concerned at the conditions of detention of these persons, which it considers unacceptable as such, and it also believes that as their status is undefined, their detention is consequently unlawful.

3. The United States refuses to treat captured persons as prisoners of war; instead it designates them as "unlawful combatants" – a definition that is not contemplated by international law.

4. The United States also refuses to authorise the status of individual prisoners to be determined by a competent tribunal as provided for in Geneva Convention (III) relative to the Treatment of Prisoners of War, which renders their continued detention arbitrary.

5. The United States has failed to exercise its responsibility with regard to international law to inform those prisoners of their right to contact their own consular representatives or to allow detainees the right to legal counsel.

6. Whatever protection may be offered by domestic law, the Assembly reminds the Government of the United States that it is responsible under international law for the well-being of prisoners in its custody.

7. The Assembly restates its constant opposition to the death penalty, a threat faced by those prisoners in or outside the United States.

8. The Assembly expresses its disapproval that those held in detention may be subject to trial by a military commission, thus receiving a different standard of justice than United States nationals, which amounts to a serious violation of the right to receive a fair trial and to an act of discrimination contrary to the United Nations International Covenant on Civil and Political Rights.

---

1. Assembly debate on 26 June 2003 (23rd Sitting) (see Doc. Doc. 9817, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr McNamara). Text adopted by the Assembly on 26 June 2003 (23rd Sitting).

9. In view of the above, the Assembly strongly urges the United States to:

9.1. bring conditions of detention into conformity with internationally recognised legal standards, for instance by giving access to the International Committee of the Red Cross (ICRC) and by following its recommendations;

9.2. recognise that under Article 4 of the Third Geneva Convention members of the armed forces of a party to an international conflict, as well as members of militias or volunteer corps forming part of such armed forces, are entitled to be granted prisoner of war status;

9.3. allow the status of individual detainees to be determined on a case-by-case basis, by a competent tribunal operating through due legal procedures, as envisaged under Article 5 of the Third Geneva Convention, and to release non-combatants who are not charged with crimes immediately.

10. The Assembly urges the United States to permit representatives of states which have nationals detained in Afghanistan and in Guantánamo Bay, accompanied by independent observers, to have access to sites of detention and unimpeded communication with detainees.

11. Furthermore, the Assembly urges those member states of the Council of Europe whose nationals are detained in Afghanistan and Guantánamo Bay or elsewhere:

11.1. to assist them actively by all possible legal and diplomatic means;

11.2. to seek the extradition of those who are threatened with the death penalty;

11.3. to insist that all competent jurisdictions commit themselves to not requesting the death penalty.

12. Finally, the Assembly expresses its profound regret that the United States, as a country enjoying Observer status with the Council of Europe, is not meeting its obligations according to Committee of Ministers Statutory Resolution (93) 26 on Observer status.

13. The Assembly further regrets that the United States is maintaining its contradictory position, claiming on the one hand that Guantánamo Bay is fully within US jurisdiction, but on the other, that it is outside the protection of the American Constitution. In the event of the United States' failure to take remedial actions before the next part-session, or to ameliorate conditions of detention, the Assembly reserves the right to issue appropriate recommendations.