Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 1539 (2007)[1]

The United States of America and international law

Parliamentary Assembly

1. The United States of America, an observer state to the Council of Europe, has traditionally been and remains Europe's long-standing ally in resisting tyranny, upholding the rule of law and defending human rights. Since the Second World War, the United States has led efforts to create a modern, multilateral, rule-based system of international law and has been among the principal driving forces in establishing the current architecture of international institutions.

2. The Parliamentary Assembly recognises that the United States remains strongly committed to a significant number of international legal norms, particularly those that promote economic interests. However, especially since the events of 11 September 2001, and in pursuit of its so-called "war on terror", the American Administration has inappropriately and unilaterally disregarded certain key human rights and humanitarian legal norms considered by it to be overly constraining or otherwise inappropriate in view of the perceived new situation. In so doing, it has done a disservice to the cause of justice and rule of law and has tarnished its own hard-won reputation as a beacon in defending human rights and in upholding well-established rules of international law.

3. More specifically, the United States:

3.1. continues unlawfully to detain persons in Guantánamo and elsewhere (see Assembly Resolutions 1340 (2003) and 1433 (2005)), in flagrant breach of its international obligations, in particular under the UN International Covenant on Civil and Political Rights, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the 1949 Geneva Conventions as well as other rules of international humanitarian law with respect to the treatment of persons captured or detained in the context of an international armed conflict;

3.2. has maintained – at least until very recently – a "spider's web" of secret detention centres and unlawful inter-state transfer routes, often in collaboration with countries notorious for their use of torture (see Assembly Resolution 1507 (2006)), a behaviour which is incompatible with UN and Council of Europe human rights standards;

3.3. by negotiating bilateral immunity agreements with parties and non-parties to the statute of the International Criminal Court (ICC), and exercising considerable pressure on some countries to enter into such agreements, has attempted to undermine the effectiveness of this body, which has jurisdiction over the international crime of genocide, war crimes and crimes against humanity when states are unwilling or unable to investigate or prosecute crimes;

3.4. despite recent encouraging national judicial findings, including those of its Supreme Court, has not made any efforts to abolish the death penalty (see Assembly Recommendation 1760 (2006)).

4. The Assembly strongly urges the United States authorities, in particular its parliamentary colleagues in the Congress and in state legislatures, to do their utmost to bring an end to this abnormal and unacceptable situation. It reminds the United States authorities that the country has paid a high price in terms of loss of international credibility for actions taken in Abu Ghraib prison, Guantánamo Bay and more generally in Iraq, without much evidence that greater security has been obtained. More significantly, the failure to guarantee

1. *Text adopted by the Standing Committee*, acting on behalf of the Assembly, on 16 March 2007 (see Doc. 11181, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Lloyd).

basic human rights, especially those relating to the treatment of detainees, and the reluctance to co-operate with the ICC, has made it more difficult for the United States to work with allies in mounting an appropriate response to the very real threat posed by international terrorism.

5. The Assembly recalls that the United States and Europe share fundamental common values and pursue the same goal of promoting and strengthening respect for human rights and the reinforcement of the rule of law. Indeed, few countries are able to rival the impressive case law of the US Supreme Court, whose judgments have often curtailed unfettered executive powers, guaranteeing the separation of powers and, as the recent Hamdan case has illustrated, respect for well-established international legal standards.

6. Finally, the Assembly, composed of parliamentarians from 46 European countries, reiterates its readiness to enter into dialogue with its fellow parliamentarians in the US Congress, as well as at state level, be it on the subject of the lawfulness of detentions at Guantánamo Bay "to pursue this issue further through bilateral dialogue" (Resolution 1433 (2005), paragraph 11), or the abolition of the death penalty (Resolution 1349 (2003) and Recommendation 1760 (2006)), or to provide the necessary impetus to launch, in partnership with the United States, a truly global strategy to address the terrorist threat and which "should conform in all its elements with the fundamental principles of our common heritage in terms of democracy, human rights and respect for the rule of law" (Recommendation 1754 (2006), sub-paragraph 4.1).