

Part 1

Detentions by the United States in Guantánamo Bay

Reports of the Parliamentary Assembly

I. Rights of persons held in the custody of the United States in Afghanistan or in Guantánamo Bay¹

Committee on Legal Affairs and Human Rights

Rapporteur: Mr Kevin McNamara, United Kingdom, Socialist Group

Summary

In this report the Assembly deplores the fate and the treatment of persons, including minors, being held in Afghanistan or Guantánamo Bay, whom the United States designates as “unlawful combatants”. The Assembly believes that these persons should be considered “prisoners of war” or, at least, the United States should allow a “competent tribunal”, within the meaning of the Geneva Convention (III) relative to the Treatment of Prisoners of War, to determine their status. The prisoners’ rights are in no way guaranteed. Only three former detainees are being tried in the United States. The Assembly, reminding the United States of their responsibility for these prisoners’ well-being, asks that the detention facilities be brought into line with recognised international legal standards and that observers from states which have nationals being detained and from the International Committee of the Red Cross (ICRC) be given access to the sites. It urges states whose nationals are being unlawfully detained to assist them by all possible means and to seek their extradition. Lastly, it considers that the United States are in breach of their obligations under the Committee of Ministers’ Statutory Resolution (93) 26 on Observer status and reserves the right to issue further recommendations before its next part-session if no improvement is noted.

1. Doc. 9817 of 26 May 2003; presentation and discussion of the report on 26 June 2003 during the third part of the 2003 session of the Parliamentary Assembly.

Part 2

Possible need for further development of the Geneva Conventions

*Opinion No. 245 (2003) of the European Commission for Democracy through Law (Venice Commission)*¹⁷¹

I. Introduction

1. By a letter of 11 April 2003, the Chairperson of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe (hereinafter “the Committee”), Mr Eduard Lintner, requested, on behalf of the Committee, the opinion of the Venice Commission regarding “the possible need for a further development of the Geneva Conventions, in light of the new categories of combatants that have emerged recently”.
2. The Commission nominated Messrs Christoph Grabenwarter, Jan Helgesen and Georg Nolte as rapporteurs on this issue.
3. Two rapporteurs, Messrs Christoph Grabenwarter and Georg Nolte, prepared a preliminary discussion paper to which Mr Jed Rubinfeld submitted a reply. Both papers were submitted to the Sub-Commission on International Law on 12 June 2003 in Venice. Subsequently, the three rapporteurs held an informal meeting in Strasbourg on 17 September 2003, to which Messrs Hans-Peter Gasser (an expert in International Humanitarian Law and former official of the International Committee of the Red Cross) and Jed Rubinfeld (the observer of the United States) were also invited. Following the informal meeting, Messrs Grabenwarter and Nolte prepared a draft opinion (CDL-DI (2003) 2,) on which Mr Rubinfeld submitted comments (CDL-DI (2003) 3). The two texts were submitted to the Sub-Commission on

171. Adopted by the Venice Commission at its 57th Plenary Session (Venice, 12-13 December 2003) on the basis of comments by Mr Christoph Grabenwarter (Substitute Member, Austria), Mr Jan Helgesen (Member, Norway), Mr Georg Nolte (Substitute Member, Germany).

International Law on 16 October 2003, and to the Plenary on 17 October 2003 in Venice. In accordance with the decision adopted by the Commission, a second informal meeting was held in London on 7 November 2003. It was attended by Messrs Jed Helgesen, Jeffrey Jowell, Olivier Dutheillet de Lamothe, Pieter Van Dijk, Giorgio Malinverni, Georg Nolte, Jed Rubinfeld and Hans Heinrich Vogel. The following opinion was adopted by the Commission at its 57th Plenary Session (Venice, 12-13 December 2003).