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在世界任何地区人权和基本自由遭受侵犯的问题

2005 年 4 月 18 日古巴常驻联合国日内瓦办事处代表团 致联合国人权事务高级专员办事处的普通照会

古巴常驻联合国日内瓦办事处和瑞士其他国际组织代表团向人权委员会秘书处——联合国人权事务高级专员办事处致意，并谨就 2005 年 3 月 14 日的第 90 号照会，随照附上题为“古巴与人权”（第一部分）* 的文件的英文、法文和西班牙文文本。

古巴常驻代表团谨请将上述文件列为人权委员会第六十一届会议议程项目 9 下的正式文件。同时，我们还要求将这份文件分发给人权委员会的所有特别程序，并刊登在高级专员办事处为人权委员会第六十一届会议所设的网站上，供所有有兴趣者查阅。

* 附件不译，仅以英文、法文和西班牙文印发。

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CUBA AND HUMAN RIGHTS

(PART V)

GUANTÁNAMO, A MORAL AND LEGAL BLACK HOLE

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CAPITULO 1.- A VERITABLE “MORAL AND LEGAL BLACK HOLE” IN THE TERRITORY ILLEGALLY OCCUPIED BY THE US NAVAL BASE AT GUANTÁNAMO

The tragic events of 11th September 2001 served as a pretext for unleashing an active imperialist offensive aimed at world domination, an offensive devised, planned and prepared before that date by the neo-conservatives and militarists who hold sway in the United States today. In the heat of that offensive, the Bush administration set in motion a wave of harshly repressive measures, restricting domestic civil and political liberties but, most importantly, threatening the right of many Third World countries to self-determination, development and peace.

In the name of an alleged war on terrorism, the government of the Superpower has waged imperialist wars of conquest to consolidate its global supremacy and seize control of strategic resources. In the process, it has ridden roughshod over the most basic precepts of international humanitarian law and has seriously and persistently encroached respect for and protection of basic human rights, including those to life and freedom.

The violation of the human rights of thousands of foreign nationals arbitrarily imprisoned in the United States is compounded by the legal and existential limbo in which over 500 people, including minors, are living. They are arbitrarily detained in inhuman conditions at the Naval Base dug in at Guantánamo, territory in Cuba which the United States has illegally occupied for over 100 years—a permanent affront to the dignity and sovereign will of the Cuban people.

After the war in Afghanistan, the Government of the United States decided to house its prisoners in the "war on terrorism" at the Guantánamo base.

At the time, on 11 January 2002, the Cuban government sent an official note saying it would not put obstacles in the way of this operation, even though it did describe the situation as one of the United States transferring foreign prisoners of war to a military installation on Cuban soil over which Cuba had been deprived of jurisdiction. The note added that the Americans' decision was not consistent with the original use for which the base was set up.

In the official note, the Government of the Republic of Cuba welcomed the US authorities' public announcements that the prisoners at the base would be given proper, humane treatment and expressed its willingness to cooperate with medical services, if these were needed.

However, the situation at the base has been quite other. What has been created and still exists there is, in terms of massive and flagrant violations, of human rights, one of the worst regimes in modern times; hundreds are being deprived even of their consciousness of being human.

On this site, occupied against the express wishes of the Cuban people, hundreds of foreign prisoners are arbitrarily detained, subjected to indescribable humiliations, totally isolated, with no means of communicating with their families or arranging for proper legal defence. The charges against the majority of the detainees remain shrouded in mystery. A few of the handful that have been freed have recounted the horrors of this concentration camp, including torture as well as cruel, degrading or inhuman treatment.

A confidential report on the Guantánamo detention centre by the Red Cross International Committee—later leaked to the US press— gives the reader an idea of just how bad the irregularities and cruel violations committed in the US Naval Base in Guantanamo are — they are comparable only to what happened in Nazi concentration camps. The report was the result of a June 2004 inspection of the detention centre and it voiced harsh criticisms of the place, saying that there are doctors and other health workers there who collaborate in the planning the interrogations which is a “flagrant violation of medical ethics”

Those doctors and other workers spend their time gathering information about the weaknesses and mental health of the detainees. They obtain this information either through direct contact with the prisoners or through the so-called Behavioural Sciences Consulting Team (BSCT). Members of the latter are psychologists and specially trained staff who advise those who run the interrogations.

The RCIC found a system designed to break the will of the approximately 550 detainees by using "humiliating acts, isolation, extremes of temperature, persistent loud noise, music and forcing the prisoners to stand or kneel for long periods". They also said that the methods used are increasingly "refined and repressive".

As the RCIC report says, " building such a system whose declared aim is to gain intelligence information can only be looked on as creating a system for deliberately applying cruel, unusual or degrading treatment and other forms of torture.

To prove that this is not a recent, new or isolated instance, the report refers to another January 2003 confidential document— which was never made public—which also mentioned psychological torture. Recently broadcast videos also show the beatings and psychological torture handed out to the detainees.

According to two British former detainees, Shafiq Rasul and Asif Iqbal, "Muslim prisoners are forced to strip from the waist down, remain like that for days on end and be "interrogated" and humiliated by woman using a new kind of sexual torture.

Whichever way you look at it, notions such as that of "illegal combatants" or the setting up of judicial aberrations such as the so-called "ad-hoc military tribunals", devised by the United States to justify the dehumanizing treatment meted out to its prisoners of war, are breaches of international law and the 1949 Geneva Conventions.

These "courts" would be empowered to impose the death sentence and there would be no appeal. They would lack any vestige of independence and would infringe the rights of the defendants to choose a lawyer or otherwise arrange a proper defence. They would admit evidence possibly obtained under torture or duress.

The international community proclaims its condemnation of the situation at the Naval Base the United States maintains illegally on Cuban soil at Guantánamo, now converted into a facility for holding prisoners without trial or cause, without lawyers and without the least sign of due process. All of these atrocities are carried out in the permanent climate of fear and hysteria, whipped up and maintained with alerts and arbitrary measures, which the right-wing fundamentalists now in power are imposing on the US public.

The war on terrorism cannot be fought by terrorist methods which entail denying citizens their rights, or by availing oneself of the so-called unilateral right to make war.

The International Red Cross Committee, leading jurists, academics, NGOs and UN agencies concerned with human rights, as well as representatives of many governments, have demanded that the US government clarify the legal situation of the prisoners held for over four years at its naval base Guantánamo Bay, in terms of international laws on human rights and of humanitarian international law.

We should mention that the US government recently refused to allow 6 non-contractual mechanisms of the Commission on Human Rights to visit prisoners in their detention centres in Iraq, Afghanistan and Guantánamo

The Government of the Republic of Cuba urges the US administration to purge this "moral and legal black hole" which the Guantánamo Naval Base, built on illegally-occupied land, has become. The Cuban people is gravely concerned about the fate of those arbitrarily detained in this part of its territory.

The Naval Base was part of the spoils of war following the US military intervention and occupation of the island, which prevented the Cuban from becoming truly independent.

The Guantánamo Naval base is a product of an illegal agreement on coaling and naval stations signed in 1903 —at a time when our people were unable to exercise their sovereignty— between the US administration and the government the neo-colonial power allowed Cuba to have. Such military facilities had been demanded by the United States as a condition for the withdrawal of US troops in an appendix to the constitution rammed down Cuba's throat: the notorious Platt Amendment.

The Agreement for Coaling and Naval stations provided the right “to do any and all things necessary to fit the premises¹ for use as Coaling and Naval stations only, and for no other purpose”.

Thirty one years later on 29 May 1934, under the aegis of President Franklin Delano Roosevelt's "Good Neighbour" policy, the United States and Cuba signed a new treaty regulating their mutual relations, supplanting that of 1903.

Nonetheless, the new treaty involved the continued occupation of the Guantánamo base and ratified the terms of its "lease".

Throughout the neo-colonial period, the base was used by the corrupt, brutal governors imposed by the US in disregard of the interests of the Cuban people. Indeed, during 1958, many of the Batista dictatorship's warplanes often refuelled and took on more bombs there so they could go on with bombing the civilian population in eastern Cuba.

Following the revolutionary victory in 1959 —the year in which Cuba gained its true independence for the first time, unlike the merely formal independence gained on 20 May 1902— the Guantánamo base became a permanent source of the threats, provocations and violation of the Republic's sovereignty that lie at the heart of the policy the United States began to implement against Cuba with successive acts of aggression, sabotage and other crimes.

The Cuban government repeatedly denounced these provocations, addressing its protests not only to the US government but also to the UN, arguing that the US neo- colonial enclave² at Guantánamo had never been used in accordance with the fraudulent 1903 treaty based on the Platt Amendment or with the equally invalid 1934 treaty, which proclaimed the “friendly” relations between the two countries.

In fact, throughout the last four decades and more, the base has been used for various purposes, none of which have been consistent with the agreement under which the United States justifies its presence in our territory.

The base became the cause of various disputes between Havana and the United States. The vast majority of the 3,000-plus Cuban citizens who worked there were sacked and replaced by nationals of other countries.

During the revolutionary conflict, shots were often fired from the base into free Cuban territory; Cuban soldiers were killed as a result of these acts and mercenaries hired by the foreign power found sanctuary and support at the facility. It was even the target for a fake attack, something cooked up by the US government in the 1960s and known to US special services as 'Operation Patty'. This ruse, which was thwarted by the Cuban security services, involved sending a force of US agents to fire on the base, to create the impression that it was being attacked by the Cuban Army, thus supplying the pretext for 'retaliatory' aggression.

Another time, also by US unilateral decision, tens of thousands of emigrants —Haitian and Cuban nationals who were trying to enter the United States illegally — were kept at the base.

In nearly half a century, there has never been a time when conditions have allowed the situation to be calmly, legally, diplomatically reviewed in order to reach the only logical and just solution to this longstanding anomaly: returning this territory occupied against the will of our people to us.

A basic principle of Cuban policy on this potentially dangerous, decades-old problem between Cuba and the United States has been to avoid having our justified claim create further tensions. Cuba has made every effort to follow an especially careful, measured policy with regards to this matter in recognition of the fact that in recent years a less tense more respectful atmosphere has developed between the Cuban and US military.

¹ Originally the premises chosen for construction of Naval stations were Bahía Honda —work never even started on that— and Guantánamo.

² Resolutions of the UN General Assembly. 1514 (XV) of 14th December 1960, 2189 (XXI) of 13th December 1966 and 2625 (XXV) of 19th December 1967 stated an urgent need, for the sake of peace and international security, to put an end to colonialism in all its manifestations

The Cuban government's position on the legal status of the US base at Guantánamo is that, since, legally speaking, it is derived from a lease, the leaseholders were ceded a temporary and not perpetual right over this part of our territory, and that justice for our people demands that, in due course, it must be peacefully returned to Cuba.

Apart from the question of the US's illegal occupation of Guantánamo—a situation that will be resolved when the situation permits—the Cuban people today joins the international community in making a justified demand for an end to what is happening there now. No time must be lost in eliminating this flagrant violation of human rights and international humanitarian law. Neither must this serious precedent be allowed to continue.

What is occurring at the Guantánamo naval base is nothing other than an atrocity, an affront to justice and human dignity: detainees are held without charge or trial for an indefinite period, incarcerated in small cells for up to 24 hours a day, handcuffed during the extremely short exercise period, repeatedly interrogated without access to a lawyer and run the risk of being executed after an unfair unappealable trial; their relatives are also victims of cruelty caused by not knowing what is happening to their loved ones,

Those classified as "illegal combatants" are held under arbitrary military regulations that permit the torture of prisoners and deprive them of their legal rights such as habeas corpus. They can be held indefinitely without any specific charge, while their lawyers' work is impeded by various restrictions. They are not allowed to call certain witnesses. A defendant who asks for a lawyer other than the one assigned by the military must first plead guilty, which makes a mockery of the principle of presumed innocence.

But not all the detainees suffer the same treatment. A clear pattern of arbitrary selection and double standards has emerged. Mr Bush grants some rights to the nationals of countries in the "coalition of the willing". These "fortunate few" are allowed to talk to their lawyers in private, a privilege denied to the rest.

How can the Superpower advance its thesis of alleged 'commitment' to the Cuban people's human rights, while at the same time creating a veritable human rights "black hole" on the latter's territory?

Cuba reiterates its condemnation of the massive, flagrant and systematic violations of human rights suffered by hundreds of people arbitrarily detained by the US administration in the United States and elsewhere and particularly at the Naval Base it maintains illegally at Guantánamo. On 19 January 2005, the Ministry of Foreign Affairs delivered a Diplomatic Note to the US authorities here in Havana and in Washington; this note roundly denounced this situation and demanded an immediate end to the inhuman, criminal behaviour.

By virtue of the moral high ground which it has conquered with its impeccable human rights record and by virtue of the right conferred on it by having sovereignty over all Cuban territory, Cuba denounces these abuses and violations committed day after day by the US government against detainees in the Guantánamo naval base and demands an end to these practices, which are a breach of international law.

The Cuban people supports and fully endorses the call by the international community for a clear and consistent statement on this serious situation.

ANEXOS

I.- DRAFT RESOLUTION, E/CN.4/2004/L.88/Rev.2, introduced by Cuba at the 60 session on the Commission on Human Rights, "Question of arbitrary detentions in the area of the United States naval base in Guantanamo"

Agenda item 17

The Commission of Human Rights,

Considering that, in accordance with the principles enshrined in the Charter of the United Nations, the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and fundamental freedoms,

Recalling that each State party to the International Covenant on Civil and Political Rights undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling also General Comment 32 of the Human Rights Committee, adopted at its 2187 meeting on 29 March 2004,

Reaffirming that every human being has the inherent right to life and the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment,

Noting that those rights are enshrined in articles 6 and 7 of the Covenant and that, in accordance with its article 4, paragraph 2, no derogation from those two articles may be made under any circumstances,

Recalling that in accordance with the provisions of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, any person who is arrested shall be informed of any charges against him/her, be presumed innocent until proven guilty, be brought promptly before a judge or other officer authorized by law to exercise judicial power and be entitled to a public trial within a reasonable time at which he/she has all the guarantees necessary for his/her defense, or be released,

Noting that article 5, paragraph 2, of the International Covenant on Civil and Political Rights establishes that there shall be no restrictions upon or derogation from any of the fundamental human rights recognized or existing in any State party to the Covenant pursuant to law, conventions, regulations or custom on the pretext that the Covenant does not recognize such rights or that it recognizes them to a lesser extent,

Deeply concerned that according to reliable information a situation of deprivation of those rights exists, affecting an undisclosed number of persons detained as a result of military operations launched in Afghanistan and being held at present in detentions camps located in the area of the United States naval base in Guantanamo, including minors,

Aware that the Office of the United Nations High Commissioner for Human Rights, several thematic procedures of the Commission on Human Rights and a large number of non-governmental organizations, as well as a number of States with nationals imprisoned in those camps have expressed their most serious concerns with respect to such a situation,

Noting the requests made during its 60th session by some thematic procedures mandate holders to visit detention camps located in the area of the United States naval base in Guantanamo,

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Taking note of recent releases of some persons that were kept detained in the United States naval base in Guantanamo and the transfer of others to their countries of origin,

Taking into account the provisions of the Geneva Convention relative to the Treatment of Prisoners of War, of 12 August 1949,

Requests the State exercising effective jurisdiction over the detention camps located in the areas of the United States naval base in Guantanamo to provide to the Office of the United Nations High Commissioner for Human Rights and to the other States the necessary information to clarify the living conditions and legal status of the persons being held at present in these camps, as well as the steps taken to secure respect for their human rights and fundamental freedoms and their protection under international humanitarian law;

Also requests the State concerned to investigate the alleged violations mentioned above and to take the necessary steps to prevent those that may take place while such persons are still under its effective jurisdiction;

Requests the Special Rapporteur on the question of torture, the Special Rapporteur on the independence of judges and lawyers and the Working Group on Arbitrary Detention in the discharge of their mandates to give consideration to the situation described in the present resolution and to report on their findings to the High Commissioner for Human Rights;

Requests the High Commissioner for Human Rights to submit a comprehensive report to on the implementation of the present resolution to the Commission at its sixty-first session.

II.- How did the industrialised countries, particularly the European Union respond to DRAFT RESOLUTION L.88/REV 2?

The hypocrisy and double standards shown by the United States and its allies in the Commission on Human Rights' were once again made starkly clear in the 60th period of sessions in April 2004 when Cuba presented the resolution "Question of arbitrary detentions in the area of the United States naval base in Guantánamo".

This draft resolution could not even be put to the vote because of the manoeuvres deployed by the European Union and some Latin American governments working hand in hand with Washington.

It is striking that on 15 April, when action was taken on the draft resolutions submitted under agenda item 9, "Question of the violation of human rights and fundamental liberties anywhere in the world", European Union representatives claimed that as a matter of principle they would vote against No Action motions, since no country could be seen to be above or beyond an examination by the Commission of its human rights situation.

That day, its representatives said over and over again that the European Union was against this kind of procedural motion in a human rights forum, since it considered them to be an attempt to deny Commission members their right to express their opinions on any topic and because it undermined the principles of transparency and non-selectivity which were essential to the Commission's work.

Just 5 days later, on 20 April, in a remarkable display of political amnesia, the European Union communicated its decision to use a procedural motion against the draft resolution proposed by Cuba. This not only prevented the Commission from taking action on the draft resolution but also censored and closed all doors to any debate on or consideration of the motion.

All of this came to pass, in spite of the fact that only a few weeks earlier the European parliament had asked its presidency to have European countries sponsor a draft resolution urging the United States to give immediate clarification of the situation of prisoners in Guantánamo with reference to international standards of human rights and humanitarian law and as a result to immediately proceed to try the detainees or to release them at the 60th period of sessions. It also repeated its request to have an independent follow up mechanism for this case to be set up within the UN framework.

III- DRAFT RESOLUTION L.17 Rev.1, introduced by Cuba at the Substantive Session 2004 of United Nations Economic and Social Council, "Question of the protection of human rights and fundamental freedoms in the context of international military operations launched to combat terrorism."

Agenda item 14 g) of the Programme

The Economic and Social Council,

PP1 Guided by the Purposes and Principles of the Charter of the United Nations and the Universal Declaration of Human Rights,

PP2 Recalling the determination expressed in the Preamble of the Charter of the United Nations to save succeeding generations from the scourge of war, to establish conditions under which justice and respect for obligations arising from treaties and other sources of international law can be maintained, to promote social progress and better standards of life in larger freedom, to practice tolerance and good neighborliness, and to employ international machinery for the promotion of the economic and social advancement of all peoples, (pp7 VDPA)

PP3 Guided by the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and other basic instruments regarding the international protection of human rights as well as universal humanitarian norms, as set forth in the Geneva Conventions of 12 August 1949,

PP4 Recalling Commission on Human Rights' resolutions 2004/44 of 19 April 2004 and 2004/87 of 21 April 2004,

*PP5 Reaffirming that every human being has the inherent right to life and the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment and *deeply concerned* on alleged and documented cases of violations of human rights and of international humanitarian law in the context of international military operations launched to combat terrorism,*

PP6 Deeply concerned also that the above mentioned alleged and documented violations of human rights and of international humanitarian law in the context of international military operations launched to combat terrorism includes: extrajudicial executions; enforced disappearances; arbitrary detentions, including massive arrests; torture and other cruel, inhuman or degrading treatment or punishment such as beatings, electric shocks, sleep deprivation, prolonged forced standing and kneeling, humiliation, psychological abuse, hooding, use of dogs to frighten and intimidate detainees with threats of attack, keeping detainees naked for several days at a time, threatening and sodomizing detainees and prolonged solitary confinement in cells devoid of daylight; sexual abuse; coercive interrogation practices; taking pictures of dead detainees; and excessive use of force against persons deprived of their liberty and holding them in dangerous places where they are not protected from shelling,

PP7 Recalling that freedom from torture and other cruel, inhuman or degrading treatment or punishment is a non-derogable right and must be protected under all circumstances and that the prohibition of torture is explicitly affirmed in all relevant international instruments,

PP8 Deeply concerned that according to reliable information an undisclosed number of persons detained in the context of international military operations launched to combat terrorism is held at present in detention camps, in a situation of deprivation of some of their fundamental human rights,

PP9 Concerned at the consequences to the protection of human rights of the growing involvement and participation of military private corporations and individuals under private contracts in tasks of protection and security in the context of international military operations launched to combat terrorism,

PP10 Reaffirming its unequivocal condemnation of all acts, methods and practices of terrorism, in all their forms and manifestations, wherever and by whomsoever committed, regardless of their motivation,

as criminal and unjustifiable, and renewing its commitment to strengthen international cooperation to prevent and combat terrorism,

PP11 Taking note of recent positive measures adopted by States to promote respect and ensure compliance with their obligations under international instruments of human rights and international humanitarian law in the context of international military operations launched to combat terrorism;

PP12 Noting the work already done by the Commission on Human Rights and several of its special procedures, the General Assembly, the Secretary General and different components of the United Nations Secretariat, the Office of the High Commissioner for Human Rights, the international humanitarian organizations, several intergovernmental and non governmental organizations, some regional organizations and specialized agencies and the human rights treaty bodies in promoting protection of human rights and fundamental freedoms in the context of international military operations launched to combat terrorism,

PP13 Noting in particular general comment N° 31 of the Human Rights Committee, adopted on 29 March 2004 and the joint statement on the protection of human rights and fundamental freedoms in the context of anti-terrorism measures made by participants at the eleventh Annual Meeting of the Special Rapporteurs/representatives, independent experts and chairpersons of the working groups of the Special procedures of the Commission on Human Rights and of the Advisory Services Programme,

1.. *Reaffirms* that States should respect and ensure compliance with their obligations under international instruments of human rights and international humanitarian law in the context of international military operations launched to combat terrorism;

2.. *Demands* States and other actors in international military operations launched to combat terrorism to prevent the occurrence of extrajudicial executions, enforced disappearances, torture and other cruel, inhuman or degrading treatment or punishment and other grave violations of international human rights and humanitarian law, and to take effective action to combat and eliminate any violation of this kind in all forms and manifestations;

3.. *Reiterates* the obligation of all States to conduct exhaustive and impartial investigations into all suspected cases of violations of international human rights and humanitarian law in the context of international military operations launched to combat terrorism, to identify and bring to justice those responsible, while ensuring the right of every person to a fair hearing by a competent, independent and impartial tribunal established by law, to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, in order to bring an end to impunity and to prevent the recurrence of such violations;

4.. *Urges* States and other actors in international military operations launched to combat terrorism to undertake all necessary and possible measures, in conformity with human rights law and international humanitarian law, to prevent the loss of life of civilian persons, in particular that of women and children;

5.. *Appeals* to States and other actors in international military operations launched to combat terrorism to ensure that all persons deprived of their liberty are treated with humanity and with respect for the inherent dignity of the human person, in accordance with relevant international instruments of human rights and humanitarian law;

6.. *Condemns* all forms of torture and other cruel, inhuman or degrading treatment or punishment and any action or attempt by States or public officials to legalize or authorize them under any circumstances, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all Governments to implement fully the prohibition of torture and other cruel, inhuman or degrading treatment or punishment;

7.. *Asks* all States and other actors engaged in international military operations launched to combat terrorism to pay special attention to the procedures and practices used by their respective agents to obtain information from detainees or from civilians, particularly during the interrogation of detainees, so they can ensure that these procedures are in compliance with the international instruments of human rights and of International Humanitarian Law;

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8.. *Encourages* all United Nations bodies, including the human rights treaty bodies, acting within their mandates, and the specialized agencies, as well as governmental, intergovernmental and non-governmental organizations, and the special representatives, special rapporteurs and working groups of the Commission to pay particular attention to, to exchange information on and to provide the United Nations High Commissioner for Human Rights with all relevant information in their possession on violations of human rights in the context of international military operations launched to combat terrorism;

9.. *Requests* the United Nations High Commissioner for Human Rights to prepare and submit to the fifty-ninth session of the General Assembly, a comprehensive report on the basis of information and comments received from Governments, intergovernmental and non-governmental organizations, specialized agencies, special procedures of the Commission on Human Rights and human rights treaty bodies, that would serve as a vital complement to the report already requested by General Assembly resolution 58/187;

10.. *Requests* the Commission on Human Rights to examine this issue as a matter of priority at its sixty-first session.

IV.- Yet another testimony to the hypocrisy and double moral standards demonstrated by the United States and the European Union in United Nations human rights work

What was the outcome of the vote on the Cuban draft resolution?

Draft resolution L.17 Rev. 1 was presented to the Economic and Social Council at the 22 July 2004 evening work session, during the Council's substantive period which took place in New York. The idea was for the resolution to be passed. The resolution was called: "Question of Protecting Human Rights and Fundamental Freedom in the Context of Military Operations Launched to Combat Terrorism".

Draft resolution L.17.Rev.1 was proposed by the Cuban delegation to the meeting as part of its ongoing efforts started at the Human Rights Commission's 60th period of sessions. The reader will remember that last April when the Commission was in session in Geneva, Cuba proposed a resolution called "Question of Arbitrary Detentions in the Area of the US Naval Base in Guantánamo".

That draft resolution was not put to the vote because of the collusive silence advocated by the European Union and some Latin American government concerning the serious violations human rights of hundreds of people committed by US authorities. These people are held in conditions more suitable to a Nazi concentration camp in territory illegally occupied by the US naval base on Guantánamo Bay.

The European Union, which has repeatedly said that it is against no action motions when it comes to human rights matters, on this occasion made known its decision to use this procedural motion against Cuba's draft resolution. This not only prevented the Commission from taking action on the proposed resolution but also censored and ruled out any possibility of it being debated and discussed.

This time at ECOSOC, Cuba proposed a new draft resolution with a new title, content and focus which did not point the finger at any country and was clearly an fitted in with the agenda items. In fact, most of the resolution's paragraphs contained language that had already been agreed to, being based on the texts of current international instruments dealing with these matters.

Lamentably, the member countries of the European Union, the rest of the Western industrialised countries and some others who were unable to put up a dignified resistance — which stems from the force of truth and justice— to the Superpower's pressures, did not care that it was impossible to cast ethical or legal doubt upon the contents of the new resolution or question that it was indeed necessary.

Neither were the stances taken by these countries influenced by the fact that the draft resolution was a positive response to the repeated, urgent demands for action to deal with the abhorrent human rights violations — including humiliating forms of torture— which had taken place in the context of international military operations launched supposedly to combat terrorism, calls that had been made by important world figures, non-governmental organisations, CHR mechanisms, bodies set up under international human rights treaties and by people all over the world.

In this regard, it will suffice to mention the Joint Communiqué drawn up at the Eleventh Annual Meeting of the Commission on Human Rights' special mechanisms, published last 25 June. In this document, four representatives of the CHR's special procedures asked if they could visit the facilities in Iraq, Afghanistan and the Guantánamo naval base where prisoners are imprisoned, allegedly because they have connections to terrorism.

Instead of supporting and helping attempts to negotiate promoted and called for by the Cuban delegation, these great champions of human rights — the industrialised powers in the North— once again set about cooking up an arsenal of pretexts and spurious arguments in order that those responsible for torture, forced disappearances, extrajudicial executions, arbitrary detentions and other serious human rights violations committed in the context of international military operations in Iraq and Afghanistan should continue to be immune from prosecution under the provisions of international law.

The problem is that in these cases, those responsible for the atrocities committed on thousand of people, including hundreds of innocent civilians, have been authorities and persons in the service of the North governments, mostly of the hegemonic Superpower. They, from the point of view of the powerful,

are not supposed to be subject to scrutiny by the international community; they are considered to be above international law and institutions.

The US delegation asked that the draft resolution be put to the vote; it did not pass, there were 24 votes against, 12 in favour and 17 abstentions. One cannot, however lay the blame for the motion's defeat only on the strong pressure exerted by the US embassies in capital cities all over the world. The collusive support of and the active role played by the European Union and other developed countries was also decisive; the aim of this was to continue to throw the cloak of impunity over the brutal human rights violations committed by their strategic ally.

Standing their ground in the face of incredible US pressure, the overwhelming majority of the South countries voted in favour of, or at least abstained from voting on draft resolution L.17 Rev.1. In fact, 30 of the 54 member countries of the Council did not go along with Washington's express request to vote against the Cuban initiative. This once again demonstrates the important storehouse of strength and endurance our countries have to use in defence of human dignity, truth and justice.

It was basically the votes of Australia, Belgium, Canada, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Poland, the republic of Korea, Sweden, the United Kingdom and the United States itself, plus Central American governments most vulnerable to the Superpower's pressure, such as those of El Salvador and Nicaragua that prevented the United Nations' machinery from following up on and giving an effective reply to the human rights violations—which have been extensively covered by the international media—such as sexual abuse of detainees, committed by the US troops occupying Iraq.

It is not surprising that this list contains the names of those same governments which every year propose, cosponsor and support unfair condemnatory draft resolutions attacking various South countries in the Commission on Human Rights, one of which is the useless, fraudulent anti-Cuban farce orchestrated by the United States.

This vote demonstrates yet again the inability of the so-called international human rights promotion and protection system to operate on principles of objectivity, impartiality and non-selectivity.

The Commission on Human Rights and the Social and Economic Council, the Assembly General and all the other UN bodies which are concerned with human rights are still help in captivity by and been converted into nothing more than tools of the great powers' yen for domination, which has been more than obvious in the political manipulation of their work by the present US administration.

Pressure, threats, conditions and even blackmail continue to be the favourite "arguments" used by the United States and its staunchest allies so they can keep on using these bodies as courts where they try to condemn anyone who dissents, puts up resistance and fights back against the plans for world domination of transnational capital's power centres.

Cuba thinks that the voting figures, even though the draft resolution was not passed, mark an important step forward in the struggle to rescue the United Nations human rights machinery from the political manipulation and the double standards to which it has been sentenced because the major western powers control it.

Cuba will not cease from striving to have these bodies work to truly defend noble causes and the desire for the justice, development, equality, peace and solidarity of which the vast majority of humanity has so much need, that vast majority who are still forbidden even to know they have rights.

Cuba, knowing what it represents in its international battle in the sphere of ideas, and for all the peoples in the world's interest in and yearnings for freedom, independence, justice and well-being, will propose new draft resolutions in up-coming United Nations' fora, resolutions which will directly challenge the hypocrisy, cynicism and opportunism which continue to determine the behaviour in these bodies of many North governments led by the United States.

V.- Statement issued by Special Rapporteurs and Chairpersons of thematic mechanisms of the Commission on Human Rights, on the situation of persons detained during the fight against terrorism, including the inmates of facilities like the US Naval Base in Guantánamo Bay.

Press Release HR/4812

UNITED NATIONS HUMAN RIGHTS EXPERTS EXPRESS CONTINUED CONCERN ABOUT SITUATION OF GUANTANAMO BAY DETAINEES (Reissued as received.)

GENEVA, 4 February (UN Information Service) -- This statement was issued today by the following six United Nations human rights experts: Leïla Zerrougui, Chairperson-Rapporteur of the Working Group on Arbitrary Detention of the United Nations Commission on Human Rights; Stephen J. Toope, Chairperson-Rapporteur of the Working Group on Enforced or Involuntary Disappearances of the Commission; Manfred Nowak, the Commission's Special Rapporteur on torture; Paul Hunt, the Commission's Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Leandro Despouy, the Commission's Special Rapporteur on the independence of judges and lawyers, and Cherif Bassiouni, Independent Expert appointed by the Secretary-General on the situation of human rights in Afghanistan.

"In January 2005 the detention center at the United States Naval Base in Guantanamo Bay entered into its fourth year of existence, and many of the inmates are completing their third year of virtually incommunicado detention, without legal assistance or information as to the expected duration of their detention, and in conditions of detention that, according to numerous observers, amount to inhuman and degrading treatment.

The Working Group on Arbitrary Detention, a group of experts appointed by the United Nations Commission on Human Rights to seek and receive information from governments and non-governmental organizations, and to report to the Commission on cases of detention inconsistent with international human rights standards, has been concerned about the situation at Guantanamo Bay since the establishment of the detention center. Already on 22 January 2002, the then Chairman-Rapporteur of the Working Group, Louis Joinet, sent a letter to the Government of the United States of America seeking an invitation to visit the detention center at the naval base in order to examine, on the spot, the legal aspects of detention. By a second letter sent on 25 October 2002, the Working Group requested that the United States Government provide responses to a series of factual and legal questions concerning the legal situation of the detainees in Guantanamo Bay.

In June 2004, the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on torture, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, and the Special Rapporteur on the independence of judges and lawyers requested the United States, as well as Iraq and Afghanistan, to invite these experts to visit those persons detained on grounds of terrorism, including in Guantanamo Bay. While the United States Government -- the only Government to respond to date -- has not yet agreed to this request, it has indicated an interest in establishing a dialogue with the experts to consider the possibility of a visit.

The year 2004 saw a number of developments regarding the situation of the Guantanamo detainees. A number of detainees were released. The Supreme Court of the United States rejected the claim of the Government that it could deny access to habeas corpus proceedings to the Guantánamo Bay detainees. A United States District Court ruled that it is for the judiciary and not for the executive power to establish whether the Third Geneva Convention applies to persons deprived of their liberty during the hostilities in Afghanistan. The same court stated that the exclusion of the defendant from certain hearings and from access to evidence used against him was unlawful. In response to these judicial decisions, the United States established the Combatant Status Review Tribunals (CSRTs) and an Administrative Review Board (ARB), which will review, on an annual basis, whether an inmate continues to pose a threat to the United States or its allies, or whether there are other factors bearing upon the need for continued detention. As recently as 31 January 2005, a United States Federal District Court stated in a judgment concerning Guantanamo detainees that "Although this nation unquestionably must take strong action under the leadership of the commander in chief to protect itself against enormous and unprecedented threats, that necessity cannot negate the existence of the most

basic fundamental rights for which the people of this country have fought and died for well over two hundred years.”

These developments are, however, insufficient to dispel the serious concerns that the mandate holders continue to have with respect to the situation:

(a) Both the international armed conflict in Afghanistan and the war in Iraq have been over for more than 18 months now. The Third Geneva Convention, dealing with prisoners of war, mandates that any prisoner of war must be released “without delay after the end of hostilities”. The legal basis for the continued detention of the Guantanamo Bay inmates is therefore unclear. In any event, many of them were arrested in countries, which were not parties to any armed conflict involving the United States of America;

(b) The lack of clarity concerning the legal basis on which the Guantanamo detainees are deprived of their freedom also means that both the detainees and their families are in a state of uncertainty regarding the remaining duration of the detention;

(c) The exact number and the names of the persons detained at Guantánamo Bay continue to be unknown. This situation is extremely disconcerting and is conducive to the unacknowledged transfer of inmates to other, often secret, detention facilities, whether run by the United States or by other countries. This situation is of particular concern to the Working Group on Enforced or Involuntary Disappearances;

(d) Concerns have been voiced regarding the independence of both the Combatant Status Review Tribunals and the Administrative Review Board, and with respect to the fairness of the proceedings before them. In particular, most detainees do not have access to legal counsel, and much of the evidence on which the decision to detain them is based is not disclosed to them;

(e) The need to objectively assess the allegations of torture, and other cruel, inhuman or degrading treatment or punishment, particularly in relation to methods of interrogation of detainees, that have been brought to the attention of the Special Rapporteur on torture;

(f) The conditions of detention, especially of those in solitary confinement, place the detainees at significant risk of psychiatric deterioration, possibly including the development of irreversible psychiatric symptoms;

(g) Most detainees do not know whether the United States Government intends to raise criminal charges against them or not. The procedural rules governing the Military Commissions set up to try those detainees who will face criminal charges raise misgivings similar to those voiced with regard to the Combatant Status Review Tribunals: doubts regarding the actual independence of the Commissions, and concerning the fairness in the respective positions (or “equality of position”) between prosecution and defense, in particular with regard to access to evidence. Moreover, the mandate holders recall that where the conditions of detention are such as to subject a defendant to inhuman or degrading treatment, or to otherwise gravely weaken him physically and psychologically, equality is compromised and any imprisonment upon conviction tainted with arbitrariness.

In conclusion, the United Nations human rights experts, once more, confirm that the right and duty of all States to use all lawful means to protect their citizens against death and destruction brought about by terrorists must be exercised in conformity with international law; lest the whole cause of the international fight against terrorism be compromised.”

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