



**Herman Van Rompuy**

President of the European Council

**José Manuel Barroso**

President of the European Commission

**Catherine Ashton**

EU High Representative for Foreign and Security Policy/  
Vice-President of the European Commission

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Dear Mr Van Rompuy, Mr Barroso, Ms Ashton,

### **EU - US Summit - uphold human rights on security issues**

The EU-US Summit on 28 November is set to assess the progress on addressing global challenges and strengthening the security of citizens since last year's Summit in Lisbon. This must be done in a frank and honest manner, with both EU and US leaders looking at whether their "conviction that respect for fundamental rights and freedoms and joint efforts to strengthen security cooperation are mutually reinforcing" - as stated in the Joint Declaration adopted in Lisbon - is fulfilled in practice.

#### **Accountability in Europe for violations committed under US-led rendition and secret detention programmes**

At EU level, there must be proper accountability for complicity of EU countries in the human rights violations, including crimes under international law of torture and enforced disappearance, which occurred in the CIA-led counter-terrorism programmes. Investigations and criminal prosecution into allegations of secret CIA prisons in Lithuania, Poland and Romania must be pursued. The same applies to European involvement in CIA rendition flights, as highlighted by the new information and inquiries into the alleged role of Finland and Denmark. The European Parliament's forthcoming report, following up on its 2007 report on European complicity, provides an excellent opportunity for a joint effort by EU institutions, member states and the USA to ensure accountability. State secrecy must not serve as a justification for denying justice to victims.

#### **Military Commissions at Guantánamo Bay**

As we approach the 10<sup>th</sup> anniversary of detention operations at Guantánamo Bay, US authorities must reverse their decision to resort to military commissions for the trial of alleged terrorist suspects. Among other flaws, the military commissions lack independence, both in substance or appearance, from the political branches of government that have in fact authorized, condoned, and blocked accountability and remedy for, violations committed against the very category of detainees that will appear before them. The commissions are creations of political choice, not tribunals of demonstrably legitimate necessity, and contravene international standards.

The commissions are discriminatory. If any Guantánamo detainee slated for prosecution was a US national, he could not be tried by these military commissions: under US law he would have the right to a civilian jury trial in an ordinary federal court, not before a panel of US military officers operating under a lesser standard of fairness. Fair trial guarantees are particularly important in cases leading to death sentences, and the imposition of a sentence of death upon conclusion of a trial which does not meet standards of fair trial constitutes a violation of the right to life under international law.

### **The case of Abd al-Rahim al-Nashiri**

The treatment that Abd al-Rahim al-Nashiri has suffered and continues to endure illustrates the range of human rights violations committed in the name of US counter-terrorism efforts. His story ought to have sparked EU action under its legal obligations and declared commitments, including its own guidelines on torture and the death penalty. The EU and the US must intervene in his case with no delay.

Abd al-Rahim al-Nashiri is one of the six detainees, from among the 171 men still held at Guantánamo, whom the US administration currently intends to prosecute before military commissions and against whom it intends to seek the death penalty in case of conviction. From 2002 he was held in secret CIA custody, allegedly including on EU soil, for almost four years. During this time he was held incommunicado in solitary confinement and subjected to torture and other cruel, inhuman or degrading treatment, including waterboarding. In 2006 he was transferred to military custody at Guantánamo and in September 2011 the convening authority of the military commissions referred the charges against him for trial as capital, thereby authorising the prosecution to seek the death penalty if it obtains a conviction. The US government also asserts that, if acquitted, he could be returned to indefinite detention under the “law of war”.

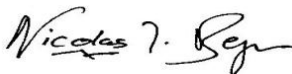
The EU carries particular responsibility to intervene in Abd al-Rahim al-Nashiri’s case given he was granted “victim” status by the Polish Prosecutor in charge of the ongoing investigation into the alleged presence of a secret CIA prison in Poland.

### **In your discussions with President Barack Obama, Secretary of State Hillary Clinton and other US delegates, we urge you to:**

- Express deep concern about the USA’s failure to ensure full accountability for the crimes under international law committed in the context of the CIA’s counter-terrorism programmes;
- Express deep concern at the continued detention without charge or criminal trial of scores of detainees at Guantánamo Bay, and at the decision to use military commissions to try a number of detainees and to pursue the death penalty against six of them, including Abd al-Rahim al-Nashiri;
- Urge the US authorities to abandon military commissions in favour of trials in US District Court;
- In line with the EU Guidelines on the Death Penalty, reiterate the EU’s opposition to the death penalty in all circumstances, and call on the USA to immediately put in place a moratorium on the use of the death penalty at federal level with a view to its abolition;
- Call on the US authorities to adhere to the prohibition under international law of the imposition of the death penalty based on any trial that has not met the highest standards of fairness;
- Express the EU’s commitment to ensuring accountability for EU member states’ involvement in human rights violations committed in the context of US-led counter-terrorism operations, and seek assurances of cooperation from the US authorities with regard to all European efforts to ensure accountability for violations on European territory.

We look forward to hearing the outcome of your discussions.

Yours sincerely,



Dr. Nicolas J. Beger  
Director

Cc:  
William E. Kennard  
US Ambassador to the European Union