

Mirek Topolánek
Prime Minister of the Czech Republic
Presidency of the EU

Brussels, 1 April 2009
Ref: B852

Dear Mr Topolánek,

European Union (EU) –United States of America (USA) Summit, 5 April 2009

The summit meeting between the USA and EU member states on 5 April 2009 is a historic event. It is historic because it marks the EU's first formal discussion with the new US administration, and also because it offers the opportunity to mark a step change in EU-US co-operation. It provides the opportunity to begin to draw to a close the dark chapter of abusive practices, involving states on both sides of the Atlantic, used to combat terrorism, and to open a new chapter in global relations, with both the EU and the USA in a position to show responsible leadership in tackling human rights issues of mutual concern.

With the summit set to address foreign policy topics in general, Amnesty International believes that the two sides must achieve progress in particular, on:

- Practical steps towards the closure of the **Guantánamo** detention centre. Given the indications of a willingness to work together on offering protection for Guantánamo detainees who cannot be safely repatriated, or who are effectively stateless and have no country to which they are able to return, the opportunity should be used to reiterate at the highest political level that the USA and the EU will find a solution on this issue;
- **Ensuring that cooperation on counter-terrorism respects human rights.** . Amnesty International has repeatedly called for an end to all forms of unlawful detention conducted in the name of counter-terrorism by, or on behalf of, the USA anywhere around the world, and to ensure that there is no impunity for human rights violations, including the crimes under international law of torture and enforced disappearance;
- **Ending the use of the death penalty in the USA.** In light of the EU's political commitment to press in all meetings with third countries for advances towards worldwide abolition of the death penalty, the EU must not fail to address the issue with the USA, which had the fifth highest number of executions in the world in 2008.

Guantánamo closure

Following President Obama's executive order in January to close the detention facility at the US Naval Base at Guantánamo Bay in Cuba within a year, there have been a number of discussions among EU ministers – in both the domestic and foreign affairs Council formations– on how the EU can help the USA meet this goal. There have also been statements from a number of EU member states setting out that they would be willing to accept some released detainees. Following the study visit to the USA in March of Commissioner Barrot and President of the JHA Council, Ivan Langer, the US government has clarified that they would welcome cooperation with EU member states on this issue.

As set out in letters from a coalition of international NGOs, ahead of the General Affairs and External Relations Council (GAERC) meeting on 26 January 2009, and ahead of the Justice and Home Affairs (JHA) meeting on 26 February 2009, Amnesty International believes that it is crucial that the international community helps the USA to achieve the common goal of closing Guantánamo. This view was echoed in the European Parliament's resolution of 4 February 2009, which called on EU member states to play their part. As of late March 2009, some 244 men remain held in Guantánamo, approximately 60 of whom cannot be repatriated. None of these men has ever been charged, and many of them have been authorized for release from the base by the US government, some of them years ago. It is the primary responsibility of the US government to find solutions for all those held at Guantánamo, as it was the US government that brought detainees to the detention facility and is holding them there unlawfully. However, it is also incumbent on the international community to do what it can to ensure that these detentions are

brought to speedy and lawful resolution. Amnesty International reaffirms its view, set out in the coalition letter to JHA ministers in February 2009 that the EU's experience in the field of asylum, immigration, and free movement, as well as with regards to rehabilitation and reintegration, could facilitate the design and implementation of a framework for the protection of these detainees. This could include through the provision of financial support,

Amnesty International calls on the EU to use the opportunity of the EU-US summit to reiterate to President Obama that EU member states are willing to play their part in accepting Guantánamo detainees who have protection concerns. The meeting is a good opportunity to call on the US government to build on the momentum which exists on this dossier within EU member states to ensure that a solution is found which enables the detention facility to be closed without further delay. Discussions on individual cases and practicalities should begin as soon as possible.

Cooperation on counter terrorism

Progress on the closure of Guantánamo detention centre must go hand in hand with human rights improvements in other areas of the USA's counter-terrorism policies and practices. In November 2008, Amnesty International set out a checklist of issues on which the incoming US President could make progress in his first 100 days in office. The EU-US summit takes place with less than a month remaining of this 100-day period. The checklist includes concrete steps that the US authorities must take to bring to an end all forms of unlawful detention conducted in the name of counter-terrorism by, or on behalf of, the USA anywhere around the world. It also calls for measures to ensure an end to impunity for human rights violations, including the crimes under international law of torture and enforced disappearance. Amnesty International continues to call on the US authorities to ensure, as they are required to do under international law, accountability and remedy for human rights violations committed by or at the instigation of the USA, including in Bagram and other facilities in Afghanistan.

The two-way nature of the EU-US dialogue at the summit should serve as a reminder that responsibility does not lie only with the USA in providing redress for human rights violations committed in the name of countering terrorism. The EU also, must at last come to terms with its own responsibilities in relation to the USA's 'rendition' and secret detention programme, operated largely by the Central Intelligence Agency (CIA). It is long overdue for EU institutions and member states to implement the recommendations issued by the European Parliament two years ago following the inquiry of the Temporary Committee on the alleged use of European countries by the CIA for the transport and illegal detention of prisoners (TDIP). In its resolution adopted on 19 February 2009, the European Parliament clearly denounces the lack of action of the member states and the Council to shed light on Europe's involvement. There have been a series of new developments in the EU member states following the adoption of the TDIP report. In 2008 the UK government admitted that rendition flights carrying detainees landed on its territory in 2002. Poland has opened a judicial inquiry on possible CIA secret prisons. Nevertheless, as set out in the Amnesty International report "State of denial: Europe's role in rendition and secret detention" of June 2008, the EU continues to deny any responsibility to address the issue at a collective level. As a result, there has been no substantial discussion, let alone concrete initiative, on what corrective and preventive measures the union could undertake to end such practices.

The EU-US summit provides an opportunity for EU member states to commit politically to acknowledging and addressing violations committed in the context of counter-terrorism, and to call on the new US administration to do the same. Among other things, the EU should call on the US authorities to set up an independent commission of inquiry into all aspects of the USA's detention and interrogation policies and practices since 11 September 2001.

Death Penalty

Last month Amnesty International published *Death Sentences and Executions in 2008*, detailing global statistics and trends in the use of the death penalty over the past year. As in previous years, the five countries with the highest number of executions in 2008 were China, Iran, Saudi Arabia, Pakistan and the USA. In 2008, 37 executions were carried out by the authorities in nine states in the USA. There have been 1,156 executions in the USA since judicial killing resumed there in 1977, including 20 executions so far in 2009.

There is increasing evidence that the USA itself is slowly turning away from the death penalty. Sentences have continued to drop since the peak in the mid-1990s. The 37 executions carried out in 2008 represented the lowest

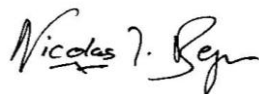
number since 1994. Notably, on 18 March 2009, the Governor of New Mexico signed a bill abolishing the death penalty in his state. As acknowledged in a letter to the Governor from the Czech Presidency and the incoming Swedish Presidency, this is a very welcome development and one on which the 35 retentionist US states, and critically, the federal government which also retains the death penalty, should build.

Reports continue to demonstrate that capital justice in the USA is marked by arbitrariness, discrimination and error. During 2008, four more men were released from death rows on grounds of innocence, bringing to more than 120 the number of such cases since 1975. The four men had all spent more than a decade on death row. Despite such revelations about mistakes, some states continue to execute even where there are doubts about the condemned prisoners' guilt. Texas continues to execute more people than any other state in the USA. A case of particular concern was the execution on 5 August 2008 of Mexican national José Medellín who was sentenced to death in 1994 for his alleged part in the murder of two girls. The state of Texas ignored international appeals, including from the UN Secretary-General, for the execution to be stopped. The authorities carried out the execution despite a 2004 judgment by the International Court of Justice which called for judicial review and reconsideration of the conviction and death sentences of José Medellín and 50 other Mexican nationals denied their right to consular services after arrest, in violation of international law.

By the time of the US presidential inauguration on 20 January 2009, six men held as "enemy combatants" at Guantánamo Bay, were facing military commission trials at which the outgoing US administration had been intending to seek the death penalty. All six had been held in secret incommunicado detention by the CIA for between two and three years before being transferred to Guantánamo. They were victims of enforced disappearance and at least two of them had been subjected to a form of water torture known as "waterboarding" (simulated drowning). Other interrogation techniques and conditions of detention that they endured in secret custody remain classified.

Amnesty International has welcomed the suspension of military commission trials following President Obama's executive order on Guantánamo. The organization is calling on the new administration to abandon the military commissions permanently and to turn to the existing civilian federal courts for the fair trial of any Guantánamo detainee it charges with recognizable criminal offences. It should not pursue the death penalty as a sentencing option in these or any other cases.

In line with EU's political commitment to worldwide abolition of the death penalty, detailed in the EU guidelines on the death penalty, and demonstrated by the active participation of the EU at the UN in securing a resolution calling for a worldwide moratorium on executions, it should use its talks with the US government to encourage it to work for abolition in the USA. In particular it should emphasise to the new US administration that a moratorium on federal executions, and a cessation of pursuit of the death penalty in federal capital cases, would be vital steps towards ending the USA's use of this cruel, destructive, unnecessary and outdated punishment. These steps should be followed up with work with Congress, and with the authorities in the 35 states which retain the death penalty, towards its complete abolition in the USA.



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CC:

Heads of State of EU member states

Ministers of Foreign Affairs

Ministers of Interior

Javier Solana, High Representative for CFSP

Jose Manuel Barosso, President of the European Commission

Benita Ferrero-Waldner, Commissioner for External Relations

Riina Kionka, Javier Solana's Personal Representative for Human Rights