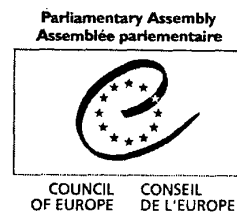


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**REPORT**

Tenth sitting

Tuesday 26 April 2005 at 10 a.m.

In this report:

1. Speeches in English are reported in full.
2. Speeches in other languages are summarised.
3. Speeches in German and Italian are reproduced in full in a separate document.
4. Corrections should be handed in at Room 1059A not later than 24 hours after the report has been circulated.

The contents page for this sitting is given at the end of the verbatim report.

*Mr van der Linden, President of the Assembly, took the Chair at 10 a.m.*

THE PRESIDENT (Translation). – The sitting is open.

### **1. Minutes of proceedings**

THE PRESIDENT (Translation). – The minutes of proceedings of the ninth sitting have not yet been distributed, so their adoption is deferred to a later sitting.

### **2. Guantánamo Bay**

THE PRESIDENT (Translation). – The first item of business this morning is the debate on the report on the lawfulness of detentions by the United States in Guantánamo Bay presented by Mr McNamara on behalf of the Committee on Legal Affairs and Human Rights, Document 10497.

The list of speakers closed at 5 p.m. yesterday. Twenty-two names are on the list, and one amendment has been tabled.

We will have to interrupt the list of speakers in the debate at about 11.45 a.m. in order to leave sufficient time for the replies on behalf of the committees and the votes before the address by Mr Marovic at 12 noon.

Are these arrangements agreed?

*They are agreed.*

I call Mr McNamara, rapporteur. He has eight minutes.

Mr McNAMARA (*United Kingdom*). – Thank you, Mr President.

To try to understand why my report concludes that the United States is acting unlawfully in Guantánamo, I want members of the Assembly to imagine the daily life of a detainee.

This morning, like every morning for the past two and a half years, you woke up in a cage. During the night, your sleep was disturbed by the cold, the bright floodlights and the constant noise of machinery. During the day, you suffer in the heat of the sun. You are unlikely to be allowed out of the cage all day, and you are forbidden from speaking with your neighbours.

There is nothing you can do to try to obtain your release. You do not know how many more months or years you will be there. Your family and friends are thousands of miles away, and you have not seen or spoken to any of them since you were brought into the cage. Indeed, you have had no direct contact with the outside world. Your captors tell you that you are suspected of appalling crimes, but you are given no opportunity to defend yourself against those accusations.

You hope that you will not be taken for interrogation. Interrogation means solitary confinement for weeks, in a cell that stinks of human excrement. Before and after questioning, you are chained to the floor in a squatting position, with your hands shackled between your ankles. The cell is freezing cold, with continuously flashing strobe lights and deafening rap music. You are kept in these conditions for fourteen hours, during which time your muscles cramp, the shackles cut into your flesh and you soil yourself. Afterwards, you can hardly remember your name, you cannot think clearly and you cannot walk without assistance.

During interrogation, a woman in revealing clothing may show you pornographic magazines and touch your private parts. Then a man shows you a picture, allegedly of your wife naked with Osama bin Laden. You are told that if you do not give the answers they want, you will be sent to another country to be tortured and your family will be imprisoned. As a deeply religious husband and father from a traditional patriarchal society, you find this humiliating and distressing.

You hope that today you can spend a quiet day in your cell. You hope that you will not be told to submit to the injection of an unknown drug, because you know that you will be beaten if you refuse. You hope that you do not get caught breaking one of the rules – talking to one of your neighbours, giving a guard a “funny look” or having too many plastic cups. If you do, the guards will take away your holy book, the Koran, which is your only source of comfort in the cage. You hope that you will not end up like the man from the cage next door, who went mad and tried to kill himself.

Colleagues, think of all the things that we, as free people, have done in the past two and a half years, the places we have been to, the people we have met and the families we have enjoyed. Then imagine that, instead of being free to do such things, we have been imprisoned in Guantánamo. Remember, none of the detainees has been convicted of any offence, and most have not been charged.

That is the treatment to which citizens of Council of Europe member states have been subjected. Some are still there, along with hundreds of others. Other organisations have criticised certain specific features of the situation, but I would be more general and more explicit: I believe that what the United States is doing is unlawful. It is an offence to our civilised values, and we must be clear in condemning it and calling for it to end.

The terrorist outrages of 11 September 2001 changed the world. None of us feels as safe as we did before, and our fears and insecurity have been confirmed by further attacks around the world, particularly in Madrid. We must react strongly and effectively to this threat, but we must do so in the correct manner.

What are the aims of the terrorists? They are attacking freedom, democracy and the rule of law. They are striking at human rights and fundamental freedoms – the most basic right to life and to live free from fear. In fighting back, we must remember not to play into their hands. We must not compromise our own principles, as the destruction of those principles is the goal of the terrorists.

For those who might sympathise with al Qaeda, Guantánamo is the true face of the enemy – the epitome of its cruelty and hypocrisy – but I do not believe that Guantánamo is a reflection of the real America, which is the America that I know and the America of the constitution, the declaration of independence and the Bill of Rights. That America stood side by side with Europe in its struggles against totalitarianism.

Many American voices, and not only in civil society, speak loudly and clearly against what their government is doing. Even the FBI and the State Department have voiced serious concerns, and the courts have, with few exceptions, rejected the Administration's doctrines. In the international arena, the United Nations, the Inter-American Commission for Human Rights, the European Parliament, the Parliamentary Assembly of the Organisation for Security and Co-operation in Europe and this Assembly, in my earlier report, have condemned the actions of the United States in Guantánamo.

Alongside the statement of our principles, we must also propose concrete actions intended to have a direct effect on the situation. We should point out clearly and individually the grounds on which Guantánamo is unlawful and call for those violations to cease.

As those detained at Guantánamo are subjected to cruel, inhuman and degrading treatment, we should call on the governments of Council of Europe member states not to transfer to United States custody individuals who might be detained in Guantánamo, since such transfers would violate the principle of *non-refoulement*. Equally, we should demand that the authorities of Council of Europe member states not participate in interrogations at Guantánamo, as such interrogations are conducted unlawfully. Indeed, as the interrogations occur against a background of cruel, inhuman and degrading treatment often amounting to torture, the information that they produce is inadmissible in a court of law.

The authorities of member states should not co-operate in the prosecution of detainees under military commissions, as such trials are so unfair as to be a flagrant denial of justice. We should call on our governments to protect the rights of individuals unlawfully detained at Guantánamo against any prejudice, including the loss of residency through involuntary absence from their own country.

We should support other organisations that are striving to correct the situation, including the International Committee of the Red Cross, the Inter-American Commission for Human Rights and the many NGOs and lawyers involved with these matters. Last week, the United Nations Commission on Human Rights rejected a Cuban-sponsored resolution that mildly called for an impartial and independent investigation into the situation using the commission's various mechanisms. That was a perfectly reasonable request, and it is reflected in my report's call for officials of international humanitarian and human rights organisations to be given access to Guantánamo. The UN's behaviour was a magnificent example of the double standards that we in the Assembly have vouched scrupulously to avoid.

Finally, as proposed by my friend Mr Jurgens, we should not stop with the adoption of this report, but should pursue the matter further through bilateral contacts with our colleagues in the US Congress. Colleagues, this is my last report for the Assembly. I am glad that my final contribution to your vital work is on such an internationally important issue that goes to the heart, being and meaning of the Assembly. I would like to take the opportunity to thank you all for my many enjoyable and rewarding years in the

Assembly and for the time that we have spent working together to try to advance the cause of human rights and individual dignity.

THE PRESIDENT. – Thank you very much, Mr McNamara. May I specially thank you for all the valuable contributions that you have made during your membership of the Assembly, which are much appreciated by all members.

THE PRESIDENT (Translation). – I call Ms Leutheusser-Schnarrenberger, who will speak on behalf of the Liberal, Democratic and Reformers' Group.

Ms LEUTHEUSSER-SCHNARRENBERGER (*Germany*) congratulated Mr McNamara for his excellent and well researched report. He had highlighted the work of the Council of Europe in a very difficult area where to some extent its powers were limited. He had given a very clear description of the situation, including the legal position, and the report had made strong demands and recommendations. In recent years over 660 people had been detained in a number of countries as part of the fight against terrorism. The Council of Europe must emphasise that even when there are challenges to human rights proper standards should be upheld. The report stressed the illegality of such detention and the Council of Europe must raise awareness of the situation and encourage wide debate. It needed to stress that terror would be overcome only if human dignity was upheld. That was the key task for the Council of Europe. Actions must be based on standards and it could not renege on its obligations and principles. The Council of Europe must extend the debate on Guantánamo Bay beyond its own organisation in 2005. That was the message for the Council of Europe summit in May. The organisation must re-emphasise its support for human rights; those who had ignored other peoples' human rights must still be brought to justice, but through due process.

THE PRESIDENT (Translation). – Thank you, Ms Leutheusser-Schnarrenberger. I now call Mr Kosachev to speak on behalf of the European Democrat Group.

Mr KOSACHEV (*Russian Federation*) welcomed and supported the report. The report and draft resolution reflected the reality of what the United States was doing. Some aspects, however, especially the legal position, could be more fully developed. There was no legal definition of terrorism and it was interpreted differently in different countries. In the struggle against terrorism there was no clear way forward. The United States, for example, took the position that military action against third countries was not subject to international law. It did not acknowledge the concept of prisoners of war and referred to "terrorists", "enemy combatants", and "the war on terrorism". Such terms were not accepted by some of the international organisations working in this field, such as the Red Cross and Amnesty International. The United States was, however, beginning to take more notice of international opinion and there had been some changes in approach to Guantánamo Bay. The Council of Europe must continue to keep a watch on the situation and press for all those who had fought against the United States to be covered by the third Geneva Convention. The Council of Europe would be adopting two conventions on terrorism at its third summit in Warsaw in May. He further emphasised the lack of a single definition of terrorism and referred to the importance of dealing with specific types of terrorism such as nuclear terrorism. The Russians had pressed this point at the United Nations General Assembly. Finally, it was important to stress that Guantánamo Bay was on Cuban territory against the will of the Cuban Government. Just as the Russians had been ordered to withdraw from Moldova the Americans must leave Cuba.

(*Mr Pullicino Orlando, Vice-President of the Assembly, took the Chair in place of Mr van der Linden.*)

THE PRESIDENT. – Thank you. I call Mr Kox, who will speak on behalf of the Group of the Unified European Left.

Mr KOX (*Netherlands*). – Next week, the President of the United States will visit Europe to commemorate the end of the second world war, sixty years ago. In my country, the president will honour the thousands of US soldiers buried at Margraten, near the German border. Most of the young men buried there died in combat, but we know that some of them, after having been captured, died due to torture or illegal execution by members of the Wehrmacht and the SS. Shameful disrespect for the Geneva conventions was one of the many horrible war crimes the Nazis committed during their dark reign over Europe.

How much better it would have been if this report had not been necessary, but it is, and it deals with reality. Having thoroughly investigated the treatment of prisoners of the American-led war on terror, the rapporteur, Mr McNamara, concludes that the United States, "has betrayed its own highest principles". The circumstances surrounding US detentions at Guantánamo Bay show "unlawfulness on grounds including the torture and cruel, inhuman or degrading treatment of detainees and violations of rights

relating to prisoner-of-war status, the right to judicial review of the lawfulness of detention and the right to a fair trial". The rapporteur says that the Government of the USA "has engaged in the unlawful practice of secret detention" and in that of rendition.

The report is both clear and convincing, so this Assembly should follow the rapporteur's proposal to condemn the unlawfulness and the inconsistency with the rule of law shown by the US Government at Guantánamo Bay.

The Group of the Unified European Left in the Assembly supports the proposal to call on the US Government to ensure respect for the rule of law and human rights and to ensure that the so-called war on terror is conducted in all respects in accordance with international law, particularly international human rights and humanitarian law. We endorse the draft recommendation to the Committee of Ministers to transmit this resolution to the US Government and to remind it of its obligations as an Observer state to the Council of Europe to respect human rights and the rule of law.

We agree with the measures recommended in the report to ensure monitoring of the developments. That will not be easy. Until now the US Government has tried to run away from its responsibilities. It does not allow foreign observers in Guantánamo Bay. Last year, the Parliamentary Assembly of Nato decided to send a fact-finding mission to Guantánamo, but the US Government first postponed it and later refused to permit it, stating that – listen carefully – the exhibition of prisoners of war to the public would be a violation of the Geneva convention.

Europe owes eternal gratitude to the United States for its role in the Second World War, but gratitude can never be an excuse to close our eyes to the misconduct of our former liberators. I congratulate the rapporteur on his brave report and excellent recommendations. It is a pity that he has to leave us; I would like to have seen many more of his reports.

We parliamentarians should also do our utmost in our national parliaments to continue this debate and to demand from our governments that they urge the US Government to return to its highest principles and end its abuse of international human rights and humanitarian law. We fully support the recommendation and the report.

THE PRESIDENT. – Thank you. I call Ms de Zulueta on behalf of the Socialist Group.

Ms DE ZULUETA (*Italy*). – The report presented by the rapporteur for the Committee on Legal Affairs and Human Rights, Kevin McNamara, may appear at first glance to be a technical document, intended to clarify some legal points. It is, of course, a great deal more. It is a powerful political document, and one of the most rigorous and, indeed, severe indictments I have read and the Assembly has seen of the dark side of the US Government's current war on terrorism. The review of the legal and factual material by the rapporteur and the committee has been both extensive and meticulous. The Socialist Group heartily subscribes to its conclusion as to the unlawfulness of these practices.

As the report makes clear, however, the detention facility at Guantánamo Bay is only the most manifest example of these errors. Some journalists have visited Guantánamo, and some have even sat in on the military review processes which are being experimented with as a substitute for the fair trials to which all prisoners have a right. The International Committee of the Red Cross has visited Guantánamo detainees, but nobody has reported back on the secret detention facilities run by the CIA or other intelligence agencies elsewhere.

It is this system that the report brings to light, rightly denouncing the torture and cruel, inhuman and degrading treatment of detainees at Guantánamo and the denial of their basic rights, but also pointing to the related unlawful practices of secret detention and "rendition" – the removal of suspects to other countries for interrogation or detention.

These actions touch us all. The current issue of *Le Monde Diplomatique* has a front page story on the so-called "outsourcing of torture", which opens with a reported case from Sweden in which two suspects were transferred, with US help, to Egypt, where they were tortured. Another recent case, which has led to charges being requested against twelve US citizens suspected of having kidnapped and transferred to Egypt an Egyptian citizen resident in Italy, has affected my own country. That man, who is known as Abu Omar, was tortured and has subsequently disappeared, and is believed dead.

There is a full review of the responses from Council of Europe national delegations whose citizens have been detained at Guantánamo in Mr McNamara's explanatory memorandum, which shows that our governments have responded piecemeal to these detentions and to the challenges that they pose to fundamental human rights.

The report and resolution are a timely call to all our governments to protect their own and other citizens. They are also a reminder that respect for human rights is not a weakness but the best way of winning international solidarity and support for the fight against terrorism.

Mr President, colleagues, on behalf of the Socialist Group I heartily thank Kevin McNamara not only for this report, whose conclusions we will support and should carry back to all our parliaments, but above all for all the work that he has done over the years. As he says, this report and the others that preceded it have been the best demonstration of what the Council of Europe is about. Thank you, Kevin.

THE PRESIDENT. – Thank you, Ms de Zulueta. I call Ms Papadimitriou, who will speak on behalf of the Group of the European People's Party.

Ms PAPANIMITRIOU (*Greece*). – With converging perceptions of global threats and regional concerns, there are plenty of opportunities for Europe and the United States to re-examine the rules of the game, to draw from their common values and to be involved, as part of a more balanced partnership, in real participatory discussion. We believe that this excellent and balanced report can be a good basis for debating highly legal and profoundly political issues, in honesty and mutual trust, in relation to all challenges envisaged by the transatlantic partnership.

The first of the security challenges common to the US and Europe is the fight against terrorism. However, although the two partners share a fairly similar analysis of security threats, they are at variance over the methods of dealing with these common threats. The case of the Guantánamo Bay prisoners and the way in which the US has dealt with some intelligence matters are the most striking examples of differences of approach. At the Istanbul and Dromoland summits in June 2004, Americans and Europeans took measures for fighting together both in the Nato framework and in that of EU/US relations.

As we all know, fighting terrorism is a grave matter, and on many occasions, disregarding the mounting anti-American feeling taking a hold on European public opinion, we have expressed our support and demonstrated our solidarity to the United States of America in this context. However, in fighting terrorism we must, as we have often stressed in the Council of Europe, pay particular attention to the respects of basic human rights and fundamental freedoms. If we disregard that obligation, we are in effect acting as the terrorists themselves expect us to act.

Upon his re-election, President Bush invited us to co-operate more closely in order to promote the rule of law and to create a just, democratic and secure world. Our ties and joint action cannot rely solely on common strategies – they need to be founded on the rule of law and full respect for human rights.

I can therefore, on behalf of the EPP, agree fully with Mr Kevin McNamara's excellent, balanced and objective report and support the relevant draft resolution and recommendation.

THE PRESIDENT. – Thank you, Ms Papadimitriou. I call Lord Judd.

Lord JUDD (*United Kingdom*). – First, I join those who have paid tribute to Kevin McNamara. His contribution to the Council of Europe has been consistently courageous, visionary and principled. However, I want to say, as a British parliamentarian, that it is not only the Council of Europe that will miss Kevin, because he will of course be leaving the British Parliament in the next few weeks. Kevin has made an equally consistent and powerful contribution in the British Parliament, sometimes when that has been a very difficult thing to do. I have had the privilege of serving with him on the Joint Committee on Human Rights in the British Parliament, and his contribution in that context has been second to none. Kevin's departure from parliament and from the Council of Europe represents a very sad loss. We must all resolve that the example that he has set is one that we want to follow.

I thank him for a powerful report that has the best characteristics of all that he has ever done in politics. In his speech this morning, he spelled out the grim reality of what detention in Guantánamo Bay means for the detainees, none of whom has been tried, let alone convicted. It is an experience that cannot be reconciled with the international conventions on human rights or on torture. In his report, Kevin also spoke out about the people in the United States who are making a stand against what is happening in Guantánamo Bay. I hope that one clear message that will emerge from our deliberations is that of solidarity with all our friends and colleagues in the United States who continue to stand for the things in which we believe.

Of course, the justification for Guantánamo Bay is the threat of international terrorism. Let us analyse that threat for a moment. It is aggravated by a disastrous combination in the world – the millions of people who live in such desperate poverty and destitution that they have very little stake in the future, and the reality of highly educated people in many places who feel excluded from the power systems and

structures of the world and have therefore become alienated. The reality is that ruthless power seekers manipulate the politically alienated and the deprived and perniciously use religion or whatever else is at their disposal to pursue their own relentless search for power and influence. We cannot defeat that by arms, and we certainly cannot defeat it by the kind of so-called security measures at Guantánamo Bay – we can defeat it only by winning the battle for hearts and minds. That is what makes me most angry about the whole issue of Guantánamo Bay. It is a daily, constant contradiction in terms of our battle for hearts and minds.

It is driving young people into the arms of the manipulators. Think of the young, Islamic person, frustrated and deprived, listening to talk about freedom from our part of the world yet faced with the reality of Guantánamo Bay. Understandably, that young person will be driven towards extremism. The only way in which we can proceed is by reasserting the importance of the rule of law and the standards and ethics that are central to the purpose of the Council of Europe.

Let me conclude by saying that we must all look at ourselves in our individual member countries honestly and ensure that our countries' response to terrorism does not mirror, albeit on a less dramatic scale, what we condemn in Guantánamo Bay. We must stand together in the battle for hearts and minds.

THE PRESIDENT. – Thank you. I now call Mr Jahić.

Mr JAHIĆ (*Bosnia and Herzegovina*). – Unfortunately, my country – Bosnia and Herzegovina – is directly involved in the problem of the unlawful detention of a group of people in Guantánamo Bay. In October 2001, the Supreme Court of Bosnia and Herzegovina ordered holding a group of naturalised Bosnia and Herzegovina citizens in prison on the charge of planning terrorist attacks on the United States embassy in Bosnia.

At the beginning of 2002, the prosecution authorities informed the judge of the supreme court that there were no more reasons for holding those people in prison and he therefore ordered that they should be freed. On the very same day, the human rights chamber proposed to the Bosnian Herzegovinan authorities that they should take "all the necessary steps to stop extraditing these persons from Bosnia and Herzegovina." The human rights chamber consists of prominent lawyers from Bosnia and Herzegovina and European countries.

Instead of freeing those persons and returning them to their families, as had been ordered, those men were handed over, against the law, to the US military forces in Bosnia and Herzegovina and then taken to Guantánamo Bay where they remain to this day. As I said earlier, these men have been charged with planning terrorist attacks but, after three years, there is no official allegation against them. They have not been given a chance to defend themselves in any US court.

Bosnia and Herzegovina society faces the problem of the violation of human rights. Various public and media debates are taking place about the issue. The Parliament of Bosnia and Herzegovina and the Council of Ministers have, on various occasions, discussed the problem. As a president of the Commission for Human Rights in our parliament, I had the opportunity to listen to very sad stories from the wives and children of the detained men.

Bosnia and Herzegovina requested information from the US Government to clarify the status of the men. Although no case has been made against them, they remain prisoners in Guantánamo Bay. To make the situation even more illogical, they still have to prove their innocence; the authorities do not have to prove their guilt.

The citizens of Bosnia and Herzegovina view the United States of America as a beacon of respect for human rights. We are aware that the system and laws of the United States provide for upholding the rights of the common man but now we are confused.

I support the report and I hope that it improves the status of the Bosnia and Herzegovina citizens who are held in Guantánamo Bay.

THE PRESIDENT. – Thank you. I call Mr Kucheida.

Mr KUCHEIDA (*France*) said that colleagues might imagine people submitting to surreal tortures, for example, use of dogs, electricity, and the threat of killing, that would be similar to the Nazis. However, what was being discussed was the treatment of people detained after the terrorist attacks of 2001. In December 2004 more than 500 people were being detained without charge. Guantánamo was a symbol of a government acting outside the law. The US did not adhere to the convention on human rights, and did not accept the rule of law. Guantánamo was a world of arbitrary detention and two-speed justice. That was

a quote from Amnesty International. The United States had declared a war against terror, but that did not mean that terrorist methods should be used to combat it. The Spanish did not resort to such means after the attacks on them. It was the duty of the Council of Europe to remind the United States that force was not above the law. He hoped that President Bush would stop identifying himself with this approach. He thanked Mr Kevin McNamara for his excellent report.

THE PRESIDENT. – Thank you. I call Mr Eörsi.

Mr EÖRSI (*Hungary*). – As a Hungarian Liberal, I feel the need to be humble in making strong judgments because I come from a country that has, fortunately, not yet been exposed to terrorism. I wonder what my feelings would be if the citizens of Budapest feared every day that they could be killed any time on the underground by a crazy terrorist. I therefore say to my American colleagues who may be listening to this debate, “Don’t listen to me but to our British and Spanish colleagues who have experienced exposure to serious terrorism.”

It could be claimed that that is different because ETA and IRA terrorists have an aim and a face and perhaps even a known headquarters. That is different from al Qaeda. If we recall the two bloodiest terrorist movements of the past century – the Soviets and the Wehrmacht, which, unfortunately, even won for a while - they all had political goals and faces. Al Qaeda has no goal except killing; it has no face, only a huge network. It is therefore very difficult to combat. That is all true. However, perhaps we can turn for assistance to a famous American – Benjamin Franklin. He said: “Those who give up liberty to purchase safety deserve neither liberty nor safety.” I am convinced that Benjamin Franklin was right and that his words still apply today.

I believe that the United States of America has become the strongest nation in the world because it put individual liberty first. It concluded that, if the individual enjoys liberty and freedom, that will contribute to the liberty and freedom of the community.

Sometimes we Europeans take a different attitude – we say that community values are more important than individual values. We know that we are not as strong as America, but I have a feeling that now it is time for Europe to give America a lesson.

We must remember Nuremburg and the Eichmann trial in Jerusalem. Those were legal procedures under the rule of law, which relates to Lord Judd’s point about terrorism. If the procedure is based around the law, more people understand the matter. Some people rightly say that terrorism was defeated at Nuremburg, and look at what our Spanish colleagues are doing. After Madrid, they have taken people to court under proper legal procedures, and America should also follow such legal procedures.

If Europe has learned from America for centuries, the time has come for America to learn from Europe. Sir Winston Churchill was a famous European who loved America, and he believed that what made America great was that it always reached the correct decision.

THE PRESIDENT. – Thank you, Mr Eörsi. I call Mr Özal.

Mr ÖZAL (*Turkey*). – First, I thank Mr McNamara, our distinguished rapporteur, for his great work.

Dear colleagues, we all condemn terrorism as an evil of our time. The world witnessed one of the cruellest examples of terrorism on 11 September 2001. The threat that terrorism poses to mankind in today’s world is terrifying.

The existence of a global terrorist threat is now much more than established fact. The attacks on 9/11 were neither the first nor the last time that the world has encountered the horrible face of terror. The US is not the only country in history to have been subjected to such violence.

The magnitude of the violence of those attacks underlines once again the need for solidarity and international action in the global fight against terrorism. That is the reason why the international community has offered its support to the US to fight terrorism. Terrorism is an evil that strikes at the very core of democracy, and it must be fought without double standards.

The fight should be pursued through international co-operation and solidarity. In other words, the fight against terrorism does not excuse what is happening today in Guantánamo Bay. The protection of human rights should lie at the heart of all democratic states, and I therefore share the concerns about the human rights situation of persons held in custody in Afghanistan and Guantánamo Bay.

I agree with the rapporteur that conformity with human rights and humanitarian law is not a weakness in the fight against terrorism, but a weapon, which can be used to ensure the widest



international support for action against terrorism. The circumstances surrounding detentions by the US at Guantánamo Bay show unlawfulness and inconsistency with the rule of law on various grounds, which is reflected in the report.

In our time, cruel, inhuman or degrading treatment or ill-treatment which amounts to an official policy of systematic torture towards detainees can only be regarded as being as evil as terrorism itself. The current rights and status of detainees connected to the international armed conflict conducted by the US in Afghanistan should be independently determined by a competent tribunal, which is, unfortunately, not yet the case.

I believe that various international organisations should co-operate to improve detention conditions at Guantánamo Bay and to ensure that detainees' rights are respected. With good co-operation, the international community can change the situation.

I want to draw members' attention to some small mistakes in Mr McNamara's report. In Appendix III, paragraph 12, the rapporteur states that he is "concerned at the failure to reply of Turkey, which has been reported to have as many as thirteen detainees (including Murat Kurnaz)". The number of Turkish citizens who have been taken to Guantánamo Bay on the grounds that they are al Qaeda collaborators is six, not thirteen. Footnote 7 alleges that "only after intense lobbying...has the Turkish Government come to view him as their responsibility. Despite this recognition, the Turkish Government has shown little interest in pressuring the US Government over [his] case."

The Turkish Government has been in contact with US authorities, and it has followed its citizens' situation closely. In June 2002, a delegation from relevant Turkish governmental bodies went to Guantánamo Bay to see the detainees. Following the initiatives introduced by the Turkish Government in both Ankara and Washington, it has been possible to ensure the release of four out of six Turkish citizens. There are only two Turkish citizens left, and efforts to have the last two set free are ongoing. The Turkish Government has therefore already observed the important recommendation in the report, which suggests taking "effective action in support and defence of any of their citizens, nationals or former residents who are or have been detained at Guantánamo".

Human rights should always be protected. No distinction, discrimination or exception should be allowed in that regard. In the end, I strongly endorse Mr McNamara's excellent report. The report states that "the US administration has strayed into unlawful actions in its zeal to pursue a world-wide campaign against terrorism". I therefore fully agree with the recommendations.

THE PRESIDENT. – Thank you, Mr Özal. I call Mr Pangalos.

Mr PANGALOS (*Greece*) said that the Council of Europe was a community of nations based on the rule of law, and the protection of human rights, of minorities, of the right to be different. That could not be at variance with the rule of law. That marked a difference from other parts of the world where the rule of law was not established. However, Council of Europe standards were spreading. The United States, Japan and the countries of Oceania, shared those values. In his excellent report, Mr McNamara had said it was disappointing to see the United States creating a "black hole" on the issue of the individual and the state. Guantánamo was not, according to the United States, the territory of the United States, but that was contradicted by its actions there. There had been various attempts to define terrorism. Where democratic rights were violated this was a violation of the rule of law. The United States often did not share information about terrorist activities, but it claimed a technological monopoly to combat terrorism. But if it was so technologically advanced, why did it revert to "stone age" activities in places like Abu Graib and Guantánamo? Such an attitude could be described as lies and ignorance.

THE PRESIDENT. – Thank you, Mr Pangalos. I call Mr Gardetto.

Mr GARDETTO (*Monaco*) said that for 200 years the United States had displayed an image of the Statue of Liberty indicating that people were welcome to live within the rule of law and without fear. However, in the present circumstances of the war on terror he did not recognise this image anymore. He wanted to be quite clear that what was being condemned was a betrayal of the principles of liberty. The Council of Europe was hereby condemning the use of torture against prisoners of war.

The Committee on Legal Affairs and Human Rights had made clear at its meeting in Paris in December that the United States Administration had cast aside the rule of law. It was reprehensible for the United States to say that there were no limits to what could be done to fight terrorism. In some ways they themselves were using the methods of the terrorists. What was happening in Guantánamo Bay was part of a deliberate strategy taken at the highest level. The Council of Europe spoke for more than 800 million

people and must emphasise that such violation of human rights could not continue. The principles of the United States Constitution should be upheld. That was why he was going to vote in support of the report.

THE PRESIDENT. – Thank you, Mr Gardetto. I call Ms Lucyga.

Ms LUCYGA (*Germany*) congratulated Mr McNamara on his excellent report which was widely welcomed. It rightly emphasised the importance of the rule of law. The 11 September 2001 would never be forgotten, but it had opened a Pandora's box in that it had shown that terrorism was widespread and ever present. It was a question of not whether but how we should fight terrorism and Europe must make its voice heard in the United States. Turning a blind eye to what was happening in the fight against terrorism would only lead to more violation of human rights. Europe must react to situations such as Guantánamo Bay and Abu Graib. There was widespread disgust at the use of torture and the Council of Europe must make its view known to the US authorities. It was very important that the prisoners in Guantánamo Bay should have rights and Mr McNamara's report put this case very powerfully.

THE PRESIDENT. – Thank you, Ms Lucyga. I call Mr Grebennikov.

Mr GREBENNIKOV (*Russian Federation*) felt that there were two important points to make. Firstly, it was a violation of human rights to detain people without charge and legal representation. Secondly, the United States should set an example to other countries of how human rights should be upheld. It was reprehensible that the United States should detain people in a base in another country's territory. It was in fact guilty of double standards, both supporting human rights and violating them. Europe must condemn what the United States was doing in Guantánamo Bay.

THE PRESIDENT. – Thank you, Mr Grebennikov. I call Mr Oliynyk.

Mr OLIYNYK (*Ukraine*) thanked Mr McNamara for the honesty and passion of his report which had highlighted the inhuman and degrading treatment of prisoners in Guantánamo Bay. In June the Assembly had condemned terrorism and upheld the position of human rights. Conditions in Guantánamo Bay were almost medieval. People were being detained in a third country, some of them were under 16, the status of prisoners was undefined, conditions were inhuman and the terrorists were treated like hostages. Mr McNamara's report had shown very clearly how human rights were being violated. He had not intended to speak but he had read this important paper and felt he must make his case. The report had referred to the United States as a beacon of democracy, but in the recent past it had attacked other countries such as Serbia. He felt that the United States was guilty of double standards and should no longer be an Observer at the Council of Europe. He did not want to be totally anti-United States, however; there were many there who disagreed with their government.

THE PRESIDENT. – Thank you. I call Mr Lynch-Staunton.

Mr LYNCH-STAUNTON (*Observer from Canada*). – Last October, the Assembly adopted Resolution 1400, entitled "Challenge of terrorism in Council of Europe member states", which reiterates the Assembly's "condemnation and utter rejection of terror as a means of achieving political ends." It is in that context that the Assembly is today considering a resolution that is highly critical of the United States' practices at its detention facility in Guantánamo Bay, and again states our collective outrage at the terrorist attacks on the United States of 11 September 2001, and the Assembly's commitment to the campaign against terror.

In Canada these attacks affected us very deeply – a number of Canadians were among their victims – and they brought home the threat of international terrorism to both the security and the values that we share with our American neighbours and with our friends in Europe and around the world. In turn, global terrorism requires a firm and well co-ordinated global response.

At this very time, the Canadian Parliament is reviewing a major anti-terrorism bill passed immediately after 9/11. Our main preoccupation, as it was then, remains the search for a proper balance between the collective security of citizens and the constant need to respect basic individual human rights.

*(The speaker continued in French.)*

He said that Mr McNamara's report was clear that whilst the United States had done much for human rights and the rule of law, Guantánamo Bay was an example of the United States neglecting its own principles as regards the universal nature of human rights.

*(The speaker continued in English.)*

The report makes brief mention in paragraph 42.vii, of Omar Khadr, a Canadian detainee in Guantánamo Bay. His case illustrates the dilemma in dealing with the threat of terrorism and with those suspected of posing a direct threat to our security or who may have valuable information that could prevent further attacks.

Mr Khadr and his family were, by their own admission, deeply involved in al Qaeda: his father was a close associate of Osama bin Laden, and one of his brothers is alleged to have run an al Qaeda training camp in Afghanistan. Omar Khadr himself is accused of killing a medic during a battle with American soldiers in Afghanistan. He was only 15 years old at the time. These are serious allegations that warrant proper investigation and prosecution. However, as serious as they are, such allegations should in no way diminish the human rights of anyone suspected of involvement in terrorism, including protection against torture and ill-treatment, the rights to judicial review of detention, to legal counsel, to fair trial and, in the case of foreigners, to consular visits.

In 1976, the Canadian Parliament abolished capital punishment, and since then we have repeatedly registered our opposition to the death penalty as an acceptable punishment, whatever the circumstances. Canada has more than once asked the United States for assurances that Mr Khadr will not face the death penalty and that he will be given the opportunity to respond to the allegations against him before a tribunal that meets international standards. The American Government has so far refused to give such assurances and has been unwilling to discuss these issues until his legal status is determined. Indeed, the US has refused to allow a competent tribunal to establish the legal status of all Guantánamo detainees, as mandated by the Geneva conventions.

All democratic countries and societies, here and elsewhere, must continue to be firm in reminding the United States that, no matter how big the threat and how horrible its potential, any civilised society that abandons the two basic fundamental principles, respect for human rights and the rule of law, does so at its own peril.

THE PRESIDENT. – Thank you. I call Mr Kaikkonen.

Mr KAIKKONEN (*Finland*). – The United States Government continues to detain people indefinitely without charge or trial and without applying the Geneva conventions at Guantánamo Bay naval base in Cuba. According to Human Rights Watch, the United States currently holds some 550 people as “enemy combatants” at Guantánamo Bay. Furthermore, although gathering intelligence has been a central US justification for the detentions, some US officials say that most of the detainees are no longer considered of intelligence value.

There are plenty of reports of the ill treatment of prisoners. Amnesty International reports that they are confined to tiny cells, denied access to lawyers, relatives or proper courts, and are subjected to repeated interrogations and a punitive regime aimed at encouraging their “co-operation”.

The US Government has been on high alert since the terrorist attacks of 11 September 2001. Due to the excessive actions, it is clear that basic human rights of the detainees at Guantánamo Bay have been compromised. However, the rights of the detainees are universal and not negotiable. A democracy fighting terrorism cannot choose whose human rights to honour or when to honour them. The United States should immediately stop detaining Guantánamo Bay prisoners without due judicial process. The prisoners should be properly charged or set free.

In the last century, the United States helped tremendously to improve human rights and democracy. Now it is working against its own principles. There are reports from various reliable sources that the US has tortured and treated the detainees in an inhuman way. The so-called war on terror does not represent a blank cheque allowing anything to happen. If the US will not honour the principles of the United Nations, it will lose support to fight terrorism. That would not be a desirable development from any point of view. This is an excellent report, and I thank Mr McNamara for his great work.

THE PRESIDENT. – Thank you. I call Ms Kanelli.

Ms KANELLI (*Greece*). – Thank you, Mr McNamara, for reminding us that Ernest Hemingway rang the bell. Listening to your remarks, I was thinking about what would happen if Hemingway were alive today, drinking a coffee or a tequila in a Cuban café, and whether he would have had the chance to visit Guantánamo Bay.

We have all seen the pictures of terror at Abu Graib which were broadcast all over the world. There are some people in the world who have not forgotten that Agent Orange is still killing Vietnamese

men, women and children. There are people who know that if you do not have Indians – if you do not have barbarians – you can create them and again become the cowboy of the world.

I especially want to thank Mr McNamara for daring to talk about the big mistake that we make if we deny the Cuban situation. We Europeans should consider whether we should have lost two years in drafting a resolution like this and permitted the Americans to exclude themselves from any punishment in the international court in The Hague. As a superpower, they sign bilateral agreements all over the world excluding themselves from any legal procedure against behaving like big Rambo guys. Guantánamo Bay is not only a legal matter or a political matter; it is and will remain the shame of international civilisation, especially in Europe, where we have experienced concentration camps.

We have seen people die at the end of the previous century – in Yugoslavia, children sleeping in their beds – for democracy and for high ideals. Whose ideals? We have to support everyone in Guantánamo Bay and every detainee in the non-visible Guantánamo Bay. There are hundreds of Guantánamo Bays all over the world – we can find them in countries that can bear the idea of obtaining information for the worldwide anti-terrorist war by using torture or secret detention.

Our colleague from Bosnia and Herzegovina talked about some citizens coming back after three years having not even been charged; they lost three years of their lives through being detained in Guantánamo. What would have happened if there was a Victor Hugo defending a Dreyfus? As Lord Judd said, are we really looking truly and honestly into the mirror, or are we caressing American insecurity after 11 September? Who in history has ever said that one dramatic day that everyone condemns as a bloody terrorist act is an excuse to be worse than the terrorists, using legal methods? Did not we open our ears to the decision of the American high court that this is illegal and against the American Constitution and the values of the American revolution? That illegality has not been faced inside the United States because Guantánamo Bay is in a foreign country outside US territory. In my country, Greece, we lived under a dictatorship helped by the Americans, and we have their bases. Can we imagine that we could ever be asked to give them space for a new Mediterranean Guantánamo Bay?

Thank you, Kevin McNamara – we are sorry that you are leaving us. I especially thank you for deciding to choose the subject of Guantánamo Bay as your farewell, because it is a lesson that we have to learn.

THE PRESIDENT. – Thank you, Ms Kanelli. I call Mr McNamara, the rapporteur.

Mr McNAMARA (*United Kingdom*). – I thank all those who have made kind remarks about me. They will be on the record, so I can show them to my wife as a means of justifying my absence from her side on so many occasions. I should say, however, that the power of the rapporteur depends most of all on the support staff. In the Committee on Legal Affairs and Human Rights, we have a supreme team of lawyers and secretaries who work very hard: they do the devilling and pick up our ideas and put them to us in a coherent form so that we can provide a report such as this – scholarly and penetrating with interesting insights. However, they are no mere dry lawyers – they are driven by the shared passion for human rights that brought them to seek service in the Council of Europe. They deserve a vote of thanks.

Let me pick up on some of the points that have been made. I am sorry that my Turkish colleague felt that our information was incorrect. Turkey was sent the same questionnaire as everybody else, but unfortunately we did not receive any replies so we had to proceed on the basis of the information that was available to us.

I have thought very hard and carefully about the situation of the detainees from Bosnia and Herzegovina. That happened in our bailiwick – Europe – in an area where member states of this Assembly have had jurisdiction and power; indeed, its High Representative comes from my own country. Yet the federal police flouted the rule of law that we and the United States were supposed to have gone there to implement. That is quite a tragedy.

As Lord Judd hinted, the United Kingdom has anti-terror legislation that will, I hope, be subject to a resolution in the Committee on Legal Affairs and Human Rights so that it can consider the implementation and effectiveness of that legislation and what it means in terms of human rights not only in my own country but in member states, lest it should be used as a model. That must be examined very carefully.

The case that our Canadian colleague cited summed up what the report is all about: the dignity and human rights of individuals and the rule of law and democracy. Those are what we believe in and support here.

In case some colleagues think that I am calling their bluff and they will see me here in June, the rule is that even if one ceases to be a member of one's own parliament one remains a member of this Assembly until a new delegation is appointed. I hope and pray that we do not have a new delegation before next November. I hope to be here in June, but I will not produce any more reports. I repeat my thanks for the kind words that were said.

THE PRESIDENT. – Thank you Mr McNamara. I call Mr Holovaty, the chairperson of the committee.

Mr HOLOVATY (*Ukraine*). – I should like to start by quoting paragraph 7 of the report. It states: “the circumstances surrounding detentions by the USA at Guantánamo Bay show unlawfulness and inconsistency with the rule of law”. Could there be any stronger or more precise message than that to responsible politicians and responsible governments? The report is important because in it, the Assembly clearly shows that there can be no exceptions on human rights and the rule of law, whether they are newly emerged democracies or the country that was perceived as the cradle of democracy, and is characterised in the report as the long-standing champion of human rights.

The report contains a clear call on the United States Government to change its attitude. It also calls on the governments of the member countries of the Council of Europe not to compromise the basic principles of this Organisation – human rights and the rule of law. The report deserves to be unanimously supported.

I should like to join all my colleagues who paid tribute to Kevin McNamara for his profound and important contribution to the work of this Assembly. I greatly regret that this report will be Mr McNamara's last.

THE PRESIDENT. – Thank you, Mr Holovaty.

The debate is closed.

The Committee on Legal Affairs and Human Rights has presented a draft resolution to which one amendment has been tabled and a draft recommendation to which no amendments have been tabled.

I remind you that speeches on the amendments are limited to one minute.

We come to amendment No. 1, tabled by Mr Erik Jurgens, Mr Kevin McNamara, Mr Rudolf Bindig, Ms Marie-Louise Bemelmans-Videc, Mr Boriss Cilevičs and Mr Eduard Lintner, which is, in the draft resolution, after paragraph 10, add the following paragraph:

“Finally, the Assembly resolves to pursue this issue further through bilateral dialogue with the US Congress.”

I call Mr Jurgens to support the amendment.

Mr JURGENS (*Netherlands*). – The Committee on Legal Affairs and Human Rights experienced problems in dealing with the United States when we discussed the matter, which applies to the United States, of capital punishment in an Observer state of the Council of Europe. The committee has tried to start a discussion with our colleagues in Congress on the matter because that is the authority in the United States with which we should discuss such issues. That is why the amendment has been tabled and accepted by the committee. We believe that it would be a good thing, after the Assembly accepts the report, to take specific measures to ensure that we have contact with our colleagues in Congress and try to convince them that what is happening in their country is not right.

THE PRESIDENT. – Does anyone wish to speak against the amendment? That is not the case. What is the opinion of the committee?

Mr HOLOVATY (*Ukraine*). – The committee is in favour of the amendment.

THE PRESIDENT. – The vote is open.

*Amendment No. 1 is adopted.*

We will now proceed to vote on the whole of the draft resolution contained in Document 10497, as amended.

The vote is open.

*The draft resolution in Document 10497, as amended, is adopted.*

We will now proceed to vote on the whole draft recommendation contained in Document 10497.

The vote is open.

*The draft recommendation in Document 10497 is adopted.*

That concludes our consideration of the report on the lawfulness of detentions by the United States in Guantánamo Bay.

Our next business is the address from Mr Svetozar Marovic, President of Serbia and Montenegro, at 12 noon. I will therefore suspend the sitting until that time. May I strongly encourage you to take your seats in good time for Mr Marovic's address? The bells will sound about two minutes before we resume.

The sitting is suspended until 12 noon.

*(The sitting, suspended at 11.42 a.m., was resumed at 12.02 p.m. with Mr van der Linden, President of the Assembly, in the Chair.)*

### **3. Address by Mr Svetozar Marovic, President of Serbia and Montenegro**

THE PRESIDENT. – It is my pleasure to welcome in our midst Mr Svetozar Marovic, President of Serbia and Montenegro. He is a graduate lawyer who is a politician by vocation, having a calling for philosophy. In addition, he is a great admirer of art, which led him to become co-founder of Budva's summer "Theatre City" festival, as well as the poetical event, "Poets' Square".

To describe President Marovic's creed in politics and in life, I will use one of his quotations: "I believe that people cannot do without having a dream. It is only by means of imagination that one is able to see further and feel more. In that way, one is closest to reality."

Mr President, two years have passed since your country joined the Council of Europe, on 3 April 2003, after the constitutional charter setting up a state union was ratified. Since then, a number of important developments have taken place, notably the recent positive feasibility study by the European Commission, which paved the way for your country to start talks on a stabilisation and association agreement with the European Union.

In that process, further efforts in compliance with Council of Europe commitments and obligations will be essential, in particular with regard to constitutional reform, the judiciary, human and minority rights, and freedom of expression.

Co-operation with the International Criminal Tribunal for the Former Yugoslavia in The Hague is also a key obligation towards the international community, including the Council of Europe. The recent series of voluntary departures for The Hague is a positive development. The way in which the authorities encouraged the indicted war criminals voluntarily to go to The Hague resulted from the fact that two thirds of Serbian citizens considered the voluntary surrender a patriotic act. The fact that persons indicted for war crimes and crimes against humanity are perceived as heroes making a sacrifice for their homeland certainly goes against the need critically to confront the past, which is also a Council of Europe commitment.

The recent amendments to the constitutional charter are a welcome development, but they must be followed soon by a clear, convincing and feasible plan for the future of the state union. I would like to assure you that the Council of Europe is ready to provide full assistance in this area. I give you the floor, Mr President.

MR MAROVIC (*President of Serbia and Montenegro*). – Thank you, Mr President; thank you everybody. This is a great opportunity for me and for my country. We ask you to understand when I say that I shall continue in my own language.

*(The speaker continued in Serbian)* (Translation). – Dear Mr President, members of parliament, ladies and gentlemen. I want to thank you for your invitation and the chance to address the Parliamentary Assembly of the Council of Europe. This is a great honour for me, as the President of Serbia and Montenegro, and for Serbia and Montenegro.

Two years have passed since our accession to the Council of Europe. We are grateful for the tangible help of the Council during the period that started just a few months after the assassination of late

Prime Minister Djindjic and we thank all your observers for their reports and suggestions, which have been a great support and have offered a significant benchmark for all the efforts we have invested on our way to achieving a fully developed, democratic, law-abiding European society. This why now, in 2005, I want to emphasise our deepest devotion to the objectives and the role of the Council of Europe.

For Serbia and Montenegro, accession to the Council of Europe in 2003 marked the beginning of the unstoppable process of joining European institutions. The main objective of state union, shared by both member states, has been – as it is today – the accelerated process of Europeanisation. We are devoted to European values and goals, which are defined as our priority in the constitutional charter of Serbia and Montenegro, and we have been working on all levels – day in, day out – to strengthen democratic institutions, more speedily to implement European standards and to affirm the political culture of an open, tolerant society.

The process of Europeanisation has not always been as speedy and thorough as we have wanted, and not as efficient as our citizens have expected, due to a constitutional specificity of the state union, whereby an additional effort and time were needed to define clear, functional mandates for member states and state union, and due to the still-notable lack of appropriate willingness to accept the reality and embrace common interests, thus giving up political disputes in the name of general progress of all citizens.

The acceptance of the twin-track approach by the European Union in the process of harmonisation of member states' different economic systems encouraged the implementation of European standards. In this new climate, significant results were achieved regarding co-operation with The Hague, especially during the last couple of months. These results confirmed the full understanding of the political leadership on all levels that we have fully to comply with all our international obligations if we want to gain access to the European and Euro-Atlantic institutions.

They also prove how determined we are not to waste a single day or month on our way to European integration and in making 2005 the year of Serbia and Montenegro's European success. That decision was made by the highest representatives of member states and the state union at the recent meeting of the Council for European Integration of Serbia and Montenegro.

For us, the positive feasibility study represents not only the first step but the foundation of our full and equal membership of the European Union. As much as it is an important sign of hope and encouragement, it is an obligation. The time ahead of us is a time for the conscious and conscientious fulfilment of this obligation without waiting for new pressures or conditions. The time ahead of us must be characterised by internal political consensus and dialogue on common European goals and the future. We must continue to confirm that Europe is our choice, our goal and the future. This must not be just political rhetoric, but a truthful, vital long-term interest for both Serbia and Montenegro.

The state union of Serbia and Montenegro is aware of its responsibility not only for its own citizens, but for global stability and the future of the region. We are very proud of the fact that in this climate Serbia and Montenegro greatly contributed to the new spirit of solidarity, support and mutual help in the region. We will continue to make that contribution in future. We will support all our neighbours who are formally ahead of us in the process of European integration. Naturally, we want to catch up with them, perhaps even overtake them in the race, but not at any cost and not to the detriment of good neighbourly relations, friendship and the joint stability of South-Eastern Europe.

The success and speed of Serbia and Montenegro's Europeanisation directly influences the stability of the whole region. That is why Serbia and Montenegro will do their best to begin talks on stabilisation and association as soon as possible. With the support and understanding of the European Union, and bearing in mind the importance of the stabilisation process in our region, we are looking not for a shortened procedure but for an acceleration of the process of accession of Serbia and Montenegro to the European institutions. We are not looking for shortcuts to Europe, only for an acceleration of the process. We are clearly aware of our responsibilities. I want to emphasise again, esteemed members, that it depends primarily on us. We have to fulfil our obligations ourselves. We have to perform our tasks ourselves. We have to win our freedom ourselves and secure our safety and the rule of law in line with European conventions and the standards protected and guaranteed by the oldest European institution. Of course, we must bear in mind the specificities that we want to preserve, as they affirm individuality and authenticity. Our policy will thus remain devoted to multiethnic principles and tolerance.

As you know, not all the problems in our region have been solved, but that need not be a cause for concern. It is more of a challenge and invitation to show maturity and responsibility so that we can prove that we can indeed solve problems through democracy and compromise. Ladies and gentlemen,

honoured by your invitation, I wish to restate some of the most important messages that I bring from Serbia and Montenegro.

First, Serbia and Montenegro as a state union and their member states remain devoted to Euro-Atlantic integration and to accelerating the process of accession to the European institutions. That will remain our primary task in future in governments, parliaments and in the everyday life of civilian society. Secondly, after positive results in recent months, Serbia and Montenegro will continue to co-operate fully with international institutions, especially with The Hague Tribunal. No responsible person in Serbia and Montenegro harbours the illusion that we can progress without such co-operation. On the contrary, there is full understanding among all the representatives of member states and the Council of Ministers that full co-operation with The Hague is a prerequisite of any further advancement by Serbia and Montenegro towards Europe.

Thirdly, after defining the proposal to amend the constitutional charter in the presence of the High Representative of the European Union, both Serbia and Montenegro have confirmed their readiness to work democratically on their relations through mutual agreement, as that is in the best interests of both member states and their citizens. Proceedings will soon be initiated to amend the constitutional charter, thus establishing the prerequisites for the full legitimacy of the parliamentary state union. Its legislative activity, as well as the legislative activity of the member states' parliaments, represents an essential factor in the accelerated implementation of European standards. The agreement restated the interests of all signatories and the member states' right to hold a referendum.

A referendum is envisaged as a reality by the constitutional charter. Belgrade, Serbia, Montenegro and Europe do not want to avert their gaze from the issue. It is a reality that needs a democratic, peaceful answer. International democratic standards must be respected, thus affirming the values of European societies, guaranteeing stability and supporting devotion to European objectives by both member states regardless of the outcome of the referendum. We must fight for the affirmation of democratic conditions in the run-up to the referendum and for consensus on different political options. A referendum is a legal possibility after 2006, and it is expected that Montenegro will use that opportunity.

Fourthly, if the European future of Serbia and Montenegro is one of the most important elements of our democratic and general progress, then the issue of Kosovo is one of the most important elements of the stability of the whole regime. Serbia and Montenegro have a joint clear message regarding the future of Kosovo: Kosovo must be multiethnic, Kosovo must be European and Kosovo must be open and safe for all its citizens, with the minorities carefully protected. Belgrade has already invited the highest Albanian officials to a dialogue. From this building, I wish to say again that Belgrade believes that only through dialogue and agreement can the issues be solved. We need to find a solution where there will be no winners and losers, only joint benefits and a victory for all. The Belgrade talks with the representatives of the contact group confirm the joint position – a European, democratic, multiethnic Kosovo, more than autonomy, less than independence.

Kosovo cannot go back to the times before 1999, but the solution cannot be the status quo either. When talking about dialogue I refer to dialogue on all levels – local, technical, the level of Kosovo, the level of Belgrade and Pristina. Only through dialogue and with the support of the international community will we find a solution that will open a perspective for everyone, without endangering anyone. To succeed, we will need patience, maturity and determination.

Fifthly, as a member of the Council of Europe, we want to express our firm belief that the Third Summit of the Council of Europe in Warsaw will once again stress the importance of respect for human rights, democracy and the rule of law in twenty-first-century Europe with no borders and division lines, where the different religions, traditions and cultures will be looked on as a heritage that links us together in the new environment of the enlarged European Union. I know that Mr Prodi, former President of the European Commission, used to say that the process of European integration will not be finalised until the countries of the western Balkans join in. I am fully aware that we should work on it diligently together every day, for without a speedy Europeanisation of South-Eastern Europe and the western Balkans the process of stabilisation will be slowed in the whole region. The progress of the region will be in peril, misunderstandings deepened, the instability prolonged and the perspective of a better, safer European life for all the citizens in this part of Europe pushed further away.

Mr President and esteemed members, I remain deeply grateful to all of you who understand, support and help these processes not only here at the Parliamentary Assembly of the Council of Europe, but in national parliaments from your positions of power and influence. Serbia and Montenegro have made an important step in their European history. Citizens, pro-European forces, Governments of Serbia and Montenegro, all the parties and all the institutions of the state union firmly believe that a European future is



not only our goal, but a reality worth risking and making sacrifices for. On our way to that European future, I know that we can continue to count on your support.

In the name of all the citizens of Serbia and Montenegro, in the name of all their parties and in the name of our institutions, I thank you.

THE PRESIDENT. – Thank you, Mr Marovic. About thirty members of the Assembly have expressed a wish to put questions to you. I propose to group members' questions so that we can fit in as many as possible. I call Mr Van den Brande of the Group of the European People's Party.

Mr VAN DEN BRANDE (*Belgium*). – Mr President, on 12 April the European Commission agreed to the feasibility study to which you referred, and at some future date EU accession negotiations, another of your priorities, can be initiated, but only when it is deemed that Serbia and Montenegro are fully co-operating with the international war crimes tribunal in The Hague. The Council of Europe is also concerned about the rule of law and human rights. What concrete steps and measures are you currently engaged in or intending to initiate to ensure that the conditions of full co-operation are being met?

THE PRESIDENT. – Thank you, Mr Van den Brande. I remind members that they have thirty seconds to ask a question. I call Mr Eörsi on behalf of the Liberal, Democratic and Reformers' Group.

Mr EÖRSI (*Hungary*). – Mr President, we all understand that every political leader has a desire to keep their country together, and we acknowledge your endeavours to give autonomy to Montenegro and Kosovo. As far as we understand, people in Montenegro and Kosovo would like to be independent, no matter what your country, Serbia, would like to give them. If the referendum has a positive result for independence, what will you say to those people?

THE PRESIDENT. – Thank you, Mr Eörsi. I call Ms Smirnova of the European Democratic Group.

Ms SMIRNOVA (*Russian Federation*) asked whether acceptable human rights standards in Kosovo had been met in order that its status might be determined in the eyes of Europe.

THE PRESIDENT. – Thank you, Ms Smirnova. Mr President, would you care to answer?

Mr MAROVIC said that results had been very convincing regarding the co-operation of Serbia and Montenegro with eminent international organisations and institutions. He warned that barriers should not be invented for Serbia and Montenegro's integration into Europe, using events in The Hague as an obstacle. He conceded that there were still issues with war generals, but assured the Assembly that Serbia and Montenegro would continue to work to fulfill the obligations necessary to move closer to the European Union. He applauded Romania and Bulgaria, was happy for Croatia and hoped that the example of Serbia and Montenegro would encourage them in their European integration. The issues surrounding events in The Hague would be solved with co-operation from the international community. On the referendum, he said that 2005 would be the year of European integration for Serbia and Montenegro. At present a referendum in Montenegro in 2006 looked distinctly likely. The conditions for such a referendum needed to be established. He stressed that he was not afraid of the referendum. Regardless of the results of the referendum life would go on and Serbia and Montenegro would need to live together closely in the same region in the future. Citizens would shape this closeness. His commitment was to advocate European Union objectives unless it became clear that this was not the choice of Serbia and Montenegro. Kosovo was a regional matter. A multiethnic society was not a reality in Kosovo at present. Commitment needed to be made by both the Albanian and the Serbian sides. The possibility of independence for Kosovo must be discussed but could not be accepted at present. He cited Resolution 1244, which meant that the borders of Kosovo could not change. Kosovo was a serious problem, and a solution for the future could be found only through responsible and prolonged discussion. The issue of standards on Kosovo was not theoretical but rather an issue of survival. Killings must be stopped and confidence must return to the region. Trust needed to be established and the issue of displaced persons needed to be resolved. The Albanian majority must enter into dialogue with Belgrade.

THE PRESIDENT (Translation). – Thank you, Mr Marovic. I call Mr Budin.

Mr BUDIN (*Italy*) congratulated Serbia and Montenegro on the European Commission's positive assessment in its feasibility study. He asked whether between now and the referendum the image of the state union could be enhanced in the eyes of the public.

THE PRESIDENT (Translation). – Thank you, Mr Budin. I call Mr Schreiner.

Mr SCHREINER (*France*) asked what degree of autonomy Mr Marovic envisaged for Kosovo.

**4. Date, time and orders of the day of the next sitting**

THE PRESIDENT. – I propose that the Assembly hold its next public sitting this afternoon at 3 p.m. with the orders of the day which were approved yesterday.

Are there any objections? That is not the case.

The orders of the day of the next sitting are therefore agreed.

The sitting is closed.

*(The sitting was closed at 1 p.m.)*

## CONTENTS

1. Minutes of proceedings

2. Guantánamo Bay

Presentation by Mr McNamara of report, Document 10497, on behalf of the Committee on Legal Affairs and Human Rights

### Speakers:

Ms Leutheusser-Schnarrenberger (Germany)

Mr Kosachev (Russian Federation)

Mr Kox (Netherlands)

Ms de Zulueta (Italy)

Ms Papadimitriou (Greece)

Lord Judd (United Kingdom)

Mr Jacić (Bosnia and Herzegovina)

Mr. Kucheida (France)

Mr Eörsi (Hungary)

Mr Özal (Turkey)

Mr Pangalos (Greece)

Mr Gardetto (Monaco)

Ms Lucyga (Germany)

Mr Grebennikov (Russian Federation)

Mr Oliynyk (Ukraine)

Mr Lynch-Staunton (Observer from Canada)

Mr Kaikkonen (Finland)

Ms Kanelli (Greece)

Mr Holovaty (Ukraine)

*Amendment No. 1 adopted.*

*Draft resolution contained in Document 10497, as amended, adopted.*

*Draft recommendation contained in Document 10497 adopted.*

3. Address by Mr Svetozar Marovic, President of Serbia and Montenegro  
*Questions*

4. Date, time and orders of the day of the next sitting.

