



**The ambivalent state of EU human rights policy
Amnesty International's ten-point programme for the German
Presidency of the European Union**

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"No country is perfect in terms of human rights, and the EU, too, must be prepared to take a critical look at its contribution in the field of human rights and be open to outside scrutiny"
Erkki Tuomioja, Minister for Foreign Affairs of Finland, in his preface as President of the Council of the European Union to the 2006 EU Annual Report on Human Rights

The European Union's human rights policy has come of age. With democracy, human rights and the rule of law anchored in the EU Treaty as principles to guide all EU policies, the EU has over the past decade gained considerable experience in trying to project these values in its relations with third countries, and in seeking to develop the EU itself as an "Area of Freedom, Security and Justice". At the start of the German Presidency it is useful to assess what the state of EU human rights policy really is.

A range of instruments developed since the 1990s now form an impressive toolbox to inject human rights into external relations. Enlargement has profiled human rights as the prime symbol of candidates' readiness to join the EU. "Mainstreaming" human rights into broader aspects of foreign and security policy is gaining ground as seen in the EU's increasing direct engagement in conflict prevention and crisis management activities in different parts of the world. The EU has staunchly pushed the International Criminal Court and the UN Human Rights Council as new institutions that are indispensable for more effective global governance. At home, the EU's own Charter of Fundamental Rights, even if not yet enforced through a new constitutional treaty, provides backbone to self-confident assertions that the EU is above all a "union of values".

However, there is a growing sense of ambivalence, one that goes deeper than the familiar challenges of putting human rights into practice in a world with different and competing interests. In part that has to do with uncertainties about the European project that stem from the EU's constitutional crisis and that tend to detract from its authority. But in the past year the EU has also increasingly been perceived as applying double standards, at home as well as in external

relations, and this begins to affect Europe's ability to conduct a credible human rights policy.

The expression "practise what you preach" is lacking in the way irregular immigration is combated with disregard for refugees' and migrants' basic rights, and in the way the reality of the fight against terrorism has belied the rhetoric of "no security without human rights". These two overriding preoccupations of EU justice and home affairs policies inexorably spill over in external relations, as seen in the mounting pressure on African countries to help stop migration to Europe. The reluctance to confront the US on how it conducts its "war on terror" has compromised the EU and contributed to polarization between Islamic and Western countries.

The EU frequently shows itself divided and lacking teeth when dealing with the world's major powers. The EU struggles to maintain unity when it comes to shaping strategic partnerships with countries like Russia and China without sacrificing human rights to energy and trade interests. An increasingly uncomfortable alliance with the US since 9/11 has drawn a number of European countries into complicity with US-led "renditions" – unlawful transportation of persons suspected of terrorist activity that involves kidnapping, detention, torture and "disappearance". If nothing else, this has brought home sharply how fragile the rule of law can be. It is ironic to witness at the same time how a defensive and minimalist approach by the Council has resulted in an EU Fundamental Rights Agency that will be barred from addressing such real human rights abuses.

And yet, the need for an EU with an effective human rights policy is as great as ever. The protracted crises in the Middle East and in Sudan demand an EU role that draws on collective strength and on the conviction of its values to

help break through the international community's inability to stop the ongoing human rights catastrophe. Another major challenge is how to prevent the UN Human Rights Council from sliding further into polarization only half a year after its start.

It may seem unrealistic to expect the German Presidency to turn the tide on the big international questions. It faces major expectations and pressures in other spheres as well, not least with regard to the revival of the blocked constitutional process. The importance of breaking the institutional deadlock can hardly be overrated at the moment when Bulgaria and Romania bring the total number of Member States to 27. The prospect of further enlargement is not the only matter held hostage to a resumption of the reform process. Greater security through enhanced cooperation in justice and home affairs, more effective external action, and strengthened democratic accountability all require substantial treaty reform.

The 50th anniversary of the EU in March 2007 is likely to see reflection on the EU's value base as offering prospects for regaining citizens' confidence in the European project. Indeed, real security at home and a strong global role are likely to be welcomed by most as obvious reasons for closer European cooperation. But that will require delivery, not celebratory talk. And delivery cannot be made dependent on the catch-22 that nothing can be done without reform. The formal way of bestowing competence on the EU to act more effectively is through treaty reform, but as long as that is pending, surely Member States acting together through the Council should be able to provide the basis for necessary action now.

There are different ways of breaking through the vicious circle. Divisive tendencies between Member States pursuing national interests will have to be controlled better by their leaders. Human rights constitute a common point of reference that can and should be used to boost collective determination especially to confront today's major humanitarian crises. To do so credibly, the Member States, acting individually and through the Council, should break with double standards by acknowledging and confronting their own shortcomings. This way, a powerful example could be set for the rest of the

world that would send a more convincing message to key strategic partners like China, Russia and the US. This would also provide an important antidote to politicization tendencies in the Human Rights Council and other UN fora.

All of which requires leadership, a quality that has been lacking for too long. Germany is looked to for such leadership at this critical juncture in the development of the EU, at a time when it also takes the chair of the G-8. It can set a powerful example right at the start in its response to the European Parliament's inquiry into unlawful CIA activities by owning up squarely to its responsibility with regard to the well-documented cases of rendition involving its own citizens.

With German leadership it should be possible to shape the EU's external policies with a stronger emphasis on the interlinking aspects of security, development and human rights. The stated German priority on Central Asia with countries that are strategically important but at the same time notorious for their human rights records should be accompanied by a strong, unequivocal human rights stance. The persistent state of conflict in the Middle East requires leadership that makes the human rights of the long-suffering populations in the region a driving force to find lasting solutions. With human security as an increasingly compelling concept, a German Presidency focus on Africa that can be sustained through the subsequent Portuguese and Slovenian presidencies would be a highly significant step to more effectively project the EU's "soft power" where it is so badly needed.

During 2006 Amnesty International led an appeal by human rights, conflict prevention and development NGOs to Commission President Barroso to personally engage the Commission in a thorough review of the EU's overall human rights policy. Such a review would take account of the impact of 9/11, and should not only be guided by the new dimension of human security, but also by the need for coherence between the domestic aspects and external affairs. The response was positive, and while it will be important to have the Commission take the lead, it should be complemented by the Council reaffirming human rights and human security as the core principles and objectives for all EU policies.

The previous German Presidency in 1999 pushed against considerable odds for the EU to codify its own bill of rights. Seven years after the adoption of the EU Charter of Fundamental Rights, a new impulse is needed to connect the vision of an EU of values and rights to its actual performance. At a time when the EU is presented with a damning report from its own parliament on European complicity in gross human rights violations, it would be a mark of true leadership if the German Presidency could take responsibility and bring the Council to acknowledge that it is the EU's business to stop and prevent kidnapping, torture and "disappearance". It would be an important step towards a synthesis between an honest human rights policy at home that rises above complacency and denial, and a truly common foreign and security policy that will be the stronger for it. Is the EU really prepared to take a look at itself?

**TEN POINTS FOR THE GERMAN PRESIDENCY TO SHAPE A COHERENT
AND CREDIBLE EU HUMAN RIGHTS POLICY**

- 1. Shape parameters for the EU's internal human rights policy that can bring about complementarity with the Council of Europe, as well as coherence with the EU's external human rights effort.**
- 2. Provide concrete follow-up to the inquiries into European involvement in illegal US activity in Europe and place the EU's fight against terrorism clearly within the bounds of international human rights law.**
- 3. Take steps to upgrade the EU legislative framework against discrimination to address all forms of discrimination, including hate speech and ethnic profiling.**
- 4. Remedy existing protection gaps in first-phase asylum instruments and relaunch the debate on improving the quality of decision-making.**
- 5. Develop standards for the return in safety and dignity of persons who have no right to remain in the EU and uphold human rights in relations with third countries in the field of migration.**
- 6. Ensure a strong and consistent human rights dimension in the EU's enlargement and broader neighbourhood policies.**
- 7. Continue to press Russia, China and the USA at the highest levels to remedy their human rights deficiencies and to fulfil their responsibilities in international affairs.**
- 8. Strengthen implementation of the EU human rights guidelines and step up in particular EU efforts to protect human rights defenders and to combat torture at all levels.**
- 9. Continue to enhance the central role of human rights in conflict prevention and in the EU's crisis management operations.**
- 10. Lead the EU to assume a strong, constructive role to advance global governance in the UN Human Rights Council and in the elaboration of an international arms trade treaty.**

1. Human rights in the EU

For many years, EU countries have faced human rights problems including police abuse, often of a discriminatory nature, and increasingly restrictive asylum policies. Reports of rising racism and homophobia continue to cast a shadow over the EU's declared commitment to fight discrimination - to be highlighted in 2007 through the "European Year of Equal Opportunities for All".

Today, fighting terrorism and "irregular" immigration are the dominant priorities for the EU in the field of justice and home affairs. Both have fostered serious human rights violations and serve as justification for restricting certain fundamental rights and freedoms. The Council, however, has never acknowledged that domestic human rights abuses are a matter of proper concern to the EU, arguing it has no legal competence. In today's political reality, the problematic manner in which terrorism and immigration issues are handled from a human rights point of view has clearly taken the debate beyond technical questions of competence. And yet, the EU persists in denying that reality.

Serious transgressions by Member States have been met with silence not only from the Council and the Commission but also from other Member States. The use of Article 7 TEU has been declared out of bounds as a sanctioning mechanism, thereby effectively ignoring it as a corrective and preventive instrument. The absence of any real internal accountability or peer pressure does little to enhance the EU's credibility when scrutinising candidate countries or demanding of third countries that they generally respect human rights. The German Presidency would be well placed to address this accountability problem and lead the way for Member States to discuss human rights deficits within the EU more openly.

EU FUNDAMENTAL RIGHTS AGENCY

The convoluted history of the establishment of the European Fundamental Rights Agency is a case in point. Tortuous negotiations continued right through the Finnish Presidency. Due to start in January 2007, discussions in the Council were blocked until the last minute. As during the Austrian Presidency, the most difficult question had to do with the competence of the Agency in the third pillar, notably on criminal justice issues.

Throughout the negotiations, Amnesty International consistently advocated for the Agency to have a role with regard to third pillar matters. Excluding such a role would preclude the Agency from addressing the core human rights challenges in the EU today, including the implications of the fight against terrorism and the protection of individual freedoms in the sphere of policing and criminal justice.

The compromise solution of the Council finally adopted in December 2006 provides for an extremely limited role for the Agency in third pillar matters. The Council declared that it will reconsider the possibility to extend the remit of the Agency before the end of 2009. In the meantime, the EU institutions and Member States may consult the Agency on issues related to judicial and police cooperation "on a voluntary basis", and only "as appropriate" when adopting or implementing EU legislation in these areas.

The Council thus failed to make a clear commitment to a role for the Agency that includes proper human rights monitoring of justice and police policies at both EU and national level. While the importance of complementarity and close cooperation with the Council of Europe is given great emphasis, it remains to be seen whether that will set concrete grounds for the development of an integrated European human rights policy.

The lack of public debate around the Agency and the very low profile adopted by the Council on the Commission proposal was deplorable. This defensive and minimalist approach was simply inappropriate for a proposal that concerns the fundamental question of how the EU upholds and promotes its common human rights values. A new dynamic will now have to be created around the Agency to make up for a negotiation phase which has virtually discredited this EU initiative. Such a political signal is crucial as persistent reports of human rights violations within the EU continue to challenge the Union's founding commitment to promote and ensure respect of human rights.

The new Agency will only play a credible role if it is supported by an EU with a clear political will to confront its human rights record in full and engage in an open dialogue on human rights with its citizens. A tangible way of manifesting this will

is to establish a dedicated structure in the Council to deal with human rights within the EU.

EU COOPERATION IN CRIMINAL MATTERS

Six years after the adoption of the European Arrest Warrant, there is still no parallel legal framework protecting the rights of suspects and defendants in criminal proceedings in the EU. Despite the good intentions of the Austrian and Finnish Presidencies, negotiations on the proposed framework decision are still dragging on. The delay in its adoption, the limited scope of the latest compromises and the ongoing debate over the very existence of a legal basis for such an instrument have now seriously undermined any positive impact on mutual trust between judicial authorities and on protection of rights across the EU.

Previous EU Presidencies have failed to send a strong political signal that the EU must agree on a binding instrument with added-value for the protection of basic fair trial rights in criminal proceedings across the EU. Germany's proclaimed objective to finally conclude the negotiation process is welcome, but despite Council assurances that the aim of the proposed framework decision is to improve the fairness of criminal proceedings and facilitate judicial cooperation in criminal matters, the risk of another lowest common denominator outcome is real.

Amnesty International calls on the German Presidency to:

- **promote open debate and effective reform of the EU's internal human rights policy, and shape parameters that can bring about complementarity with the Council of Europe, as well as coherence with the EU's external human rights effort;**
- **finalise the negotiations on the framework decision on procedural safeguards in criminal proceedings and promote further instruments to guarantee access to justice and rights of the accused across the EU;**
- **define as priorities in its roadmap towards treaty reform that the EU Charter on Fundamental Rights be given binding legal effect, and that**

steps are taken to pave the way for EU accession to the European Convention on Human Rights;

- **set up a Council working group to deal with human rights within the EU.**

2. Counter-terrorism and human rights in the EU

In November 2006, the Rapporteur of the European Parliament Temporary Committee on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners (the Committee) issued a draft final report to be debated by the Committee and the Parliament in the first months of 2007. The new report confirms the findings of European complicity in the US-led rendition programme already documented in the Committee's earlier interim report, and denounces the persistent attitude of denial of responsibility both by individual EU Member States and by the Council.

Adding to the work carried out by the Council of Europe, national judicial authorities, journalists and human rights organisations, the work of the Committee again documented the existence of the rendition programme with its trail of victims and gross human rights violations. Still, the issue remains conspicuously absent from EU's political agenda. This is all the more striking after US President Bush officially admitted the existence of renditions and secret prisons in September 2006. Adding further embarrassment to the confirmation of complicity by European countries, the Rapporteur referred to confidential reports of meetings between US and EU ministers and officials which would indicate that the EU and its Member States were not only informed about CIA illegal activities in Europe but were actually discussing possible joint action to deal with the problem.

The German Presidency has the political and moral responsibility to draw consequences from the work of the Committee. The draft report praises the quality of Germany's inquiries. Amnesty International hopes that similar diligence will be displayed at EU level. Dispelling the collective silence and misinformation by EU leaders would allow proactive debate on legal and political measures that will prevent such serious breakdown of the rule of law, ensure proper accountability, and provide reparations for

victims. The Council should in that context give due consideration to the recommendations made by the Secretary General of the Council of Europe to fill the legal gaps that helped facilitate participation of European governments in renditions.

Another concrete political step would be for the Council of the EU to unequivocally declare an absolute ban on the use of diplomatic assurances to allow the transfer of individuals to countries where they are at risk of torture or other cruel, inhuman or degrading treatment. If EU Member States are allowed to circumvent the absolute prohibition of torture and refoulement, a practice is condoned that is not only contrary to international and European human rights and refugee law, but also incompatible with the EU's own guidelines on torture and their objective to fight the root causes of torture and eradicate the use of torture in third countries, without any exception or conditionality.

After plans for terrorist attacks were uncovered in London last August, the Finnish Presidency once again stressed the need for urgent action in the judicial and law enforcement fields, while the Commission and security experts proposed new EU initiatives for detection and surveillance. Evidence of European complicity in renditions has yet to generate equivalent calls for urgent action at EU level. Until today, the measures adopted by the EU to fight terrorism have done very little to address, let alone integrate the issue of protection of fundamental rights.

Despite commitments towards a less one-sided approach to the fight against terrorism and to develop a better understanding of the factors leading to terrorism, the measures proposed continue to be mostly repressive in nature. The failure to agree procedural safeguards for suspects and defendants in criminal proceedings, already referred to in the previous chapter, also signals how individual rights have become subordinate, if not expendable, in the fight against terrorism.

There is also the issue of terrorist lists, where the EU has yet to establish adequate mechanisms to ensure the respect of the presumption of innocence and access to judicial remedies for people concerned. As the EU foresees new debates over the definition of terrorism, it must ensure that the human rights consequences of the fight against terrorism are directly addressed. The

EU should distance itself from the US "war on terror" by firmly grounding its policies in the international framework of criminal and human rights law.

Amnesty International calls on the German Presidency to:

- **provide concrete follow-up to the inquiries into European involvement in illegal US activity in Europe and place the EU's fight against terrorism clearly within the bounds of international human rights law;**
- **reaffirm unequivocally the absolute prohibition of torture by declaring the use of diplomatic assurances to transfer persons to countries where they risk torture to be unacceptable;**
- **commit to the establishment of effective monitoring and accountability mechanisms to ensure EU and Member States' human rights compliance in their efforts to fight terrorism.**

3. Racism and discrimination

In recent months, reports by Amnesty International have documented discrimination against Roma children, lesbian, gay, bisexual and transgender people and minorities in EU Member States. They add to a series of alarming reports of racism and discrimination by other European organisations including the European Monitoring Centre on Racism and Xenophobia EUMC. In line with the EU designated "European Year of Equal Opportunities for All" in 2007, Amnesty International believes that it is time for the EU to upgrade its policies and legislation to address all forms of discrimination and thus ensure that all groups of society are equally protected against violations of their fundamental right to non-discrimination and equal treatment.

Despite Article 13 TEU, the right to non-discrimination on grounds of sexual orientation still needs to be better protected beyond the field of employment law. While the Copenhagen criteria for joining the EU include the need to protect minorities, it is regrettable that the situation of minorities and related issues of citizens' rights fall outside EU institutional monitoring after accession.

These examples highlight the need for a more comprehensive, human rights-based approach to non-discrimination. As the Commission will issue the results of its feasibility study on extending the EU's scope of protection against discrimination, it will be up to the German Presidency to initiate the necessary steps to fill the remaining protection gaps. More efforts are also needed to ensure that the right to non-discrimination is not only more effectively mainstreamed in EU social, education and employment policies, but also to ensure that it is effectively incorporated into the field of justice and home affairs.

The widespread practice of ethnic profiling by law enforcement and other state agents illustrates the failure of the EU and its Member States to put their anti-terrorism and anti-immigration policies in line with their engagement to promote tolerance and combat discrimination. It highlights the human rights shortcomings of these policies and leaves the door open to other structural human rights deficiencies in the area of police and judicial cooperation.

Within the EU's own borders, EU policies and measures carried out in the context of the fight against terrorism tend to develop well beyond the strict issue of terrorism, with direct repercussions on civil liberties and individual human rights. The ever more restrictive asylum and immigration policies feed the trend of criminalisation of foreigners and the feeling of alienation of whole communities in Europe. On the judicial cooperation front the developments are mostly prosecution-led, with rights protection conspicuously left behind.

Finally, the EU legal and policy framework does not cover criminal offences based on (perceived) racial or ethnic origin or any other grounds. The proposal for the EU to adopt a framework decision on combating racism and xenophobia has still not been adopted more than five years after it was first put forward by the Commission. Germany's declared intention to resume the deadlocked negotiation is welcome, but such legislation is only worthwhile if it is designed to add value for human rights protection across the EU.

Amnesty International calls on the German Presidency to:

- **improve EU monitoring to include all forms of discrimination, and ensure implementation in practice of EU law and policies by all Member States;**
- **take steps to upgrade the EU's legislative and policy framework against discrimination to address all grounds and forms of discrimination, that should also include protection against hate speech and action to counter ethnic profiling.**

4. Asylum

After the adoption of the first phase asylum instruments, the future Presidencies will have the important task to create the conditions for proper monitoring of their impact. This is important from a human rights perspective since the first phase asylum instruments did not manage to end the protection lottery within the EU. Certain provisions within the Qualifications Directive are problematic in light of the 1951 Refugee Convention, while the Asylum Procedures Directive is a virtual catalogue of worst practices in the Member States. In particular with the latter instrument (the legality of which has been challenged by the European Parliament before the Court of Justice), harmonisation was only achieved at the level of the lowest common denominator.

REVIEW OF THE DUBLIN REGULATION

The German Presidency should focus on the evaluation of the Dublin Regulation and the way it has been applied in practice by the Member States. Extensive evaluation has been conducted by the Commission as well as by the UN High Commissioner for Refugees (UNHCR) and the European Council on Refugees and Exiles (ECRE). It is important that all such information available on the implementation of the Dublin Regulation should be taken fully into account. The task ahead will be to ensure that the necessary conclusions are drawn from this evaluation exercise to pave the way for future amendment of the Dublin regulation.

Measures are needed to remedy the current deficiencies flowing from certain provisions in the Dublin Regulation causing unjustifiable hardship

to asylum seekers and perpetuating the current protection lottery within the EU. Adjustments to the current system are also needed in order to create more efficient burden-sharing between the Member States. Member States and EU institutions should take the opportunity of the Dublin evaluation to launch a debate on effective burden-sharing and to reshape the protection principles of the current Dublin system, rather than on administrative efficiency.

IMPROVING QUALITY OF DECISION-MAKING IN ASYLUM MATTERS

As set out in the Hague Programme, the Common European Asylum System (CEAS) has two aims in its second phase: the establishment of a common asylum procedure, and a uniform status for those who are granted asylum or subsidiary protection. The year 2007 may well be a decisive year for the CEAS as the Commission should conclude the evaluation of first-phase legal instruments and submit the second phase instruments with a view to their adoption before the end of 2010.

In the meantime, further steps need to be taken to improve the quality of decision-making in asylum procedures throughout the EU. Practical cooperation between the Member States could potentially be a step in the right direction.

This would imply initiatives to ensure reliable, independent and high quality country of origin information. This should include structured consultation with reputable human rights organizations as they often have essential information on the human rights situation in countries of origin that is unknown to or complementary to governmental sources. Practical cooperation should indeed start with country of origin information as it is the fundamental element to process asylum applications. It should serve as a basis to develop best practice for the processing and protection of vulnerable groups, such as women, elderly asylum seekers, unaccompanied minors, human rights defenders, torture victims and persons fleeing armed conflict.

Practical cooperation on these issues should eventually result in EU guidelines setting high procedural and protection standards for asylum bodies in the Member States. Such guidelines could inspire future proposals for second phase legislative instruments. However, the process of practical cooperation and the structures set up to

manage it risk becoming a forum for sharing worst practices between the Member States if sufficient guarantees for transparency and close cooperation with UNHCR are lacking.

Few initiatives have been taken to further develop and improve the functioning of the Common European Asylum System since the adoption of the Asylum Procedures Directive in 2005, as priority has shifted to the external dimension of the EU's asylum policy. However, as indicated above, fundamental aspects of the CEAS remain problematic and should be dealt with. As the numbers of asylum applications in the EU Member States are decreasing and pressures on national asylum systems are diminishing, the German Presidency should seize the opportunity to relaunch the debate on improving the quality of decision-making within the CEAS.

THE EXTERNAL DIMENSION OF THE EU'S ASYLUM POLICY

The external dimension of the common European policy on asylum and immigration will remain high on the agenda of the German Presidency. The launch of the pilot regional protection programmes (RPPs), initially scheduled under the Finnish Presidency, has been delayed and is now planned for the beginning of 2007. Pilot projects to be launched in Ukraine, Belarus and Tanzania aim at increasing capacity in the regions selected to offer protection and develop asylum systems. This gives cause for concern given the persistent difficulties in Ukraine and the problematic human rights situation in Belarus, a country with which the EU has no formal relations. Insofar as the pilot RPP in Tanzania includes the promotion of voluntary return of Burundese refugees, this should be reconsidered in light of reports of extrajudicial executions in Burundi of former refugees who returned to Burundi from Tanzania thinking it was safe to do so.

Constant monitoring of the way these programmes contribute to the reinforcement of asylum systems in these countries and offer effective protection to those who need it, will be crucial for the viability of the concept itself. At the same time, it should be stressed that such programmes can never be a substitute for the protection obligations flowing from the 1951 Geneva Convention and other relevant international instruments, including the European Convention on Human Rights.

As the regional protection programmes are about to be launched, the Presidency should encourage discussion on the creation of an EU-wide scheme for resettlement, based on significant numbers of refugees to be resettled and giving priority to the most vulnerable cases. The EU and its Member States continue to have a global responsibility towards the world's refugees and should be willing to share the burden with those countries hosting the majority of refugees. This can only add to the credibility of the external dimension of the EU's asylum policy. When shaping such resettlement schemes, it should be clear that these can never absolve Member States from their obligation to offer protection to refugees arriving spontaneously at their territories.

Amnesty International calls on the German Presidency to:

- **address the flaws and protection gaps in the first-phase asylum instruments and relaunch the debate on improving quality of decision-making in the CEAS;**
- **promote the ratification of the 2005 European Convention on Action against Trafficking in Human Beings;**
- **ensure that common standards on return are adopted that fully comply with international law.**

5. Immigration

MANAGEMENT OF MIGRATION AND DEVELOPMENT

In 2006, the EU witnessed another summer of tragic deaths in the Mediterranean and the arrival of large numbers of migrants and asylum-seekers at its southern borders. The response to this crisis has been mainly control-oriented and consisted of patrolling operations with the help of the EU's border agency FRONTEX, in an effort to prevent migrants from starting a dangerous journey to Europe. Recent communications from the Commission recognize that asylum must be an important feature of the response in the Mediterranean and that Member States should respect their international protection obligations in such operations. However, concrete steps need to be taken in the coming months to ensure that protection needs are effectively being addressed

when dealing with large scale arrivals at the EU's southern borders.

At the same time a more comprehensive approach has been discussed at ministerial level during conferences in 2006 on migration and development in Rabat, New York and Tripoli. Operational activities at the borders of the EU dealing with migration flows should be complemented by concrete action in the framework of the dialogue on migration and development. It is time to move beyond the stage of well-intended political declarations and engage fully in concrete measures that effectively improve safety and security, respect for human rights and economic and social conditions in the countries of origin. The initiatives on migration and development have created a momentum that the next Presidencies should seek to maintain. Other migratory routes towards the EU, in particular at its eastern borders, may be different in scope and nature but they too require a balanced approach that takes into account the needs of both EU Member States and countries of origin, and that complies with states' obligations under international human rights and refugee law.

While the positive impact of migration on development is being increasingly acknowledged, the position of undocumented migrants in European society remains vulnerable as they are more likely to become victims of human trafficking and sexual exploitation. In this respect it is essential that the rights of all trafficked persons are the paramount consideration in all EU policy and action on human trafficking, including when implementing the EU action plan to combat trafficking in human beings. Moreover, the German Presidency should promote the standards defined by the UN and the Council of Europe, through ratification of the 2005 Council of Europe Convention on Action against Trafficking in Human Beings.

At the same time, migrant workers often are subject to harsh employment conditions, in some cases amounting to labour exploitation and are deprived of fundamental social and economic rights. Steps need to be taken to effectively ensure the protection of the rights of all migrant workers and their families without discrimination based on the 1990 UN Migrant Workers Rights Convention.

RETURN OF 'IRREGULAR MIGRANTS'

Return of third country nationals residing illegally in the EU is another dominant issue on the EU agenda. Currently the Commission proposal on common standards and procedures in Member States for returning illegally residing third country nationals is under discussion in the Council and the European Parliament. The German Presidency can play a key role in ensuring that common EU standards guarantee on principle the priority of voluntary return over forced return and fully comply with relevant international standards such as the principles of non-refoulement, non-discrimination, proportionality and the prohibition of collective expulsions. At the same time, solid guarantees that people will not be left in limbo should be included.

While the issue of return is a complicated one and not much progress has been made in the negotiations until now, there is an urgent need for binding EU standards that are firmly grounded in respect for human rights. At the same time, when engaging in cooperation with third countries on return, human rights conditionality should be a guiding principle in the EU's strategy.

Amnesty International calls on the German Presidency to:

- **uphold human rights in relations with third countries to manage irregular migration and ensure essential safeguards for the return in safety and dignity of third country nationals that no longer have a right to reside in the EU;**
- **ensure that operational measures and instruments to deal with large scale arrivals of migrants and asylum-seekers at the external borders of the EU are compatible with Member States' obligations under international refugee and human rights law.**

6. Enlargement and neighbourhood policies

The formal approval of the Action Plans for the countries of the Southern Caucasus in November 2006 closed an important geographic gap in the European Neighbourhood Policy (ENP), which now defines relations with European neighbours from

the Maghreb to Minsk. Two years after its inception, it is time to take stock of the ENP to assess its effectiveness, address policy inconsistencies and maximize the potential to influence the human rights record of neighbouring countries.

CANDIDATE COUNTRIES VERSUS OTHER NEIGHBOURS

The stated objective of the European Neighbourhood Policy is to prevent the emergence of new dividing lines between the enlarged EU and its neighbours. In offering neighbouring countries a privileged relationship, the ENP strives to build upon a mutual commitment to the common values of democracy, human rights, the rule of law, good governance, market economy principles and sustainable development. However, when it comes to establishing a platform of common values, the EU currently makes a clear distinction between acceding and candidate countries on the one hand, and non-candidate neighbours on the other.

The Copenhagen criteria set forth clear benchmarks in key areas including human rights and the rule of law for those eligible to join the EU, with a clear plan to encourage a substantial transformation towards common values. However the formulation of common values towards other neighbours remains vague. The prospect of membership evidently gives a stronger impetus, but although the speed of change may vary, the ambition of human rights reform should essentially be the same for all neighbours.

With the entry of Romania and Bulgaria in January 2007, the EU wants to "pause" enlargement until institutional reform has been achieved. However, negotiations are still under way with Croatia and Turkey and the German Presidency needs to project determination to maintain the human rights momentum towards candidate governments that may question if it is worth their effort and domestic political risk to implement the necessary reforms.

In Turkey, significant achievements have been made in legislative terms, but these are yet to be translated into effective human rights protection in practice. Croatia is co-operating with the International Criminal Tribunal for the former Yugoslavia, but many war crime cases need urgent investigation as they reach their statute of limitations, and Croatia needs strong

encouragement to strengthen the judicial system and ensure that all perpetrators of war crimes and crimes against humanity are brought to justice.

The integration of a strong human rights component in the action plans of non-candidate neighbouring countries seems to be ad hoc and lacking an overall strategic approach. Negotiations are left to individual geographic units in the Commission, without direct involvement or political guidance by the Council, and there seems to be no hierarchy of priorities or clearly defined human rights benchmarks. The German Presidency should strengthen the ENP by establishing clear strategic policy guidelines which ensure the uniform application of a readily understandable order of human rights standards that its partners should implement.

NEW OSTPOLITIK VERSUS EUROMED

Although the EU is the preferred partner of most countries in Eastern Europe and the Caucasus, it has not been able to engage these European neighbours to voluntarily adopt the EU acquis in terms of human rights and the rule of law. Countries sandwiched between the EU and Russia need a clear EU engagement that has strengthening human rights, democracy and the rule of law at its core. A new "Ostpolitik" ought to promote harmonised approaches to these central issues, and support civil society in its efforts to consolidate basic freedoms.

The EU's relationship with its neighbours to the south is being defined not only through the ENP and its action plans, but also through the institutions established during the eleven years of the EUROMED Partnership. The Barcelona Anniversary Summit held in November 2005 did little to clarify the inter-relationship between these two processes. Nonetheless, the regional and bilateral dimensions have the potential to mutually reinforce each other, and provide a powerful vehicle to promote the rule of law and human rights throughout this turbulent region.

However, this requires strategic analysis and policy coherence. As it stands, the ambitions of the five year work plan to strengthen human rights in the region are modest, with a limited focus on political participation, freedom of expression, and weak references to fostering the role of civil society and implementation of UN and regional charters. The human rights components of the regional action plans vary greatly, and the

monitoring mechanisms established to oversee their implementation do not universally include a human rights subcommittee with a standard format as part of the institutional framework. Clearly a common human rights monitoring mechanism with an appropriate format ought to be applied to all action plans.

EXTENDED NEIGHBOURHOOD: CENTRAL ASIA

Whereas the Southern Caucasus was recently included in the European Neighbourhood Policy, relations with the remaining five Central Asian countries are still defined by the strategic plan expiring at the end of 2006. Germany has marked the elaboration of a strategy for Central Asia as a priority for its EU Presidency.

EU relations with the most populated Central Asian republic, Uzbekistan, have been severely strained since 13 May 2005, when police shot an estimated 745 people during anti-government protests in the eastern town of Andijan. By imposing sanctions over the refusal to allow an independent inquiry, the EU gave an important impetus to international efforts to exact accountability for these atrocities. The visa ban will come up for review during the German Presidency, and it is important that it is carried out on human rights merits rather than short-term political considerations, as it will send an important signal to all neighbours as to the EU's political will to uphold human rights as a key determining factor of the CFSP. The possibility of a human rights dialogue between the EU and Uzbekistan may provide new opportunities for positive influence, including also the call for a moratorium on the death penalty.

Human rights remain fragile in all Central Asian countries and should therefore become a strong element in the new strategy to be approved under the German Presidency. It should include components which address the protection of human rights defenders and the release of prisoners of conscience, adherence to the Convention Against Torture as this practice is still widespread in all countries in Central Asia, and the abolition of the death penalty.

The German Presidency could provide an important practical step towards abolishing the death penalty in Central Asia by adding the EU's weight to current NGO efforts. Turkmenistan already abolished the death penalty in 1999, and Kyrgyzstan removed provisions for its use from

the new constitution adopted in 2006. Tajikistan and Kazakhstan have introduced moratoria. Notwithstanding positive signals of further progress towards abolition, it is important that the EU continues to actively encourage such developments, so that moratoria on capital punishment are not reversed. In addition, the EU presidency must ensure that the principle of non-refoulement is adhered to by all parties, particularly with regard to Uzbek refugees in the aftermath of the Andijan events.

Amnesty International calls on the German Presidency to:

- **devise a strategic and coherent approach to the human rights component of the European Neighbourhood Policy which includes clear benchmarks at national and multilateral levels to be applied systematically with all partners;**
- **implement a standard human rights monitoring mechanism as part of the institutional set-up established with each country party to the European Neighbourhood Policy;**
- **monitor closely the human rights situation and the implementation of reforms in Turkey and Croatia to maintain the human rights momentum;**
- **incorporate a strong human rights component in the new EU strategy on Central Asia and in bilateral relations with the countries concerned.**

7. Strategic partners

The EU has regular high level meetings with the three non-European countries that are Permanent Members of the UN Security Council: China, Russia and the USA. With each of these countries the EU has an important relationship that is marked by substantial common interests, by divergent views on key strategic issues, and by a pressing human rights agenda. All three countries have major human rights problems and in its dealings with them the German Presidency should take a strong and consistent stand on human rights.

RUSSIA

Germany will be at the helm of the EU during the very important phase of re-negotiating the Partnership and Cooperation Agreement with Russia. The last decade has seen a significant deterioration of human rights in Russia, eroding civil liberty gains made during the 1990s and the Chechnya conflict continues to generate gross human rights abuse.

It is important therefore that the opportunity of negotiating the new partnership and cooperation agreement is used to ensure that human rights are fully integrated to define the future relationship with the EU's largest and most important neighbour. Russia should also be encouraged to fully assume the role as a responsible partner in global governance. Russia's seat in the Security Council and current membership in the UN Human Rights Council provide alternative platforms in which it can show its commitment to strengthen the international human rights framework. Through the EU-Russia human rights consultations and the summits, the EU should promote constructive use of these for a by Russia.

CHINA

Human rights abuses continue on a massive scale in China and affect countless people. The EU-China human rights dialogue that has been conducted for the past ten years with the aim of improving the human rights situation has led to interesting exchange and modest concessions in the legislative sphere, but has had negligible influence on actual human rights practice. China has yet to show it is serious about its stated intentions to improve its human rights record ahead of the 2008 Beijing Olympics.

It is understood that under the German Presidency the review of the EU arms embargo on China will continue in accordance with the decision taken by the EU Council in December 2004. The EU has made the lifting of its arms embargo contingent on human rights improvements but concerns remain in all areas of human rights abuse under scrutiny and the Chinese Government has yet to present a coherent plan. The EU should reiterate publicly the importance of human rights reform in relation to the renewed debate around the lifting of the EU arms embargo, and put forward pertinent criteria which may be used to measure progress.

This becomes all the more relevant in light of the fact that with China's growing influence in international affairs, it has failed to assume the responsibilities of such a role. Emerging as a major arms producer, China refrains from entering multilateral agreements that set out criteria to guide arms export controls. Through the sale of military equipment to Sudan, China is effectively fuelling violence in Darfur, a practical example of a foreign policy that flouts human rights.

USA

The transatlantic partnership is the cornerstone of European foreign policy. Since 11 September 2001, the partnership has been dominated by the common desire to combat terrorism, and by divergent views as to how to adequately address this unprecedented challenge. Faced with the growing evidence that the US has been systematically breaching human rights and the rule of law in its counter-terrorism

efforts, it is important that the German Presidency insists that a common approach in addressing the threat from terrorism must remain firmly rooted in the fundamental principles and values of the EU. This requires confronting the issue of torture and unlawful CIA activities with the US directly as well as by addressing the question of European complicity.

In January 2007 it will be five years since the US authorities transferred the first "war on terror" detainees to the US Naval Base in Guantánamo Bay, Cuba. Despite widespread international condemnation, hundreds of people of more than 30 nationalities remain there. The fifth anniversary provides the German Presidency with an opportunity to reinforce the EU's call for the closure of Guantánamo and to offer the necessary support in ensuring the release of detainees.

The forthcoming EU-US Summit provides an opportunity to address human rights violations in the context of the war on terror as well as the continued practice of the death penalty in the United States.

Amnesty International calls on the German Presidency to:

- **insist on a strong human rights component when renegotiating the Partnership and Cooperation Agreement with Russia;**
- **continue to press China for appropriate action to stop human rights violations, and reiterate publicly the requirement of concrete human rights reform in relation to the renewed debate around the lifting of the EU arms embargo;**
- **press the US to close Guantánamo Bay and stop secret detention, and to help establish the truth about unlawful CIA activities in Europe;**
- **continue to press Russia, China and the USA at the highest levels to fulfil their responsibilities in international affairs.**

8. Strategic human rights tools

The EU guidelines on human rights constitute an important set of concrete foreign policy tools to be used at EU level and by Member States, and in particular through missions in third countries. Putting them into practice effectively has not been easy, but experience shows that focused effort and coordination will bring results. In this context it is increasingly problematic that the main responsibility for implementing the guidelines is still effectively carried by an already overburdened Presidency. A more structured and coordinated approach makes it urgent to seriously examine the scope for burden-sharing among Member States, at different levels.

This could be achieved by systematically integrating the aims and objectives set forth in the guidelines into regional strategies and association agreements. During the German Presidency important regional initiatives will be completed or begun, such as the EU-Africa strategy and the Association Agreement with Mercosur, the Andean Community and Central America. These would provide excellent opportunities not only to provide coherence but

also burden-sharing between Member States and between the Presidency and the Commission.

The Austrian Presidency took the welcome initiative to maintain a systematic database on EU interventions in individual cases, as an important step to gain an overview over the actions taken by the EU. It is crucial that the German Presidency continues to maintain this database as it will provide the EU the opportunity to measure the effectiveness of its actions and to further refine its "toolbox" of measures to protect persecuted individuals.

TORTURE

Since the adoption of the torture guidelines in 2001, the use of political instruments such as political dialogues, declarations and démarches in relation to the actual practice of torture has been minimal. After thorough evaluations of the guidelines on children and armed conflict and on human rights defenders, the German Presidency should initiate a similar process of assessment and planning for the torture guidelines.

The aim should be to broaden the scope of implementation, in particular through developing a procedure to identify and démarche on individual cases in selected countries. Consistent pressure should be maintained on countries that have failed to sign or ratify the Convention against Torture and/or its Optional Protocol, by issuing a formal démarche at the beginning of the Presidency. For such an approach to be effective, it will be important at the same time to step up pressure on all EU Member States to ratify the Optional Protocol without further delay – at the end of 2006, 18 Member States had signed, only 7 of these had ratified.

HUMAN RIGHTS DEFENDERS

The review conducted under the Austrian Presidency provided a valuable set of recommendations to improve the knowledge and application of the human rights defenders guidelines. The Finnish Presidency started implementing these recommendations, but in order to maintain the momentum gained, this work must be continued and expanded systematically under German leadership.

The need to raise the level of awareness of the guidelines remains the most important, among relevant officials in the EU and Member States -

especially in missions, as well as among human rights defenders and relevant local NGOs. Another point of general concern is the relative lack of transparency in the way the different guidelines are operated. Feedback on individual cases and information on action taken would enable NGOs to make a more effective contribution to the implementation of the guidelines.

DEATH PENALTY

The practised approach to promoting abolition of the death penalty by focusing on a limited number of countries where there were prospects of influencing developments has proven an effective methodology which the German Presidency is encouraged to continue. The list of countries selected may need to be reviewed, with particular emphasis placed on Central Asia and countries which have a moratorium that may expire during 2007. This approach should be complemented with active interventions and démarches in urgent individual cases throughout the world. The EU summit with Japan should be an occasion to press the Japanese government to take steps towards abolition.

Amnesty International calls on the German Presidency to:

- **initiate an evaluation of the implementation of the torture guidelines;**
- **continue to press for active implementation of the EU human rights guidelines, and to broaden the scope of application in particular through EU missions, by raising awareness about the guidelines and by ensuring meaningful involvement of civil society;**
- **promote the abolition of the death penalty in Central Asia.**

9. Conflict prevention and crisis management

Human rights violations are often a source of conflict, and always its consequence. Therefore violations must be addressed both as a preventive measure and to achieve sustainable peace. Human rights can be a powerful tool for bringing parties closer and finding a solution to their

conflict. Mediators invariably operate in a politically contentious and sensitive atmosphere. In such settings, internationally accepted norms of human rights can provide the parties with a common language with which to approach the root causes of their own conflict and address the critical questions of transitional justice.

The EU as a global security actor has a responsibility to contribute to solving conflicts and assisting war-torn countries. In recent years, the EU's activities in the field of conflict prevention and crisis management have increased dramatically. It is therefore essential that human rights protection, human rights training and capacity-building feature prominently in EU missions deployed in third countries.

The need to develop rapid reaction capabilities for short-term crisis management was one of the principal motives behind the establishment of the European Security and Defence Policy (ESDP) in 1999. The EU has identified police, the rule of law, civilian administration and civilian protection as priority areas in civilian capabilities. Specific capacities in these four areas may be used either in the context of independent missions managed by the EU or in operations run by other lead organizations in crisis management such as the UN.

All evidence from the field points to the need to handle conflict in terms of prevention, containment and management. The 2003 European Security Strategy made a step in this direction by providing a conceptual framework, which can serve as a common point of reference for crisis management.

Human rights violations are usually the first signal that a crisis is about to erupt. If it is dealt with at an early stage, military means will not be necessary. However if a crisis has erupted then both during conflict and afterwards, human rights considerations have to be central to all action. In practice this means providing basic security, stopping the spread of small arms, collecting surplus arms, bringing perpetrators of violations to justice, protecting displaced people and ensuring safe return.

The centrality of human rights for conflict prevention and crisis management is clearly understood and acknowledged in the context of the ESDP. However, knowledge about the actual ways and means of ensuring implementation, and about best practices, needs to be shared and

disseminated. Member States must make the necessary expertise and resources available and develop appropriate recruitment procedures and programs for human rights training. Each EU mission that is deployed provides further opportunities to ensure that the terms of reference of such missions contain a strong human rights mandate and that their implementation builds on previous experience.

Each mission should include a qualified human rights focal point, and be equipped fully to address gender-specific issues. In 2005, EU operational measures were drawn up with regard to UN resolution 1325 concerning women, peace and security and armed conflict. The Council in November 2006 adopted strong conclusions on gender equality and gender mainstreaming in crisis management, stressing that "gender equality and human rights should be fully integrated in the planning and conduct of all ESDP missions and operations, including fact-finding missions".

As a next step, the EU could usefully develop an action plan for the implementation of UN resolution 1325, to include the need for training on gender issues. It is also important that the draft guidelines for protection of civilians in EU-led crisis management operations adopted in 2003, complemented by the generic standards of behaviour for ESDP missions in 2005, are properly taken into account in the next EU missions. Furthermore, the German Presidency should build on Finnish Presidency support for joint NGO efforts to clarify the role played by civil society, and develop a framework for the involvement of local civil society and international NGOs in crisis management operations.

Preparations have started for an ESDP mission in Kosovo to take over the UN's responsibility for crisis management and restoring the rule of law. Given the accumulation of human rights abuse prior and subsequent to 1999 and continuing ethnic tensions, and uncertainties with regard to the status of Kosovo, this will present a critical challenge for the EU's declared commitment to stability in the Balkans.

Amnesty International calls on the German Presidency to:

- **continue to enhance the central role of human rights in conflict prevention and in the EU's crisis management operations;**
- **develop planning and monitoring mechanisms to ensure full implementation of UN resolution 1325 on women and armed conflict, of the EU standards of behaviour and of the guidelines for protection of civilians in EU-led crisis management operations;**
- **draw up guidelines for the involvement of local civil society and international NGOs in crisis management operations.**

10. Global governance

UN HUMAN RIGHTS COUNCIL

At the World Summit in September 2005, the international community was united in calling for the establishment of a strong human rights body that was to supersede the discredited Commission on Human Rights. However, very few parameters were provided by world leaders, leaving it to diplomats to work out how the new body should function in practical terms. Within half a year of its inception, concern is mounting about the difficulties encountered in establishing the new body. The UN Human Rights Council (HRC) is entering a critical phase. The year 2007 will be decisive in making sure that the new body will be able to fulfil its role of providing global governance for human rights.

Given the adverse voting divisions in the current Council, EU diplomacy has begun to show a defeatist attitude, which risks becoming a self-fulfilling prophecy if left unchallenged by strong political leadership. Now that the HRC has become a standing body, the extensive consultation processes of the EU and the fragmentation of expertise and authority place it at a severe disadvantage that is compounded by insufficient staffing in Geneva and Brussels. The strain this new body places on the diplomatic services must be addressed as a matter of urgency if the EU is to play an effective role in the HRC.

All of this means that political attention must be given at the highest level to provide the necessary impetus and determination to ensure that a strong and credible HRC becomes a reality. Amnesty International recommends a five-step approach:

1. **Political approach** – the Presidency must devise a clear political agenda for its objectives for the HRC and instruct its civil and diplomatic services accordingly.
2. **Integrated approach** – key messages pertaining to the HRC should be integrated as standard items in all agendas of EU CFSP meetings, as well as in bilateral meetings held by Member States.
3. **Inter-regional approach** – the EU and its members in the Council must undertake to actively forge broader inter-regional alliances.
4. **Burden-sharing** – towards this aim, systematic and intelligent burden-sharing should be applied, building on the comparative advantages of the various EU Member States.
5. **Resourcing** – the EU must urgently upgrade its capability at diplomatic and institutional levels to ensure it can operate consistently and effectively with regard to the HRC.

UN ARMS TRADE TREATY

In December 2006 an overwhelming majority of the world's governments voted at the UN General Assembly to take the first step towards a global Arms Trade Treaty to prevent international arms transfers that fuel conflict, poverty and serious human rights violations. Work on the treaty is to start in early 2007 when the new UN Secretary General will begin to canvass the views of all member states to establish the foundations of the treaty.

The EU Council in December reaffirmed that the EU and its individual Member States are to play an active role in this process. However, this contrasted sharply with the EU's inability to agree on the draft common position defining common rules governing the control of exports of military technology and equipment. The common position builds on the 1998 EU Code of Conduct on Arms Exports, contains stronger reference to international humanitarian law and would be legally binding.

Amnesty International calls on the German Presidency to:

- **take strong political leadership to establish the necessary political and procedural framework to enable the UN Human Rights Council to fulfil its intended mandate, and to ensure adequate resourcing to that end;**
- **provide leadership regarding EU support for the process to develop an Arms Trade Treaty through actively promoting a swift drafting process in the United Nations;**
- **ensure swift adoption of the common position on arms exports.**