

OSCE HUMAN DIMENSION IMPLEMENTATION MEETING 2006

EU statement for the working session 8: Rule of law I

6 October, Warsaw

Rule of law I:

Capital punishment, prevention of torture, international humanitarian law and protection of human rights and fighting terrorism

I am honoured to speak on behalf of the European Union.

Torture is a dreadful weapon of human destruction. The European Union deeply deplores that torture and other cruel, inhuman or degrading treatment or punishment continue to be practised.

Indeed torture is universally condemned. It is outlawed in national law and under a peremptory norm of international law. Yet the consequence is not that torture does not occur. The consequence is that torture takes place in secret and despite official denial, which makes it all the more difficult to combat.

At last year's HDIM we expressed our wish for the Optional Protocol to the UN Convention Against Torture to enter into force. We are very pleased that this has come true.

But the prevention of torture is not just a question of new and innovative instruments. Its essence is the application and implementation of existing national and international law and of corresponding changes in the mindsets of law enforcement officials and governments.

On the basis of its Guidelines on Torture and Cruel, Inhuman or Degrading Treatment or Punishment the European Union has therefore sustained its action to combat torture with a programme of systematic demarches to all countries, where we discuss issues of concern relating to torture and cruel, inhuman and degrading treatment and punishment.

The prohibition of torture is absolute: It cannot be suspended, circumscribed or restricted under any circumstances, be it in time of peace, during armed conflict or any other emergency.

The unconditional prohibition against torture also applies in the fight against terrorism. Counter terrorism measures must always be conducted in full respect for international law, in particular international human rights law, refugee law and international humanitarian law as set out in the relevant international instruments. Human rights must in no way be curtailed, restricted or

circumvented in any manner not permitted by these instruments. Their content and their wording provide ample possibility to address relevant security concerns.

Governments must never use the fight against terrorism to justify clampdowns or harassment of opposition voices - political parties, NGOs, media or its people. Violence should never be directed against civilians in the name of combating terrorism. Even resolute action to counter terrorism must not degenerate into violation of human rights. That would defeat the purpose of fighting terrorism. It is in times of emergency that a country's commitment to basic values is put to the test.

The participation of OSCE Participating States in armed conflicts highlights the importance of fully respecting international humanitarian law. It is vital to protect civilians from attack and respect the principle of proportionality, no matter how difficult in times of combat.

There are also fundamental rules to be applied under any condition in armed conflicts, such as the absolute prohibition against torture and cruel, inhuman or degrading treatment or punishment.

The European Union warmly welcomes the establishment of the International Criminal Court, which will have a significant impact on respect for international humanitarian and human rights law. To the European Union human rights is not only about ensuring respect for globally agreed international rules. We adhere to a set of values, which goes beyond that. Thus we consider that universal abolition of capital punishment is crucial for progress in the respect for human rights.

The European Union considers the death penalty as a cruel and inhuman punishment that provides no added deterrence to criminality and is a denial of human dignity and integrity. Any miscarriage of justice - which is inevitable in any legal system - would be irreversible. The death penalty is abolished in all EU countries. It is our sincere conviction that capital punishment should not be used anywhere in the world, including the three OSCE Participating States, where it is still applied: Belarus, the United States and Uzbekistan - even if we recognize that the President of Uzbekistan has expressed his intention to abolish the death penalty by 2008.

The EU carries out regular demarches on the basis of its guidelines on the death penalty. Since our last meeting a year ago the European Union has raised death penalty issues in general terms with a number of OSCE Participating states: Belarus, Kyrgyzstan and Tajikistan. We are pleased that Kyrgyzstan has extended the statutory moratorium. We have also raised individual death penalty cases with the United States and Uzbekistan.

Mr/s Moderator,

I am sure we all agree that a culture of impunity must not prevail. We need also to be concerned however about the risk involved in any acceptance of a culture of indifference. Our societies and we must remain alert and vigilant in the face of human rights violations. A culture of indifference breeds human rights violations. We are obliged not to let that happen.

The European Union has circulated a number of recommendations to this effect in writing.

Recommendations to be circulated in writing:

Prevention of torture

- The EU expects all OSCE Participating States to ensure that no one is subjected to torture or cruel, inhuman or degrading treatment or punishment or transferred to a country where there are substantial grounds to believe that he or she would be subjected to torture or ill treatment.

- The EU also expects all OSCE Participating States to cooperate fully and in good faith with international organisations and independent international monitors such as the OSCE, ICRC, the Council of Europe and the UN human rights mechanisms such as the Special Rapporteur on torture and to grant them unconditional and unhindered access.
- The EU recommends that OSCE Participating States sign and ratify the Optional Protocol to the UN Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment at the earliest opportunity and make the declarations provided for in Articles 21 and 22 of the Convention.
- The EU urges Andorra and San Marino to ratify the UN Convention Against Torture and other Cruel, inhuman or Degrading Treatment or Punishment.
- The EU recommends all OSCE Participating States to ensure the implementation of UN General Assembly resolution 60/148 on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Protection of human rights and terrorism

- While the European Union underlines the importance of a comprehensive and vigorous response to terrorism and remains determined to tackle this scourge, the EU expects that all OSCE Participating States fully respect human rights, refugee law and international humanitarian law in their counter terrorism measures.

International humanitarian law

- The EU expects that all OSCE Participating States ensure respect for international humanitarian law, including in particular the obligation to distinguish between civilians and combatants and the principle of proportionality.

Capital punishment

- The EU urges all OSCE Participating States that have not yet done so to abolish capital punishment in fact and in law.
- The EU urges OSCE Participating States, which regrettably still apply capital punishment, to inform other Participating States and their own civil society about any death sentence, any final judgement imposing or confirming the death penalty and any execution, including dates and names of those convicted or executed, the grounds for their conviction and any other relevant circumstances in full.
- The EU recommends all OSCE Participating States to ensure the implementation of UN Commission on Human Rights resolution 2005/59 on The Question of the Death Penalty.

The Acceding Countries Bulgaria and Romania, the Candidate Countries Turkey, Croatia ¹ and the former Yugoslav Republic of Macedonia, the Countries of the Stabilisation and Association Process and potential candidates Montenegro and Serbia, EFTA country Norway, member of the European Economic Area, as well as Ukraine align themselves with this statement.

¹ Croatia and the Former Yugoslav Republic of Macedonia continue to be part of the Stabilisation and Association Process