



Cover photograph: During demonstrations surrounding a G8 summit held in Genoa (Italy) in July 2001 there were many reports of excessive use of force by the police.

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## **Closing the gap**

**between rhetoric and practice**

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*Amnesty International's*

*recommendations to the Dutch*

*EU Presidency*



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## Introduction

At a time when those fighting to uphold human rights standards are on the defensive almost everywhere and the world is still reeling from the revelations of the torture of prisoners in Iraq, it is time for a strong voice to promote human rights on the global stage. The Netherlands takes on the European Union Presidency at a particularly difficult moment, but it is precisely for that reason that Amnesty International believes the EU Presidency program must do more than reaffirm values and make passing reference to human rights.

If the Dutch Presidency program is to enable the European Union to meet the challenge, two questions must be addressed:

- What is the real situation of human rights in the world?
- What is the real importance of human rights for the EU?

Amnesty International's answers to these questions came with its latest annual report.<sup>1</sup> It documented how violence by armed groups and increasing violations by governments have resulted in a sustained attack on human rights and international humanitarian law the world over. And with the vast majority of its member states included in the report, the EU was admonished for the lack of political will to confront human rights violations within its own borders.

Does this mean that the international human rights situation is hopeless, or that the EU's claim to be a community of values is entirely disingenuous? Of the major actors, the EU is probably best placed to confront the global human rights crisis, while at home, it is obliged to respond to serious appeals to shed its complacency. Yet what has been evident over the past years is that human rights have become more of an add-on than a central determining force – dispensable in the face of strong opposition, negotiable when confronted with other interests, and taken for granted at home. And it has been particularly at the level of the Council and the member states that the collective strength of purpose required to pursue human rights goals effectively and coherently has been found wanting.

Ground has been lost compared to five years ago when the Council and Commission actively sought to confront the question of how to put human rights into practice. The rights protection commitments of the 1999 Tampere agenda to build an "area of freedom, security and justice" across the Union have evaporated, the counter-terrorist drive has lacked essential safeguards, and the Charter of Fundamental Rights has prompted complacency rather than accountability. Externally, what began as a determination to build a stronger human rights dimension in the EU's relations with third countries has withered rapidly since 11 September 2001.

1) Amnesty International Report 2004, London 26 May 2004.

This critical appraisal points to some basic assertions that Amnesty International wishes to put to the Dutch EU Presidency:

- It is necessary for the international community to consider how to restore a proper profile and real priority to human rights, and the EU is well placed to provide the necessary leadership.
- When it comes to addressing human rights worldwide, there is a need to close the gap between rhetoric and practice, through a more coherent approach that gives substance to the notion that human rights constitute an essential element of the EU's external relations.
- On human rights within the EU, it is time to acknowledge that there are problems of compliance and accountability that must be addressed if the EU is to meet its obligations towards all people on its territory and if it is to be credible towards third countries.
- The EU stands to gain in authority and effectiveness if it can show through its policies and actions that human rights are not dispensable, not negotiable, and not to be taken for granted.

Therefore, the EU must deliver on its promises, by putting human rights more consistently into practice, and being prepared to lead by example. Ideally, this would require some fundamental rethinking of the EU's human rights policies as they have evolved over the past years. With the complex dynamics of a Union of 25, and at a time of turmoil and uncertainty on many fronts, this is indeed a challenge. But can the EU afford to ignore the dramatically changed landscape of human rights globally and in Europe? Amnesty International believes it cannot.

The surprise Council decision of December 2003 to establish an EU human rights agency in Vienna may have shown a disturbing lack of coherent thinking on how to fulfil the Union's human rights mandate, but at least it can now serve to focus discussion on what is really needed on the domestic front. In relations with third countries, however, the EU is barely able to implement the human rights clause and the various sets of human rights guidelines it has adopted over the past years, while 'mainstreaming' human rights into other policies remains an elusive goal. Here, no focus or mechanism exists as yet to strengthen the capacity to deliver on human rights objectives in the EU's external relations.

It is therefore all the more relevant for the Netherlands to inject new vitality into the EU human rights agenda. In the same way as the agency proposal can and should advance human rights observance internally, so an initiative is called for that can create the necessary focal point externally. Appointing an EU special representative for human rights would be an interesting and important step in this respect.

Amnesty International calls on the Netherlands to mark its Presidency with actions like these that can bring about specific improvements and so begin to restore the profile of an EU that puts human rights into practice and leads by example. To that end, Amnesty International presents the Dutch Presidency with a series of concrete recommendations for both the internal and external agendas, every one of which would make a difference.

# Proposals for the internal agenda: human rights in the EU

The obvious focus for the internal human rights agenda is the outcome of the “Tampere agenda” by which the European Union’s goal of constructing an area of freedom, security and justice was to be advanced. The progress made since the 1999 Tampere European Council is the basis on which the Dutch Presidency is to construct plans for a new five-year program of development in crucial areas such as asylum and immigration, and judicial and police cooperation including counter-terrorism.

Amnesty International’s critical assessment of Tampere focuses on these areas. However, evaluating the achievements of the Tampere agenda also requires an assessment of the overall picture of human rights observance and protection within the EU, as exemplified by both legislative measures and actual compliance. Unfortunately, from a human rights perspective, the picture is not positive. The vision of the area of freedom, security and justice has turned out to be a parallel universe to the reality experienced by asylum seekers, immigrants, suspects in police stations and defendants in courts.

The proposed human rights agency provides an opportunity to put the protection of human rights in Europe at the core of EU policy. The development of the proposal will be crucial to the advancement of fundamental rights in the EU and, as such, Amnesty International will be working to ensure that it will be an effective addition to the framework for human rights protection in Europe.

## Accountability for human rights in the EU

Amnesty International has long been pointing to the need for the EU to address problems with observance of human rights within its own borders and to establish accountability at EU level for the human rights performance of its member states. The Council has shown itself remarkably unconcerned about the occurrence of human rights abuse within EU borders. It is time for the Council to take its responsibilities seriously in this regard and to consider making constructive use of Article 7 of the Treaty on European Union as a key mechanism in establishing EU level accountability for ensuring the reality of the shared values of respect for human rights enshrined in Article 6 TEU.

Following the surprise decision by the December 2003 European Council to set up an EU human rights agency, the process of consultations by the Commission has started and will continue throughout the period of the Dutch Presidency to result in a proposal in early 2005. Amnesty International believes that the human rights agency should be tasked to monitor the respect for human rights within the EU rather than globally, to promote best practice and to feed into policy development at EU level. In this way, it should be possible to give substance to the evident need to establish accountability at

EU level for the respect of fundamental rights in the EU. Above all, and bearing in mind the curious manner in which the decision came about, care must be taken that it is part of a coherent approach to human rights and accountability at EU level.

*Amnesty International urges the Dutch Presidency to respond positively and robustly to the 2003 Commission Communication on the use of Article 7 TEU and so contribute to the establishment of a strong human rights agency to carry out effective monitoring of the human rights situation within the EU.*

## Judicial cooperation

### **Rights of suspects and defendants in criminal proceedings**

The European Commission has finally presented its proposal for a Council framework decision on certain procedural rights of suspects and defendants in criminal proceedings throughout the EU. This proposal is urgently needed to meet some of the problems that have been encountered by member states in implementing the European Arrest Warrant. The framework decision is a key to protecting individual rights within the EU and preventing serious criminals such as traffickers in human beings and the perpetrators of terrorist acts from escaping with impunity.

*Amnesty International urges the Dutch Presidency to ensure that negotiations on the proposed Council framework decision on the rights of suspects and defendants in criminal proceedings do not lead to a weakening of the standards that are currently set by international law.*

### **European Arrest Warrant**

The European Arrest Warrant, replacing extradition procedures between member states with a simple system of surrender, was to be implemented on 1 January 2004 but by June it had still not been transposed into national law in eight of the 25 member states. In the first months of the new system a number of cases have shown that while standards of human rights protection differ across the EU, a fast-track system will do nothing to improve the efficiency of cooperation to combat crime across borders. A failure to address the basic issue of the protection of fundamental rights in criminal proceedings across the EU could lead to a breakdown in cooperation against serious crime.

*Amnesty International urges the Dutch Presidency to ensure that implementation of the European Arrest Warrant is completed across the EU in such a way as to protect the rights of individuals. This should be accompanied by improvements in the protection of rights in criminal proceedings across the EU as the protection of human rights is a pre-requisite to effective cooperation against crime.*

## Violence against women

Amnesty International is conducting a worldwide campaign to stop violence against women, and is looking at the EU to translate evident awareness of its occurrence within its societies into more far reaching action. Two avenues in particular need to be explored actively: collection of comparable data, and protection of victims.

*Amnesty International urges the Dutch Presidency to take the lead in supporting the Commission's proposals to establish systems of data collection in member states which would allow for the compilation of a comprehensive comparative report on the situation of violence against women in the EU through the Daphne II programme.*

*Amnesty International also urges the Dutch Presidency to consider legislation on the protection of vulnerable victims of crime, in particular victims of gender-based crime, expanding on the Council framework decision on the standing of victims in criminal proceedings.*

## **Discrimination against Roma**

Enlargement has put the systematic discrimination and social exclusion of Roma high on the EU's agenda. This issue was raised by the EU network of independent experts on human rights in their report on 2003 as one of the major human rights problems facing the EU that requires action on a structural level. It will be important to ensure that this issue is given the prominence that it deserves and that a strategy for combating anti-Roma discrimination is adopted. This should include an analysis of the efficiency of current anti-discrimination legislation such as the EU Race Directive in tackling problems specific to the situation of the Roma.

*Amnesty International calls on the Dutch Presidency to address the issue of the discrimination against Roma in the EU as a matter of priority. Amnesty International also asks the Dutch Presidency to put the draft framework decision on combating racism and xenophobia back onto the JHA Council agenda as a matter of urgency to ensure protection against racism and xenophobia across the EU.*

## **Common European Asylum System**

### **Heading towards Tampere II**

The development of a Common European Asylum system is at a critical juncture. All instruments setting minimum standards have been agreed by the Council within the deadline drawn up by the Amsterdam Treaty, but the process has been characterized by a lack of ambition and political will. Domestic political agendas have dominated the negotiations, and despite recommendations by the UN High Commissioner for Refugees, Amnesty International and others, member states have been allowed to maintain their national legislation on key asylum issues.

The Dutch Presidency will be crucial in determining the steps towards the second phase of harmonization in the enlarged EU. With the discussion regarding the adoption of a single common European procedure at the heart of this second phase, the real question at stake is to define essential procedural safeguards that should be enshrined in any procedure to ensure the full respect of standards and obligations of international law.

*Amnesty International urges the Dutch Presidency to reaffirm and reinvigorate the commitments and principles of Tampere as the basis for a more ambitious level of harmonization.*

### **Maintaining the right of asylum in an enlarged EU**

The debate on the need for a second stage of harmonisation should also take into account the impact of enlargement. Adequate attention should be paid to the situation of minorities such as Roma who are potentially in need of international protection. Only weeks before actual enlargement, citizens from acceding countries were still recognized as refugees by EU member states.

*Amnesty International urges EU member states to use the derogatory procedure codified under Protocol n° 6 of the Amsterdam treaty (the so-called Aznar protocol), which allows examination of any asylum application lodged by an EU national, in a non-discriminatory fashion.*

### **Transposing EU asylum legislation**

While the past years have been focused on the adoption of the six “building blocks” set up by the Tampere agenda, the coming period will be focused on the transposition of the main legislative instruments into national legislation with the aim of achieving an “equivalent level of protection” throughout the 25 EU member states.

*Amnesty International urges the Dutch Presidency to assist the Commission in setting up a public database available to lawyers and legal advisers of asylum seekers in order to inform them of the existing legal framework in all EU countries. The database should contain at least any relevant information on the designation of safe countries of origin, safe third countries, the definition of a refugee and persons otherwise in need of international protection and procedural safeguards.*

### **European solidarity**

The Dublin II mechanism determining which member state is responsible for dealing with an asylum application potentially has far-reaching implications for the asylum systems of the ten new EU member states. Given the predominant responsibility of countries located at the external borders of the EU territory, this regulation is likely to create a very heavy burden on the new member states.

*Amnesty International calls on the Dutch Presidency to explore responsibility-sharing and solidarity mechanisms in cases where the Dublin II system disproportionately burdens member states located at the external borders of the EU.*

### **Common European country reports**

Amnesty International believes that a Common European Asylum System should be based on common European country reports, or at least be facilitated by the establishment of a European documentation centre dealing with information on refugee producing countries and countries of transit. Such a centre would work on the basis of a wide variety of sources including reports from inter-governmental organizations such as the UNHCR, and non-governmental organizations. A common independent information base is a key element in achieving an equivalent level of protection throughout the EU.

*Amnesty International calls for the development of an independent and impartial European refugee documentation centre, with a view to ensuring availability of common European country reports.*

## The external dimension of asylum and immigration

### Enhancing regional protection

The Dutch Presidency intends to promote protection in the region and at the same time resettlement programmes. Amnesty International has always held that better protection of refugees in the region of origin is necessary and has to be enhanced as the vast majority of refugees are hosted there. Protected entry procedures and resettlement schemes may be used to complement protection in the region as long as they are additional tools to the existing asylum procedures and not a substitute for spontaneous claims for asylum on EU territory – or worse, used as a justification for restrictive measures which inhibit access to fair and satisfactory asylum procedures. Any proposal towards ensuring better protection in the region does not exempt EU member states from their responsibility under international human rights and refugee law.

*Amnesty International calls on the Dutch Presidency to ensure that resettlement and protected entry procedures are never used as a substitute – legally or politically – for the right to seek and to enjoy in other countries asylum from persecution.*

*Amnesty International urges the Dutch Presidency to ensure that the UNHCR has a central role in the implementation of any resettlement scheme, and that selection criteria fully comply with those defined by the UNHCR.*

### Needed: protected entry for human rights defenders

Protected entry procedures could feature as an emergency strand of wider resettlement action. The EU should further explore the feasibility of emergency procedures so that persons facing immediate danger of persecution can be granted immediate effective protection. Specifically, the EU and its member states must commit to granting humanitarian visas to human rights defenders who have to leave their country because they are under threat. This is a measure that should have been a key provision of the guidelines on human rights defenders.

*Amnesty International calls on the Dutch Presidency to elaborate a policy to allow human rights defenders and other vulnerable groups fleeing their countries due to a well-founded fear of persecution, to quickly apply for and be granted asylum or humanitarian visas in order to gain access to a fair asylum procedure in the EU.*

### **Return of irregular migrants and the fight against “illegal immigration”**

The Dutch Presidency is also expected to develop tools for an integrated management of external borders and the fight against “illegal immigration”, in particular through financial instruments and the establishment of a European agency for the management of the operational cooperation at the external borders. A returns policy is a necessary component of a proper asylum and immigration policy. However, Amnesty International is concerned that protection issues are not given adequate attention while persons in need of international protection are amongst irregular arrivals. Preliminary discussions regarding common minimum standards also revealed a great reluctance to develop ambitious standards at EU level, despite existing obligations under international human rights instruments. The development of fast-track procedures to process asylum claims lodged at the borders is also of particular concern given the potentially far-reaching implications of these procedures on refugee protection.

*Amnesty International urges the Dutch Presidency to promote an adequate return policy, ensuring full observance of the non-refoulement principle and other relevant international standards, in particular those developed by the Council of Europe and the European Court of Human Rights. Returns should only be allowed when persons can be sent back home in safety and dignity.*

# Proposals for the external agenda: human rights in the world

For the external human rights agenda there is no overall policy framework to assess and direct the European Union's human rights efforts across the full spectrum of its international endeavours. The Council's annual report on human rights issued every October provides an extensive and useful overview of activities but has so far failed to offer a comprehensive and realistic assessment of achievements and shortcomings.

Amnesty International for its part, in its advocacy towards the EU on human rights in the world, informs and comments on a wide spectrum of individual countries as well as on broader thematic and multilateral approaches. Without being exhaustive these include, for the Dutch Presidency period, the evolving enlargement and neighbourhood policies, the UN human rights system, the ASEM summit, and action against torture, on arms control and on corporate social responsibility.

Connecting human rights concerns to relevant policy frameworks and institutional processes inevitably entails an appraisal of their effectiveness. Here, Amnesty International identifies certain structural shortcomings which have become increasingly apparent towards the end of the current legislative cycle. Constructive plans by the Commission and the Council at the start of the cycle could not be sustained and there are serious questions about implementation of the new instruments generated during the past years in the form of guidelines on torture, human rights dialogues, children and armed conflict, and human rights defenders.

This picture was exacerbated by the massive impact on human rights in the world and in the EU as a result of the events of 11 September 2001. While the rhetoric on the need to balance security and human rights cannot be faulted, and the EU's important new security strategy makes appropriate references to prevention, they are not made operational and it is evident that human rights are not on the real political agenda. All of which points to the need for a more substantial review and revitalization of the policies and the institutional capabilities and resources of the EU and its member states to conduct an effective external human rights program.

## Enlargement

The enlargement table now lists Bulgaria, Romania and Turkey as candidates, shortly expected to be joined by Croatia. Amnesty International will continue to submit its findings and assessments of the human rights situation in these countries and seek to inform the process with objective analysis. With regard to Bulgaria and Romania this has focused in particular on the rights of people with mental disabilities and the situation in psychiatric institutions.

## Turkey

The major political decision to be taken under the Dutch Presidency is whether to start accession negotiations with Turkey. Amnesty International will continue to report regularly on patterns of human rights abuse that persist despite the significant legislative reform that has been generated by the accession prospect. They include ill-treatment and torture, restrictions on freedom of expression, assembly and association, and unfair trial concerns. The key remaining question is how legislative progress can be translated into the structural and institutional adjustments needed to effect change in actual practice, and how the EU member states and the EU as a whole can play the most constructive role in this process.

The continuing prospects of enlargement and in particular Turkey's candidacy should serve to underline the importance of respect for human rights within the EU itself. All people in Europe are entitled to expect observance by their governments backed up by an EU that complements and if necessary enforces that commitment.

*Amnesty International urges the Dutch Presidency to guarantee that the European Council bases its decision on the start of accession negotiations with Turkey on a thorough analysis of concrete improvements and shortcomings in practice.*

*Amnesty International also calls on the Dutch Presidency to inject the question of EU accountability for human rights observance within the own borders into the debate on Turkey's candidacy and so complement the continuing enlargement process with a commitment to strengthen the EU's own human rights framework.*

## Europe's neighbours

Following the endorsement of the new European Neighbourhood Policy by the European Council in June, the Dutch Presidency will have to ensure that the forthcoming Action Plans for Ukraine, Moldova, Tunisia, Morocco, Jordan, Israel and the Palestinian Authority will develop the closer association of these countries with the EU on the basis of tangible improvements for the respect for human rights and fundamental freedoms in these countries. These include in particular the fight against torture, the full realization of women's rights, efforts to build an effective and independent judiciary and the resolution of conflicts on the basis of full respect for international human rights and humanitarian law standards.

*Amnesty International calls on the Dutch Presidency to ensure that the final Action Plans in the context of the European Neighbourhood Policy will make tackling pressing human rights concerns in the countries concerned a priority, and to ensure that all political dialogue meetings during the Dutch semester will capitalize on achieving concrete commitments from these neighbours.*

## Russia

Despite recent pledges by the Council and the Commission to address human rights concerns vigorously and coherently and to re-orient the EU-Russia relationship towards substantial results, the EU continues to show a lack of engagement on the deteriorating state of the rule of law and respect for human rights in the Russian Federation. Having failed in the UN Commission on Human Rights to call Russia to account for the ongoing serious human rights situation in Chechnya, this human rights crisis at the EU's doorstep also appears to be absent from the EU's dialogue agenda with Russia. Obtaining results in building respect for human rights for all people in Russia must be at the core of the EU's dealings with Russia, if the EU is to deliver on its commitment towards its citizens to create an "enlarged area of political stability and functioning rule of law" at its Eastern borders.

*Amnesty International urges the Dutch Presidency in preparing for the November EU-Russia summit to rebuild rigorous scrutiny of Russia's conduct in the Chechen Republic and to use all avenues of political dialogue to remind the Russian government of their duty to respect international human rights and humanitarian law, to press for unrestricted access to independent international monitors, and to reiterate the need for decisive action against perpetrators of human rights abuses. Amnesty International also calls on the Dutch Presidency to ensure the EU member states will not return people who have fled the conflict to Chechnya or to other parts of the Russian Federation unless and until their safe and durable return with dignity is assured.*

## The EU and the UN Commission on Human Rights

The world's primary body for human rights protection and promotion, the UN Commission on Human Rights, has again demonstrated an incapacity and unwillingness in the 2004 60th session to fulfil its mandate of ensuring public scrutiny of situations of gross and persistent abuse, in particular regarding China, Russia, Iran, Zimbabwe and the situation of detainees in Guantánamo Bay. Despite some positive results, the EU's efforts were again marred by obstructionism by regional blocks and political manipulation by the big powers.

Any meaningful effort to reverse the tide must in the view of Amnesty International be based on a clear understanding that protection of human rights through monitoring, reporting and public scrutiny is and should remain the UN CHR's core function. The perspective for effective reform of the Commission on that basis may not be good in the present poisonous political climate, but the EU should nevertheless consider how it may go beyond damage control and reinsert a spirit based on human rights rather than political interests.

An evident step towards achieving this is to establish objective criteria for invoking the Commission's scrutiny of the human rights situation in individual countries. Another important approach in this context would be for the EU to connect and integrate its UN CHR effort into the regular foreign relations cycle throughout the year, and to include it consistently in its political dialogues with third countries including at the highest levels.

*Amnesty International calls on the Dutch Presidency to instigate a more fundamental review of the EU's efforts in relation to the UN Commission on Human Rights, with a view to supporting improvements in the UN CHR's working methods that will enable it to adopt effective measures to bring human rights violations to an end wherever they may be committed.*

*Amnesty International also calls on the Dutch Presidency to integrate the UN CHR effort of the EU more effectively into the regular foreign relations cycle throughout the year and to include its objectives consistently in political dialogue with third countries.*

### **Iraq**

The UN Human Rights Commission's complete lack of engagement with the human rights situation in Iraq was a telling example of the international community's inability to address one of the starkest human rights situations of the day. The population of Iraq has suffered decades of appalling human rights abuses and the devastating consequences of war and economic sanctions. As if to underline the flagrant omission, the Commission had barely closed its session when friend and foe were shocked by the revelations of the torture and ill-treatment by coalition forces in Iraqi prisons, echoing the frequent reports of abuses received by Amnesty International during the past year.

The transfer of authority to an interim government in Iraq will mark the first day of the Dutch EU Presidency. The EU should make all possible efforts to ensure that the Iraqi authorities and any future multinational force live up to their responsibility to uphold the rights of the Iraqi population and to guarantee full accountability for those who abuse those rights. Long-term stability and human rights protection in Iraq require respect for the rule of law and transparent, accountable systems of government that are based on respect for human rights and recognition of the particular needs of women as well as ethnic and religious groups without discrimination. EU and member states' support for Iraq should prioritize support for legal reform, assistance in the rehabilitation of torture victims and capacity building for human rights NGOs.

*Amnesty International calls on the Dutch Presidency to ensure EU pressure on the Iraqi interim government to put human rights protection and promotion at the forefront, in particular the protection of the rights of women, and to rally EU support for the early deployment of international human rights monitors to Iraq, as circumstances permit.*

*Amnesty International urges the Dutch Presidency to demand that the US and UK authorities conduct a thorough, independent and public investigation of torture and ill-treatment by coalition forces in Iraqi prisons, and to hold accountable all who have committed acts of torture as well as those who have contributed to a command culture condoning such abuses.*

*Amnesty International also urges the Dutch Presidency to ensure that EU member states will not return Iraqi asylum seekers in view of the current security situation.*

## Sudan

Although the UN Human Rights Commission did finally call on all parties to the conflict to respect the cease-fire, grant access to humanitarian organizations and set up an Independent Expert to report back on the human rights situation to the General Assembly and at next year's session of the Commission, its action fell patently short in the light of the unfolding human rights crisis in Darfur, western Sudan.

*Amnesty International calls on the Dutch Presidency to ensure that the government of Sudan permits the deployment of human rights monitors in Darfur, commits to respect international humanitarian law at all times, and acts to disarm and demobilise the armed militias.*

## Asia-Europe Meeting

The Asia-Europe Meeting (ASEM) is an informal process of dialogue and cooperation bringing together the EU member states and the European Commission with ten Asian countries. The next ASEM Summit taking place in October 2004 in Hanoi, Vietnam, should be an opportunity to introduce a clearer human rights profile for the political pillar of the ASEM process. An appropriate way of doing so would be to seek commitment to implement the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and its Optional Protocol adopted on 18 December 2002. Only five of the ten Asian countries members of ASEM have ratified the Convention itself, and none of them and very few of the European members signed or ratified the Optional Protocol.

*Amnesty International calls on the Dutch Presidency to ensure that human rights issues will be on the agenda of the upcoming ASEM summit, and in that context to promote the early ratification of the UN Convention against Torture and/or its Optional Protocol amongst ASEM governments.*

## Arms control

Since 1998 the EU has been committed to its Code of Conduct on Arms Exports which stipulates that arms should not be exported to countries where there is a clear risk that they may be used for internal repression or where serious violations of human rights have occurred. As the code is not legally binding, and the final decision on exports remains a prerogative of national governments, this promise is far from being honoured. Although it is a significant advance in regional arms export control, the code has major weaknesses, ambiguities and loopholes and as a result, EU member states continue to export arms or equipment that are misused for human rights violations.

There is a patent need to improve the EU arms exports regime and expand arms export controls to a much greater number of states across all world regions. A binding international arms trade treaty grounded in principles of international law, rather than a voluntary code would provide potential victims around the world with much greater protection. These elements should be taken into account by the EU Council Working Group on Conventional Arms which is currently revising the Code of Conduct on Arms Exports.

*Amnesty International urges the Dutch Presidency to significantly strengthen the EU code of conduct on arms exports, and to promote and work towards a global arms trade treaty based on international standards of human rights and humanitarian law with a view to curbing the proliferation and misuse of arms and preventing the unregulated spread of arms production.*

### **China arms embargo**

The EU arms embargo on China was imposed in 1989 as a direct response to the brutal actions of the Chinese authorities against protestors calling for democratic and political reform that resulted in the Tiananmen Square massacre. Tens of thousands were arrested in the aftermath of the 1989 crackdown throughout China. Many of those detained were tortured or ill-treated, often with devastating long-term effects on their physical and mental health. Some were sentenced to long imprisonment after unfair trials and others were sentenced to death and executed.

15 years later, dozens of people are still in prison in connection with the protests, or living in exile. The Chinese authorities continue to ignore calls from both domestic and international activists to conduct a full, independent and impartial inquiry into the events.

*Amnesty International urges the Dutch Presidency to formulate which concrete improvements will be required in the human rights conduct of the Chinese government for the EU to consider lifting the arms embargo imposed on China in 1989.*

## **Human rights guidelines**

With the Irish Presidency having put forward guidelines on human rights defenders for adoption by the Council in June, the arsenal of EU human rights instruments is further augmented without any indication that there will be the resolve and the resources to implement them. The 2001 guidelines on torture have been bogged down by conceptual and institutional complexities, and NGOs are seriously concerned that those adopted in late 2003 on children and armed conflict will suffer the same fate. While welcoming the intention to broaden the scope of the EU's human rights engagement, there is a clear need now to consider seriously how the capacity of the EU and its member states can be assured for adequate implementation.

Both official human rights dialogues conducted by the EU, with China and Iran, are up for review during the Dutch semester. The 2001 EU guidelines for human rights dialogues have as their basic premise that dialogues should produce tangible results in the actual human rights performance of the countries concerned, related to concrete benchmarks. Given the absence of such measurable improvement in both countries, there is cause for principled reflection on how to conduct these dialogues in a more effective and transparent manner. That should include incorporation of human rights in political dialogue at the highest levels, and initiatives to seek public scrutiny in appropriate international fora such as the UN General Assembly and the UN Commission on Human Rights.

*Amnesty International calls on the Dutch Presidency as a matter of urgency to conduct a critical analysis of the capacity for implementation of the EU's human rights policies and to present the Council with recommendations to strengthen the EU's resources to deliver on human rights objectives in the EU's Common Foreign and Security Policy. In this respect, the Dutch Presidency is encouraged to consider the appointment of an EU Special Representative for Human Rights.*

## Action against torture

### **Torture trade regulation must now be adopted**

As part of its commitment to eradicate torture, the European Commission has taken the positive step of proposing a regulation concerning trade in certain equipment and products which could be used for capital punishment, or torture or other cruel, inhuman or degrading treatment or punishment. The regulation is to ban the export of equipment that has no other use than torture, including electro-shock stun belts, thumbcuffs and leg cuffs, from member states to outside the EU. It would also strictly control the export of equipment that may have a legitimate policing function but can lend itself to torture, such as tear gas. Since end 2002, a proposal for a Regulation is being discussed by the Council Working on Trade, and an amended proposal has been presented by the European Commission. It is now high time this process is concluded.

*Amnesty International urges the Dutch Presidency to ensure adoption of a Council regulation concerning trade in certain equipment and products which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment, before the end of the year.*

### **Optional Protocol to UN Convention against Torture**

Of the 25 EU member states, only seven have signed and one has ratified the UN Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted on 18 December 2002. The lack of willingness to sign and ratify this important instrument contrasts starkly with the very considerable effort by the EU and its member states to achieve its adoption.

*Amnesty International urges the Dutch Presidency to sign and ratify the Optional Protocol to the UN Convention against Torture and to encourage member states alike to accede to the Protocol in order to profile the EU as a positive agent for external change.*

## Towards an EU framework for corporate social responsibility

On the eve of the Dutch Presidency the European Multi-Stakeholder Forum on corporate social responsibility (CSR), bringing together the business sector, trade unions and NGOs with the Commission to explore "the appropriateness of establishing common guiding principles for CSR practices and instruments", concluded its two-year work.

The Forum's report should mark an important step towards a European framework for CSR. The main challenge will be to reconcile fundamental differences of approach between the corporate sector which maintains that CSR must be business-driven, and NGOs which believe that it cannot be left to voluntary commitment only.

The Dutch Presidency conference on CSR in November is an opportunity to advance the debate on how to develop concrete and effective ways of implementing corporate social responsibility. A crucial factor will be for public authorities – including the EU – to assume their own responsibility and regulatory power to ensure responsible corporate behaviour, with proper transparency and accountability to match.

*Amnesty International calls on the Dutch Presidency, in conjunction with the Commission and the European Parliament, to provide for concrete next steps towards the development of an effective European framework on corporate social responsibility.*

### **Accounting to EU citizens: relations with the European Parliament**

The European Parliament has undertaken to strengthen its capacity to bring more coherence, transparency and accountability to the EU's human rights endeavour by re-establishing a Sub-committee on human rights in the framework of the EP Foreign Affairs Committee. In coinciding with the start of the new legislative term of the European Parliament, the Dutch Presidency is given a prime opportunity to enhance the democratic legitimacy of the EU's actions to advance human rights.

An excellent starting point for such a new engagement would be for the Dutch Presidency to invite the European Parliament to a debate on the basis of the annual report on human rights that it will be presenting in October on behalf of the Council. Its relations with the new human rights Sub-committee should be built on reporting and consulting on the preparation, conduct and follow-up to the human rights dimension of political dialogue meetings, in particular the forthcoming sessions of the human rights dialogues with China and Iran.

*Amnesty International calls on the Dutch Presidency to present the Council annual report on human rights directly to the European Parliament, and to establish a regular engagement with the European Parliament's new Sub-committee on Human Rights.*

June 2004

