
amnesty international



“Putting human rights into practice”
MEMORANDUM TO THE
BELGIAN PRESIDENCY
OF THE EUROPEAN UNION

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European Union Office

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Putting human rights into practice

Amnesty International Memorandum to the Belgian Presidency of the European Union

I. The European Union and the relevance of human rights

The European Union has over the last decade established a strong human rights mandate. Statements by the Council (25 June 2001), the Commission (8 May 2001) and the European Parliament (5 July 2001) show a growing resolve to live up to that mandate, and for the EU to make a difference in a world that is still beset by conflict and gross human rights abuse. The level of the EU's ambition when it comes to human rights protection around the world has in fact never been so high.

The urgency is evident when just the bare statistics compiled by Amnesty International on human rights violations in 2000 are considered:

- People were reportedly tortured or ill-treated by state authorities in 125 countries;
- People “disappeared” or remained “disappeared” in 30 countries;
- Confirmed or possible extrajudicial executions were carried out in 61 countries;
- Confirmed or possible prisoners of conscience were held in 63 countries;
- Arbitrary arrests or detention without charge or trial occurred in 72 countries;
- Armed opposition groups committed serious human rights abuses in 42 countries;
- At least 1,457 known executions were carried out in 28 countries, and 3,058 death sentences passed in 65 countries.

Putting human rights at the heart of EU policies is one thing, putting them into practice is quite another. The vision, analysis and ambition contained in the current statements and communications by the Council, the Commission and the Parliament should give fresh impetus to focus on the essential question: how to be more effective. Their many recommendations appear impressive but at the same time they show up the main weaknesses in the system:

- The advocacy of coherence and consistency in support of human rights amongst EU institutions and member states constitutes a major challenge, to the Council in particular, to overcome the institutional barriers.
- The emphasis on dialogue and cooperation and on “mainstreaming” human rights raises questions about the strength of purpose to exert real political pressure to stop and prevent gross violations, and to give more substance to the human rights clauses in trade and association agreements.
- The ambition to infuse all external assistance with an effective human rights focus, and to engage in systematic monitoring, evaluation and impact assessment on the basis of

country strategies, is very positive but does not correspond with the available capacities and the level of human rights expertise across all institutions.

- The acknowledgement of human rights problems within the EU without action to match raises the question of credibility and legitimacy, not least towards the accession countries.
- The asylum issue raises fundamental questions about the integrity of the EU's human rights aspirations.

This memorandum from Amnesty International to the incoming Presidency briefly reviews the present state of affairs and seeks to respond to the Belgian government's objectives and priorities on human rights in the light of the issues raised above. In doing so, it builds on the memoranda Amnesty International presented to previous Presidencies. It also incorporates the main recommendations in recent statements by Amnesty International Belgium on asylum and on human rights in the Great Lakes region, and takes account of the joint memorandum on fundamental rights presented to the government in March 2001 by AI Belgium together with four other Belgian NGOs.

Overall, reviewing the efforts and the developments over a broad range of activity, the EU human rights endeavour shows steady progress and sometimes tangible results. In the face of the continuing human rights crisis in the world, however, the question how to be more effective must be put very emphatically. The values are clear, but the relevance of respect for human rights must be articulated much more forcefully if we are to secure their realisation. The relevance for the victims, first and foremost. But the relevance also for the overarching objectives of rights for all through poverty reduction, conflict prevention and rule of law.

The principal recommendation arising out of all this is that the European Union must rise to its own challenge and aspiration, and make the question "how to be more effective" a priority. It must look at the obstacles and how to overcome them. It must give new weight to the relevance of human rights in the balance of competing and conflicting interests.

Its stated ambition demands that the EU make this a priority in 2001 and beyond. By "mainstreaming" the human rights issue into a number of its specific priorities the Belgian Presidency should feel committed to take up the challenge. So that Spain coming next can mark a turning point by making human rights for the first time a proper and explicit Presidency priority. A European Union that feels responsible, that is determined to be more effective, is indeed in a position to make a difference.

II. Presidency priorities and human rights

The Belgian Presidency is no exception to the practice of successive Presidencies of keeping the human rights issue implicit rather than making it explicit in its main objectives and priorities. The outline of priorities issued early May 2001 states the government's firm intention to give respect for human rights a prominent place in the determination of the Common Foreign and Security Policy (CFSP) of the EU. However, the question how to address the human rights issue effectively is not included in the list of specific Presidency priorities.

Whether or not human rights are included in the stated priorities of a Presidency is not necessarily a sign of more or less weight afforded to the issue. A human rights dimension is indeed present in a number of the 16 priorities listed in the Belgian Presidency's note. However, the human rights debate at EU level is now finally beginning to acknowledge that the gap between policy and practice is too wide, and that the EU must confront the question of how to become more effective in putting policies into practice. The time has come to go beyond the rethoric of re-stating principles and intentions, and to address these fundamental questions more forcefully.

This requires taking a hard look at the methods and resources, and at the way they are applied. Most of all it requires the EU to look very specifically at the obstacles that stand in the way of achieving its objectives, and identifying how to overcome them. If the EU takes its own ambition seriously, it cannot avoid confronting this challenge. In that sense, the issue warrants a different and more explicit priority rating, and each Presidency that from now on fails to do so is in fact a missed opportunity.

The efforts of committed previous Presidencies have highlighted the basic dilemma, and the aforementioned statements by Council, Commission and Parliament underline the need for a more thorough approach of the problem. The Belgian Presidency is well-placed to undertake the suggested analysis and so start breaking the vicious circle. In Amnesty International's view, the analysis can be brought under three main headings: political, practical and professional.

a) The political dimension: policies and principles

An integrated human rights policy: internal and external dimensions

A comprehensive EU strategy on human rights requires consistency and coherence between the EU's external and internal approaches to human rights. The internal dimension is all the more important for an EU that aspires to broaden its scope and its membership.

The recently adopted European Charter of Fundamental Rights underlines the need for the EU and for member states individually to address internal human rights problems more systematically and to provide for proper accountability. And yet there is at present no such system. The development of a comprehensive human rights policy integrating internal and external dimensions and including adequate monitoring and evaluation mechanisms will be important to help resolve this dilemma, and to strengthen the EU's credibility.

At present there is no forum to develop such a comprehensive approach. The EU human rights debate is the domain of external relations, and there has so far not been a serious attempt to bring the relevant circuits of justice and home affairs into a more inclusive debate. One example of the contradictions this creates is the apparent difficulty to develop an internal dimension to the EU policy against torture, which Amnesty International considers an essential step to complement the guidelines for EU policy towards third countries adopted in April 2001.

An integrated human rights policy: the United Nations system

An important development is the growing recognition and initiative to apply UN human rights standards and to link up to the UN human rights mechanisms. The EU must integrate its objectives at the UN Commission on Human Rights and the General Assembly as well as the decisions by those bodies, further into its regular Common Foreign and Security Policy initiatives throughout the year. In all its external relations, it must insist on compliance with UN standards and mechanisms.

Cooperation and pressure: how to strike an effective balance

Increasingly the human rights concept is being extended and linked to the larger context of interdependence with other primary domains of EU activity and ambition: development, conflict prevention and democratisation, but also trade, environment and social development. The broadened scope of the EU's human rights endeavour, positive in itself, must however not lose sight of the need to forcefully address gross violations. The challenge is how to "mainstream" human rights into other areas of activity without losing focus. And risking credibility.

Coherence and consistency

This also raises the question of coherence between the Council and the Commission when conducting political dialogue and external assistance respectively, as well as the question of consistency in applying human rights policies to individual countries. The role of individual member states is very important here as they can too easily turn the strength of common policy into the weakness of the lowest common denominator.

Enlargement: a unique opportunity for human rights

The enlargement process offers a very specific context for pursuing human rights objectives, moving them from external relations into the internal domain. Twelve candidate countries had been found to fulfil the political criteria in a sufficient manner to allow for the negotiations to start; nevertheless most were and still are considered to be in need of substantial improvements on a range of issues concerning human rights, including refugee protection.

With accession of the majority of candidate countries by 2004 now a political probability, the key questions for them as well as for the EU will be to address major outstanding problems in the area of police abuse and discrimination, and to ensure adequate administrative and judicial reforms. This should bring these countries at a level with the performance and accountability expected of the present member states and of the EU system as a whole for the internal human rights dimension. Which, given the shortcomings indicated earlier in this respect, underlines the need for the kind of systematic monitoring and evaluation that is now done for the accession candidates through the Commission's regular reports, to be extended to all member states, present and new.

Asylum: a cornerstone of human rights protection

Despite solemn assurances of full and inclusive application of the Geneva Convention, the proposals put forward towards the common asylum regime to be established at EU level are by no means fully in compliance with international human rights and refugee law. The overriding desire to curb illegal immigration leads the EU on the dangerous path of creating its own “version” of international law governing asylum and refugees. This risks undermining the integrity of the internationally agreed regime for the protection of refugees.

The refugee issue is a human rights issue, and the refugee protection regime is a cornerstone of international human rights protection. There is an urgent need to re-establish the human rights perspective into the asylum debate. And to reflect this in the review of the implementation of the Tampere decisions to be carried out under the Belgian Presidency.

b) The practical dimension: methods and instruments

Methodology

As Amnesty International has repeatedly pointed out, in order to properly address human rights issues it is necessary to apply a methodology of systematic monitoring and evaluation on the basis of clear benchmarks. In proposing to develop such a methodology in the context of the country strategy papers, the Commission’s May 2001 communication on human rights marks an important advance. It also recognizes the importance of conducting impact assessments regarding the human rights effects of EU policies in other spheres of activity.

Clearly such a methodology should be applicable not only for human rights in third countries but also for human rights within the EU’s own borders, as stressed earlier. The European Parliament’s 2001 report on human rights in the EU, calling for the setting up of a permanent working group to monitor continuously the situation of fundamental rights in the EU, is an important step in this respect.

The guidelines on the death penalty and on torture offer a specific methodology for addressing these violations in concrete situations. Through such instruments, which could perhaps in the future also be conceived on other specific human rights issues, it should be possible to build up increasing consistency in the application of the EU human rights policy towards third countries.

UN decisions

The EU should relate its – very considerable – efforts in the UN Commission on Human Rights (CHR) more systematically to the ongoing human rights activities in external relations throughout the year. There is a need to resolve the disconnection which is apparent between the two at different stages and levels, and to establish a cycle of continuity that incorporates CHR initiatives and decisions into CFSP. Specifically, there should be follow-up by the Council at different levels to EU sponsored resolutions and statements. The EU should incorporate initiatives, concerns and recommendations expressed through EU sponsored and supported initiatives during the CHR into its ongoing political dialogue with third countries throughout the year.

Human rights clause

The Belgian Presidency must ensure that the human rights clause inserted in all agreements with third countries develops from a dead letter to a constructive and dynamic instrument to

strengthen respect for human rights. Concrete mechanisms must be put in place to give substance to the human rights clause, through monitoring, supporting human rights defenders, ensuring observance of UN standards and access for its representatives, making appropriate demarches in individual cases. And by making the assessment of compliance with the human rights clause an agenda item in its own right in all meetings held under the relevant agreements, especially at Council level.

Other instruments: arms exports

A specific area to focus on is the strengthening of the application of the Code of Conduct on Arms Exports. The proliferation of small arms, through their poorly regulated supply and easy availability, is a major contributing factor to violations of human rights in many parts of the world. At a different level, a complete ban on the trade in torture equipment will be an important step in the fight against torture.

European Initiative for Democracy and Human Rights

The European Initiative for Democracy and Human Rights is a key instrument to advance the EU's human rights objectives. The proposals by the Commission in its communication to take a more strategic approach to EIDHR consistent with overall EU policy, as well as to make its operation more efficient, deserve support. Underlying the strategic approach should be the notion that fostering democratic values and respect for human rights in societies suffering structural human rights abuse or attempting to come to grips with its legacy should focus in particular on supporting and building positive forces in civil society. That notion should be reflected not only in the programming, but also in the matching of levels of funding to the needs on the ground, and in the capacity and expertise to provide the necessary technical assistance.

c) The professional dimension: coherence, capacity and expertise

Human rights are regarded today as a cross-cutting issue that engages and affects all EU institutions and the individual member states in ways that pose high demands in terms of coherence and consistency of policies, coordination of activities, and accountability for those policies and activities. That points to clarifying roles and functions: as regards human rights in third countries; as regards human rights within the EU; as regards control and accountability through the European Parliament. It also points to applying methods more consistently, and coordinating structures more effectively. And last but not least it calls for a fundamental rethinking with regard to the necessary capacity and human rights expertise across all institutions.

At the institutional level, the following aspects should be mentioned and addressed:

- The lack of coherence and consistency in applying human rights policies between the Council and the Commission;
- The absence so far of a clear human rights profile in the function of the High Representative for CFSP;
- The discontinuity caused by the rotating Presidency;
- The need for the European Parliament to transform its activist role more into one of scrutiny and policy orientation.

It can be safely stated that in all three institutions the capacity as well as the expertise that is available for human rights bears no relation to what would be required if the EU wants to realise its stated ambitions of putting human rights into practice and mainstreaming human rights into all areas of activity. That ambition now rests on the dedication of far too few people.

III. The human rights challenge for the Belgian Presidency

The current debate is beginning to touch the questions that are fundamental and must be addressed if the EU is to realize its ambition:

- How to achieve greater coherence and consistency, in policies and actions as well as amongst institutions and member states;
- How to strike an effective and credible balance between cooperation and pressure;
- How to address human rights problems within the EU;
- How to re-establish the human rights perspective in the asylum debate;
- How to “mainstream” human rights into other domains of EU endeavour without losing focus;
- How to ensure adequate capacity and expertise.

Recommendations

The principal challenge put forward in this memorandum to the Belgian Presidency is that the EU’s vision and ambition require it to undertake a thorough review of the way the EU’s human rights policies are implemented and of the main obstacles encountered.

1. *Putting human rights into practice*

The Belgian Presidency is urged to take the first steps towards such a review, taking into account the political, practical and professional dimensions as outlined above, and including in particular:

- integration of the external and internal dimensions into a comprehensive policy
- a proper balance between cooperation and pressure;
- coherence amongst institutions and member states;
- adequate capacity and expertise.

In addition to such an overall initiative, the Belgian Presidency is urged and expected to take on a leadership role in a number of specific areas:

2. *Asylum*

Amnesty International calls for a proper human rights perspective to be re-established in the asylum debate. The political dimension and objectives of the harmonization process in light of the Tampere review, due to take place at Laeken, should be clarified in that perspective. Full compliance with international human rights and refugee law must be ensured.

3. *Human rights in the EU*

The EU should give more systematic attention to promoting respect for the European Charter of Fundamental Rights and to establishing systematic monitoring and evaluation, while member states should ensure adequate mechanisms to effectively address instances of violations and to eradicate discriminatory practices. The EU should accede to the European Convention on Human Rights to ensure external accountability.

4. *Enlargement*

In the enlargement process there is a need to consider whether human rights concerns and the need for structural reforms as reported in the Commission’s regular reports on the countries concerned are adequately reflected in the Accession Partnerships, and in the

financial assistance offered in the accession framework. The regular reports on the candidate countries should be extended into a monitoring and evaluation system for all member states, present and new.

5. ***External relations generally***

Mainstreaming human rights into external assistance programs needs to be balanced by forcefully addressing violations in the context of CFSP, in political dialogue in the context of agreements with third countries, and in the application of specific instruments such as the guidelines on death penalty and torture. In doing so, the EU must seek to give meaningful substance to the human rights clause, and develop systematic monitoring and evaluation. The EU must better integrate its efforts in the UN Commission on Human Rights into its external relations throughout the year, and generally ensure compliance with UN standards and mechanisms.

6. ***External relations specifically***

With reference to the explicit regional and country priorities of the Belgian Presidency:

a) Russian Federation

Pursuing the human rights agenda regarding Russia must focus in particular on the continuing crisis in Chechnya and the need for impartial investigation, concentrating on the implementation of the decisions of the UN Commission on Human Rights.

b) Central Africa and Great Lakes

Despite promises by governments to stop the violations of human rights in the Great Lakes Region, reports of such violations are increasing and Amnesty International is alarmed by the prospect of further deterioration. It is therefore of crucial importance to use the opportunities that present themselves in the different countries and to focus on ending human rights abuses in the entire region. The Belgian Presidency offers a unique chance for the EU to make such an effort.

c) Balkans

Human rights aspects, including clarification of unresolved “disappearances”, confronting the issue of impunity and safe minority returns, must remain central in the efforts towards restoration.

d) Middle East

Amnesty International urges that an effective policy for human rights protection be placed at the heart of the agenda for peace. This must include implementation of the human rights clauses of the Association Agreements with Israel and the Palestinian Authority.

7. ***Death penalty***

The EU must vigorously pursue its activities towards abolition including the application of the guidelines to EU policy on the death penalty. Specific strategies should be developed towards the worst offending countries.

8. ***Torture***

The implementation of the newly adopted guidelines to EU policy on torture must be systematically developed and extended. At the same time the EU must begin to address the question of torture and ill-treatment within its own borders. The forthcoming Community regulation on the trade in torture equipment should include EU-wide

prohibition of the trade and export of equipment that is inherently cruel, inhuman or degrading, including a ban on leg-irons, electroshock stunbelts and serrated thumbcuffs, and should be followed by an EU wide ban on the production and use of such equipment.

9. *Arms exports*

The EU must advocate effective international measures to bring small arms under proper control at and beyond the UN Conference on the Illicit Trade in Small Arms and Light Weapons.

10. *Impunity*

The Belgian Presidency is well-placed to play a leading role in the EU's efforts to counter impunity and promote international justice. The Common Position on the International Criminal Court of June 2001 should effectively guide these efforts towards further ratification of the Rome Statute and the establishment of the Court, as well as the enactment of implementing legislation in member states and third countries.

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