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"I/A" ITEM NOTE

From: Secretariat
To: Coreper/Council

Subject : Guidelines to EU policy towards third countries on torture and other cruel,
inhuman or degrading treatment or punishment

Attached is the text of the draft EU guidelines to EU policy towards third countries on torture and other cruel, inhuman or degrading treatment or punishment. These guidelines will add to the already existing guidelines on the death penalty and enhance the EU human rights policy.

It is suggested that the Committee invite the Council to approve the text, as set in the Annex, under part "A" of its agenda at its session of 4 April.

A draft EU declaration regarding the above guidelines will be circulated in document 7644/01 PESC 118 COHOM 8.

GUIDELINES TO EU POLICY TOWARDS THIRD COUNTRIES ON TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

PURPOSE

The purpose of these guidelines is to provide the EU with an operational tool to be used in contacts with third countries at all levels as well as in multilateral human rights fora in order to support and strengthen on-going efforts to prevent and eradicate torture and ill-treatment in all parts of the world. The term "torture" is used in these guidelines in accordance with the definition provided in Article 1 of the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment. For the purpose of these guidelines ill-treatment means all forms of cruel, inhuman or degrading treatment or punishment, including corporal punishment, which deprives the individual of its physical and mental integrity. While addressing specific concerns about torture and ill-treatment is the primary purpose, the guidelines will also contribute to reinforcing the EU's human rights policy in general.

INTRODUCTION

The European Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law. These principles are common to the Member States. Respect for human rights features among the key objectives of the EU's common foreign and security policy (CFSP).

Torture and ill-treatment are among the most abhorrent violations of human rights and human dignity. According to the Universal Declaration of Human Rights no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No exceptions are permitted under international law. All countries are obligated to comply with the unconditional prohibition of all forms of torture and ill-treatment. Despite the efforts by the international community torture and ill-treatment persist in all parts of the world. Impunity for the perpetrators of torture and ill-treatment continues to prevail in many countries.

To work towards the prevention and the eradication of all forms of torture and ill-treatment within the EU and world-wide is a strongly held policy view of all EU member states. Promotion and protection of this right is a priority of the EU's human rights policy.

In its work towards the prevention and eradication of torture and ill-treatment the EU is guided by relevant international and regional norms and standards on human rights, the administration of justice and the conduct of armed conflict including, inter alia, those contained in the following instruments:

- * Universal Declaration of Human Rights
- * UN International Covenant on Civil and Political Rights (ICCPR) and its two Optional Protocols
- * UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
- * UN Convention on the Rights of the Child (CRC)
- * UN International Convention on the Elimination of All Forms of Racial Discrimination (CERD)
- * UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- * European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocol no.6 as well as the relevant case-law of the European Court on Human Rights
- * European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)
- * Statute of the International Criminal Court
- * Statute of the International Tribunal for the Former Yugoslavia
- * Statute of the International Tribunal for Rwanda
- * Geneva Conventions on the Protection of Victims of War and its Protocols as well as customary rules of humanitarian law applicable in armed conflict.

An additional list of relevant norms and standards that the EU may invoke in its contacts with third countries is provided in the Annex to the guidelines.

OPERATIONAL GUIDELINES

The operational part of these guidelines is meant to identify ways and means to effectively work towards the prevention of torture and ill-treatment within the CFSP. An example of measures already undertaken to this end within the CFSP is the adoption of the EU Code of Conduct on Arms Export. Another example is the ongoing work to introduce EU-wide controls on the exports of paramilitary equipment.

The prohibition of cruel, inhuman or degrading punishment imposes clear limits on the use of the death penalty. The present guidelines thus also serve a complementary role to the Guidelines to EU policy towards third countries on the death penalty.

The EU supports actively the work of the relevant actors (the Committee Against Torture, the Human Rights Committee, the Committee for the Prevention of Torture of the Council of Europe, the OSCE/ODIHR Advisory Panel on the Prevention of Torture as well as the UN Special Rapporteurs and other relevant actors). The EU will pro-actively contribute to ensure that the existing international safeguards against torture and ill-treatment are strengthened and effectively implemented.

Monitoring and reporting

In their periodic reports, the EU Heads of Mission will include an analysis of the occurrence of torture and ill-treatment and the measures taken to combat it. The Heads of Mission will also provide periodic evaluation of the effect and impact of the EU actions. The Heads of Mission will have the possibility of sending embassy representatives as observers to trials where there is a reason to believe that defendants have been subjected to torture or ill-treatment.

Assessment

The Council Working Group on Human Rights (COHOM) and the relevant Geographic Working Groups will on the basis of the reports of the Heads of Mission and other relevant information, such as reports and recommendations from UN Special Rapporteurs and Treaty Bodies as well as non-governmental organisations, identify situations where EU actions are called upon, agree on further steps or make recommendations to higher levels.

EU actions in relations with third countries

The EU's objective is to influence third countries to take effective measures against torture and ill-treatment and to ensure that the prohibition against torture and ill-treatment is enforced. In its contacts with third countries, the EU will, when deemed necessary, express the imperative need for all countries to adhere to and comply with the relevant international norms and standards and will consequently emphasise that torture and ill-treatment are forbidden under international law. The EU will make its objectives known as an integral part of its human rights policy and will stress the importance it attaches to the prevention of torture and ill-treatment with a view to its global eradication.

A) To achieve these objectives, the EU will take, inter alia, the following actions:

Political dialogue

The human rights component of the political dialogue between the EU and third countries and regional organisations shall, where relevant, include the issue of torture and ill-treatment.

Démarches

The EU will make démarches and issue public statements urging relevant third countries to undertake effective measures against torture and ill-treatment. The EU will, where need be, request information on allegations of torture or ill-treatment. The EU will also react to positive developments that have taken place.

In well documented individual cases of torture and ill-treatment the EU will urge (by confidential or public démarche) the authorities in the country concerned to ensure physical safety, prevent abuses, provide information and apply relevant safeguards. Actions on individual cases will be determined on a case-by-case basis and may form part of a general démarche.

Bilateral and multilateral co-operation

Combating and preventing torture and ill-treatment will be considered a priority in bilateral and multilateral co-operation for the promotion of human rights, inter alia in collaboration with civil society, including in the legal field and the field of training. Particular attention should be given to such co-operation within the framework of the European Initiative for Democracy and Human Rights.

- B) In its actions against torture the EU will urge third countries to take, inter alia, the following measures:

Prohibit and condemn torture and ill-treatment

- prohibit torture and ill-treatment in law, including criminal law;
- condemn, at the highest level, all forms of torture and ill-treatment;
- take effective legislative, administrative, judicial and other measures to prevent the occurrence of acts of torture and ill-treatment in any territory under its jurisdiction;
- prevent the use, production and trade of equipment which is designed to inflict torture or other cruel, inhuman or degrading treatment or punishment and prevent the abuse of any other equipment to these ends.

Adhere to international norms and procedures

- accede to the CAT, the ICCPR and relevant regional instruments, including the CPT* (note, see bottom of text);
- withdraw reservations incompatible with the purpose and object of the CAT and the ICCPR;

- consider withdrawing other reservations to the CAT and the ICCPR;
- consider allowing individual and inter-state complaints under the CAT and the ICCPR;
- accede to the Statute of the International Criminal Court;
- comply with the requests for interim measures of protection, rulings, decisions and recommendations of international human rights bodies;
- co-operate with the relevant UN mechanisms, in particular the UN Special Rapporteur on Torture, the UN Special Rapporteur on Violence against Women and, where appropriate, the UN Special Rapporteur appointed for the country concerned;
- ensure that no one is forcibly returned to a country where he or she risks being subjected to torture or ill-treatment;
- in countries where the death penalty is still applied, ensure that in addition to the limitations contained in Article 6 ICCPR, executions, as well as death row conditions, must be such as to cause the least possible physical and mental suffering;
- support the work for adoption of a Draft Optional Protocol to CAT that provides an independent and efficient international visiting mechanism for the prevention of torture and ill-treatment and once such a Protocol is adopted, accede to it;
- co-operate with the relevant Council of Europe mechanisms, in particular the decisions of the European Court of Human Rights and recommendations of the Committee for the Prevention of Torture, and consent to publication of the Committee's reports on visits to their countries.

Adopt and implement safeguards and procedures relating to places of detention

- adopt and implement legal and procedural safeguards against torture and ill-treatment in order to ensure that persons deprived of their liberty are brought before a judicial authority without delay and that they have access to lawyers and medical care without delay and regularly thereafter and ensure that the persons deprived of their liberty can inform their relatives and other relevant third parties without delay;
- ban secret places of detention ensuring that all persons deprived of their liberty are held in officially recognised places of detention and that their whereabouts are known;
- ensure that procedures for detention and interrogation are in conformity with relevant international and regional standards;

- improve the conditions in places where persons deprived of their liberty are held in order to conform with international and regional standards.

Establish domestic legal guarantees

- ensure that statements obtained through torture and ill-treatment shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made;
- abolish all forms of judicial corporal punishment;
- ensure that no exceptional circumstances whatsoever, including a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture or ill-treatment;
- ensure that no order from a superior officer or a public authority may be invoked as a justification of torture or ill-treatment;
- ensure that law enforcement officials, military, medical and other relevant personnel will not be punished for not obeying orders to commit acts amounting to torture or ill-treatment.

Combat impunity

- bring those responsible for torture and ill-treatment to justice in trials that conform to international norms for a fair trial and which exclude the death penalty or extradite them for prosecution in another state where these guarantees are fulfilled;
- conduct prompt, impartial and effective investigations of all allegations of torture in accordance with the Istanbul Rules annexed to CHR resolution 2000/43;
- ensure to the greatest possible extent that amnesty is not granted in respect of acts of torture, and ensure that amnesties do not deprive individuals of the right to an effective remedy, including compensation and rehabilitation.

Groups requiring special protection

- establish and implement standards and measures relating to women, children, refugees, asylum-seekers, internally displaced persons, migrants and other groups requiring special protection against torture and ill-treatment.

Allow domestic procedures for complaints and reports of torture and ill-treatment

- establish and operate effective domestic procedures for responding to and investigating complaints and reports of torture and ill-treatment in accordance with the Istanbul Rules;
- ensure that alleged victims of torture or ill-treatment, witnesses, those conducting the investigation and their families are protected from violence, threats of violence or any other form of intimidation or reprisal that may arise pursuant to the report or investigation.

Provide reparation and rehabilitation for victims

- provide reparation for the victims of torture and ill-treatment and their dependants, including fair and adequate financial compensation as well as appropriate medical care and social and medical rehabilitation.

Allow domestic visiting mechanisms

- allow visits by suitably qualified representatives of civil society to places where persons deprived of their liberty are held.

Establish national institutions

- consider creating and operating and, where appropriate, strengthening independent national institutions (e.g. human rights ombudspersons or human rights commissions) which can effectively address the prevention of torture and ill-treatment.

Provide effective training

- train law enforcement officials and military personnel as well as medical personnel (civil and military) to comply with the relevant international standards;
- ensure the training of the judiciary, prosecutors and lawyers on the relevant international standards;
- ensure that transfers of equipment and training for military, security or police use do not facilitate torture and ill-treatment;

- ensure that training programmes for law enforcement personnel include training on the prevention of violence against women, on the rights of the child and on discrimination on such grounds as race and sexual orientation.

Support the work of medical professionals

- enable medical professionals to work independently and confidentially when preparing observations on alleged cases of torture and ill-treatment;
- protect doctors, forensic experts and other medical professionals who report cases of torture and ill-treatment.

Conduct autopsies

- ensure that medico-legal autopsies are carried out by trained forensic specialists in accordance with internationally recognised standards;
- provide for proper forensic examination in all cases of serious injury of detained persons.

Other initiatives

The EU will:

- * continue to raise the issue of torture and ill-treatment in multilateral fora, such as the UN, the Council of Europe and the OSCE. The EU will continue to actively support the relevant resolutions at the UN bodies including the General Assembly and the Commission on Human Rights;
- * support the relevant international and regional mechanisms (e.g. the Committee Against Torture, the European Committee for the Prevention of Torture, the relevant Special Rapporteurs) and stress the need for states to co-operate with the mechanisms;

- * support the UN Voluntary Fund for the Victims of Torture and encourage other countries to do so;
- * offer joint or bilateral co-operation on the prevention of torture and ill-treatment;
- * support public education and awareness-raising campaigns against torture and ill-treatment;
- * support the work of relevant national and international NGOs to combat torture and ill-treatment and maintain a dialogue with them;
- * continue to fund projects undertaken to improve training of personnel and conditions in places of detention and will maintain its substantial support for rehabilitation centres for victims of torture across the world.

NOTE

- * Upon the entry into force of its First Optional Protocol the CPT will be open to accession for non-member states of the Council of Europe after an invitation from the Committee of Ministers of the Council of Europe. The Protocol requires only one additional ratification (Ukraine) before its entry into force. Ukraine's ratification is expected shortly.

ANNEX

In addition to the list of instruments included in the introductory part of the guidelines the EU may invoke, where relevant, in its contacts with third countries concerning torture and ill-treatment the following norms and standards and principles.

- UN Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- UN Declaration on the Elimination of Violence Against Women
- UN Convention Relating to the Status of Refugees
- UN Declaration on the Protection of All Persons from Enforced Disappearances
- UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions
- UN Standard Minimum Rules for the Treatment of Prisoners
- UN Basic Principles for the Treatment of Prisoners
- UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
- UN Rules for the Protection of Juveniles Deprived of their Liberty
- UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power
- UN Basic Principles on the Independence of the Judiciary
- UN Basic Principles on the Role of Lawyers
- UN Guidelines of the Role of Prosecutors
- UN Standard Minimum Rules for Non-Custodial Measures
- UN Code of Conduct for Law Enforcement Officials
- UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
- UN Principles on Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment
- UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions

- Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) annexed to UN Commission on Human Rights resolution 2000/43
- Safeguards guaranteeing protection of the rights of those facing the death penalty (ECOSOC resolution 1984/50)
- Vienna Declaration and Programme of Action
- General Comments by the UN Human Rights Committee, in particular No. 20 on Article 7 and No. 21 on Article 10 of the International Covenant on Civil and Political Rights
- General Recommendation no. 19 of the Committee on the Elimination of Discrimination against Women
- African Charter on Human and People's Rights
- African Charter of the Rights and Welfare of the Child
- American Convention on Human Rights
- Inter-American Convention to Prevent and Punish Torture
- Recommendations of the Committee of Ministers of the Council of Europe:
 - no. R (87) 3 European Prison Rules
 - no. R (98) 7 Concerning the ethical and organisational aspects of health care in prison
 - no. R (99) 3 On the Harmonisation of Medico-legal Autopsy Rules
 - no. R (99) 22 Concerning Prison Overcrowding and Prison Population Inflation.
