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Security and respect for Human Rights Amnesty International's Appeal to the EU and its Member States

Within the framework of the Amsterdam Treaty, the EU and its Member States are working towards the establishment of an *Area of Freedom, Security and Justice*.

Since the occurrence of the acts which took place on 11 September 2001 in the United States of America, the EU is speeding up the adoption of measures which are stated to be necessary to protect people within their territories by ensuring security against similar criminal acts and the consequent loss of lives.

Amnesty International recognises the legitimacy for the EU and its Member States to provide for the security of their citizens and all other individuals in their territory. However, the EU must ensure that the aim of security does not undermine the very rights it seeks to safeguard, and that the principles on which the Union is founded are not compromised.

Amnesty International therefore appeals to the EU and its Member States to ensure that any measures adopted to guarantee security are in full compliance with international human rights law and standards, including the Charter of Fundamental Rights of the European Union.

Human rights standards at the basis of any EU security measures

Human rights standards must always govern how states treat people under their jurisdiction, whether protecting them from crime, or assessing whether or not an individual is criminally responsible. Without a strong commitment on the part of the EU and its Member States to protect all the rights enshrined in international and European human rights instruments, action taken to improve security may lead to serious infringement of human rights, such as torture or other forms of cruel, inhuman or degrading treatment or punishment, and violations of the right to freedom of expression and of the right to a fair trial.

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Amnesty International notes that in 2000 and 2001, the UN Commission on Human Rights reaffirmed that “all measures to counter terrorism must be in strict conformity with international law, including international human rights standards.”¹

In the context of administration of justice, human rights standards, including those enshrined in the Charter of Fundamental Rights of the EU, apply to all persons, no matter what they are alleged to have done, or what has been proved against them beyond reasonable doubt in a court of law. Where criminal legislation and criminal justice procedures are adopted to ensure security from criminal acts, human rights standards must still apply.

The definition of “terrorism”

As noted this year by the UN Special Rapporteur on terrorism, the issue of “terrorism” has been “approached from such different perspectives and in such different contexts that it has been impossible for the international community to arrive at a generally acceptable definition to this very day.”²

International law and standards require criminal law to be clear and certain, so that everyone can modify their behaviour and know whether their behaviour is lawful or not, and to avoid the application of criminal laws from being extended by analogy. Human rights law and standards require that prohibited acts must be recognisably criminal offences. Broadly worded laws which can potentially be used to criminalise peaceful activities, which are unrelated in any way to acts of violence, are of serious concern because they may infringe the right to freedom of expression and freedom of association.

EU arrest warrant and surrender procedures

Methods of international cooperation in criminal justice, including mechanisms for the surrender of individuals, must respect international human rights law and standards. Accordingly, the mechanisms

¹ UN Commission on Human Rights Resolution 2000/30 (preambular paragraph 20) and Resolution 2001/37 (preambular paragraph 27).

² UN Document E/CN.4/Sub.2/2001/31, paragraph 24.

must prevent effectively the surrender of individuals to a jurisdiction where they would become prisoners of conscience, be subjected to an unfair trial, the imposition of the death penalty, or treatment or punishments involving torture or other cruel, inhuman or degrading treatment or punishment. Indeed, the Charter of Fundamental Rights of the EU states that “no one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment” (Article 19.2). The European Court of Human Rights has held that where a person is extradited to a state where their human rights would be at risk of being violated, the extraditing state would be responsible under international human rights law for any human rights violations which the individual suffered following extradition.³

In cases where surrender could lead to violations of human rights, states could prosecute or extradite suspects to another state where their rights will be ensured. Indeed, international treaties on crimes such as hijacking⁴, attacks on diplomats⁵, and bombing⁶ go further by requiring states to extradite or submit the case to the relevant authorities for the purpose of prosecution. With respect to crimes under international law such as genocide, crimes against humanity, war crimes and torture, Amnesty International believes that states should extradite or submit the cases to the relevant authorities for the purposes of prosecution.

Protection of minorities

Ensuring respect for human rights in the wider community means not only addressing the actions of the state regarding minorities, but also means ensuring effective action is taken to address abuses by non-state actors. The EU Heads of State or Government meeting on 21 September emphasised the “need to combat [...] xenophobic drift”. Such statement is very important, but must be followed through by effective police and judicial action to ensure that there is no impunity for those who commit attacks with a discriminatory motivation.

Security and the protection of asylum-seekers and refugees

“Acts of terrorism” are not expressly included as one of the recognised grounds for exclusion from refugee status under the 1951 Convention relating to the Status of Refugees (UN Refugee Convention). But such acts are grounds for exclusion when they constitute crimes against peace, war crimes, crimes against humanity, serious non-political crimes outside the country of refuge, or acts contrary to the purposes and principles of the United Nations.

Under Article 14 of the Universal Declaration of Human Rights, everybody has the right to seek asylum. Nobody should be prevented from lodging an asylum application. A determination to exclude an individual from refugee status, in application of Article 1(F) of the UN Refugee Convention, should only

³*Soering v UK*, Series A, No 161 (1989).

⁴Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo, 14 September 1963 (the Tokyo Convention).

⁵Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, 14 December 1973.

⁶International Convention for the Suppression of Terrorist Bombings, 12 January 1998.

be made after full consideration of the claim in a fair and satisfactory procedure. Each case should be considered on an individual basis and according to facts and evidence, not suspicions. In view of the serious consequences of an incorrect decision for the individual concerned, the procedure should comply with all procedural safeguards provided in human rights law, notably to be informed that exclusion is under consideration, and to have the right to be informed of the evidence, to rebut the evidence and to appeal against a decision to exclude on the above grounds.

While a decision to exclude a person removes them from the protection of the UN Refugee Convention, it does not follow that a state can remove the individual as a consequence. There is clear support in international human rights law, for example, in Article 3 of the Convention against Torture, and in the jurisprudence of the European Court of Human Rights, for taking the position that, where people risk torture or other forms of cruel, inhuman or degrading treatment or punishment the prohibition on *refoulement* is absolute. In line with the international prohibition of *non-refoulement*, Amnesty International opposes the forcible return of anyone (including individuals who are excluded from the protection of the UN Refugee Convention) to a country where they would be at risk of serious human rights abuses by states or non-state actors.

In cases when an asylum-seeker is found after a fair procedure to be a suspect of crimes under international law (such as genocide, war crimes, crimes against humanity, torture, extrajudicial executions and “disappearances”) s/he should be referred to the relevant prosecution authorities for the purposes of prosecution (consistent with international human rights law and standards) or the individual should be surrendered to another State to be prosecuted (consistent with international human rights law and standards).

In their wish to enhance security, Member States must not resort to the detention asylum-seekers in ways contrary to international law and standards. As a general rule, asylum-seekers should not be detained, unless they have been charged with a recognisably criminal offence, or unless the authorities can demonstrate in each individual case that the detention is necessary, and it is on grounds prescribed by law. Amnesty International calls for each asylum-seeker who is detained to be brought promptly before a judicial authority to determine whether his or her detention is lawful and in accordance with international standards. In addition, as provided by international human rights instruments, such as the European Convention on Human Rights, an asylum-seeker who is detained has the right to take proceedings before a court of law in order that it may determine the lawfulness of their detention and order their release if the detention is not lawful.