

Euro-Mediterranean Seminar

Counter-terrorism and human rights

Prague (16-17 June)

1. Importance of the fight against terrorism for the EU

As starting point, important to underline that, of the various threats that Europe faces, terrorism stands out. Probably because terrorists target the essence of our democratic systems, namely that political conflicts must be resolved through peaceful means.

Terrorists have no respect for the most fundamental human right of all: the right to life. Therefore, terrorism seriously hampers the enjoyment of human rights by our citizens.

Dealing with terrorism is a long-term affair, requiring a multi-faceted approach.

Because terrorism is a global threat, we work together with many countries around the world.

I have been appointed to coordinate the European response to terrorism.

2. CT and HR are mutually reinforcing goals

Let me elaborate a bit on how the fight against terrorism relates to the need to uphold certain legal standards and safeguards.

The position of the European Union is clear: **States must ensure that any measures they take to combat terrorism comply with their obligations under international law, in particular international human rights, refugee and humanitarian law.**

Effective counter-terrorism measures and the protection of human rights are not conflicting but complementary and mutually reinforcing goals. Europeans feel strongly about this subject - and that is why I welcome this conference.

Europeans have a long and, sometimes, difficult history of tackling terrorism. One important lesson we learned is that **any shortcut around human rights makes you weaker.**

Respecting human rights in the fight against terrorism is first and foremost a moral and legal obligation. But it is also a practical necessity. To defeat the extremists, we **need to win the battle for hearts and minds, including of Muslims.** We need to intensify our engagement with the broader Muslim world. We need to build bridges wherever we can. Most of all, we need to stress that this is a joint fight, together with Muslims, on the basis of common values such as the sanctity of life, democracy, human rights.

To get that message across, it is fundamental that we can prove that we mean what we say about human rights. **We must not fall in the trap that terrorists have set. They want us to over-react.** But the reason we are ultimately strong and they are fundamentally weak is that we have legitimacy, due process and the sanctity of life on our side. To repeat: there is no trade off between morality and effectiveness. They point in the same direction.

Some rights and freedoms lie at the heart of our legal system which makes them non-negotiable. These include, but are not limited to,

- the **right to human dignity and physical integrity;**
- the **rule of law,**
- the **right to a fair trial,**
- the **presumption of innocence.**

3. Torture

Most important of all, this set of non-negotiable rights include the **prohibition of torture and other cruel, inhuman and degrading treatment.** Our stance against torture and other cruel, inhuman and degrading treatment is clear. It is wrong and illegal - always. Wherever and by whomever a person is detained. There are no ifs or buts.

This position has been made clear again in the December 2006 Council Conclusions: *"The Council reiterates that human rights, refugee law and international humanitarian law have to be respected and maintained when combating terrorism. The Council will continue to follow closely developments with regard to human rights in combating terrorism and take adequate measures for their protection. The EU remains firmly committed to the absolute prohibition of torture, cruel, inhuman or degrading treatment and punishment. It guides our own actions and we raise our concerns with third countries"*¹.

The reasons why this is the right approach are simple. **The use of torture or cruel, inhumane and degrading treatment is abhorrent and shatters your legitimacy.** It is counter-productive, precisely because it is immoral. It also produces unreliable intelligence. And statements obtained in this way cannot be used in criminal trials, so that the punishment terrorists deserve is harder to get.

European countries do not argue that the prohibition of torture or ill-treatment should be softened, or that these terms should be interpreted in a narrow fashion. On the contrary, the European belief is that democratic societies can only overcome the scourge of terrorism in the long term if they remain committed to their own values². **Torture would hurt, not help, the fight against terrorism.**

All EU Member States are party to the UN Convention against Torture. Moreover, they have also ratified the **European Convention on Human Rights**, which prohibits torture and ill-treatment. Alleged torture/interrogation practices can be challenged before the **European Court of Human Rights**, which has established a robust case law and strict interpretation of the prohibitions over the past decades. The judgments of the European Court of Human Rights are binding on EU Member States and must be executed in good faith.

¹ Council Conclusions, 11 December 2006

² EU Strategy for Combating Radicalisation etc

The EU's torture guidelines³ state that **countries should 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. This principle is important to reduce the incentive to use interrogation techniques that violate the prohibition against torture and ill-treatment.

I can also underline the principle of "**non-refoulement**": The EU's torture guidelines state clearly that nobody must be forcibly returned to a country where he/she risks being subjected to torture or ill-treatment

4. Secret detention and rendition

Secret detention can increase the risk of torture and ill-treatment. Therefore, the EU's position is: The existence of secret detention facilities where detained persons are kept in a legal vacuum is not in conformity with international humanitarian and human rights law (Council Conclusions December 2006). The EU's torture guidelines state that countries should 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.

The question of **alleged rendition flights**: here I should stress that the supervision of intelligence and security service activity on the territory of Member States is a matter of Member State competence. What I can stress today is that concerns about the CIA secret detention and "rendition" program have been raised with the US in our political dialogue.

³ Guidelines to EU policy towards third countries on torture and other cruel, inhuman or degrading treatment or punishment
(<http://www.consilium.europa.eu/uedocs/cmsUpload/TortureGuidelines.pdf>)

5. War on terror ? Which international legal framework ?

Let me elaborate a bit on European views regarding the **international legal framework for the fight against terrorism**.

A fundamental question is: Are we involved in a **global war against Al Qaeda in the legal sense**? Many in Europe consider that the "global war against Al Qaeda" cannot be regarded as an armed conflict in the legal sense to which international humanitarian law (IHL) applies. However, some actions related to the fight against international terrorism may take place in the context of an armed conflict in a given area – e.g. the fight against Al Qaeda in Afghanistan. In such cases, IHL is applicable. In cases other than armed conflict, the EU advocates a law enforcement/judicial framework, as shown by the responses to the Madrid and London attacks. This has consequences for detention and targeting of terrorist suspects: For example, if a terrorist suspect is arrested outside of armed conflict and has never participated in combat, he is a civilian subject to normal criminal law. This means that a terrorist suspect either has to be charged with a crime or has to be released. Security detention is possible - if national legislation so allows - only in very narrow circumstances, subject to the limits of human rights law.

Human rights law also plays an important role in the fight against terrorism. As the International Court of Justice (ICJ) stated, the International Covenant on Civil and Political Rights may apply extraterritorially. We also believe that IHL and human rights law are complementary, as the ICJ also stated..

We believe that all detainees have **procedural rights**. There are **minimum due process guarantees** such as access to Court to challenge arrest, detention, transfer, torture and ill-treatment. **Fair trial rights** are important when terrorists are brought to justice.

In armed conflict, the minimum standards of humanity set out in Common Art. 3 to the Geneva Conventions and the fundamental guarantees contained in Art. 75 Additional Protocol I protect all detainees.

EU politicians have stated that **Guantanamo** remains a serious source of concern and have advocated the closure of the detention facility.

6. Fight against terrorism in the UN framework

We support the important work of the **UN** in counter-terrorism. We highly value Special Rapporteur Scheinin's work on counter-terrorism and human rights. He has addressed several Council working groups. The EU supports the conclusion of the **UN Comprehensive Convention on counter-terrorism**. In this context let me pay tribute to the outstanding work delivered by Maria Telalian to bring this negotiation to a successful end. We urge all countries to ratify and implement all UN counter-terrorism conventions.

7. The EU and third countries

In our **counter-terrorism assistance to third countries**, human rights play an important role, for example in capacity building. The European Commission provides counter-terrorism related assistance to more than eighty countries world-wide. Much of this assistance concerns the judiciary, police forces and drafting of legislation and has been devised with a view to the protection and promotion of human rights.

The respect of human rights and international humanitarian law in the fight against terrorism is an important part of the **EU's political dialogues** with third countries.

8. Respect of human rights in the EU's own internal counter-terrorism policies

Let me briefly describe to you what my job is.... As the EU's counter-terrorism coordinator, I coordinate implementation of the EU's own counter-terrorism policies and legislation and I make recommendations on future EU priorities. I can assure you that human rights and civil liberties play an important part in our discussions. It is probably not a coincidence if the SG/HR Javier Solana appointed CTC someone who had earlier been deputy Secretary of the Convention which drafted the EU Charter of fundamental rights...

It is important to strike the right balance. However, I would like to stress that what we seek is a balance *within* the existing legal framework of fundamental rights and human rights. We do NOT argue that human rights don't apply.

Let me give you a few examples of how human rights play an important role in the EU's own policies:

-- **Data protection:** The right to privacy is an important fundamental right. The EU is trying to protect this right as far as possible when taking measures in the fight against terrorism that involve access to data.

-- **Strengthening of criminal law:** important that terrorist suspects are brought to trial. Security detention is problematic over a longer period of time. Therefore we have to adapt our criminal laws in order not to allow loopholes for terrorists.

-- As CTC, the topic of **radicalization and recruitment** to terrorism is one of my top priorities. The EU Strategy for Combating Radicalization and Recruitment identifies a lack of respect for human rights as one of the structural factors underlying the emergence of radicalization. The protection of human rights is therefore an important theme throughout the EU's policies to prevent terrorism.

-- **Listing - freezing of assets.** The EU has recently conducted a review of its procedures for listing/Delisting of persons, groups and entities pursuant to the mechanism established on the basis of UNSCR 1373.

As a result of this review concrete improvements were agreed in order to establish a clearer and more transparent procedure :

- a new working party has been set up
- the Council provides for each person, group or entity, subject to restrictive measures, a statement of reasons which is sufficiently detailed to allow those listed to understand the reasons why they are listed and to allow EU COourts to exercise their power of review where a formal challenge is brought against the listing
- after a listing decision each person, group or entity is informed by a letter of notification (when we know their address) or by a notice published in the OJ of the restrictive measures, the humanitarian exemptions available, the reasons for listing, the possibility to send a file to the Council asking for their listing to be reconsidered and the possibility to go to Court.
- a review of the list at regular intervals and at least every 6 months.
