

The United Nations and the European Union: An Ever Stronger Partnership

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SESSION 2: UN-EU Cooperation on Development, Humanitarian, Human Rights and Refugees Issues

Mr. Jacques Mouchet, Regional Representative of the UN High Commissioner for Refugees to the Benelux and the EU:

Thank you professor, I am very honoured to be in this panel under the chairmanship of a former Commissioner General for refugees. When we look back at all these years, we can say Europe is indeed very attached to the principle of asylum.

The European states led the formulation and the adoption of the 1951 Refugee Convention, the Geneva Convention, which is the corner stone of the protection regime for refugees. This has not just been theoretical support, it has been translated into deeds for the millions of refugees after WW2 to more recently, hundreds of thousands of refugees from the Balkans. All along, there has been a very close cooperation between the European Union, the UN, and particularly with the High Commissioner for Refugees. I would like to highlight and select two areas to see how this cooperation has been translated into practice. One is within the union, where UNHCR has been a partner in the harmonization process in the field of asylum and migration, which was foreseen under the Amsterdam Treaty. And another one is how the EU is helping a multilateral effort to ensure the development of refugee law outside the Union.

Within the Union first, the Amsterdam Treaty does not yet envisage a common asylum system in Europe. Yet, it encompasses a harmonization of the various policies. This was supposed to be done through a number of Directives that the member states would adopt in very important fields regarding refugee law: the field of definition of refugee law, the procedure to determine who is a refugee, reception conditions, etc..., 5 in total. UNHCR was a formal partner because article 35 in the Geneva Convention gives the UNHCR a supervisory role. And there is a Declaration 17 next to the Amsterdam Treaty, which foresees the cooperation with the UN and other international organisations for the implementation of that Treaty.

Finally, as far as we are concerned, there was an exchange of letters between Commissioner Vitorino and the High Commissioner for Refugees. It is on this basis that there was a very close cooperation, first with the Commission in the drafting of the new Directives, where we had both informal input and comments in a very good dialogue and, at a later stage, more formal comments. I must say that we were on the same wavelength because we both, the Commission and us, wanted a text of the highest possible standard and in accordance with and further developing refugee law. So the texts were prepared, but things became a bit more difficult when we had a discussion in the Council for the adoption of these Directives. This process was just concluded 2 weeks ago with the adoption of the last Directive, which was still being discussed on procedures. We have now therefore the entire text. We were somewhat disappointed with the draft, but you either see the glass half full or half empty. It is half empty because the texts are not ambitious enough, they are not binding enough and too much is left to the appreciation of member states. It is half full because we have completed what was foreseen in Amsterdam and we have a basis to go further. Even if these discussions were difficult, the cooperation with member states in the various forms of meetings of the Council was good and our opinions were listened to, if not always followed. We have to

understand that these discussions took place in a difficult international context, as firstly the question of asylum and migration was at the centre of political debates in many member states and, secondly, of course, member states are sometimes not tempted to leave behind their legislation and practices. But we have a basis, as I said, to go further and it will be important for all of us to be very vigilant when the transposition of this Directive into national legislation will take place. It is important for Europe, but also for the outside world, which leads me to my second point.

Whatever is adopted within Europe, has value of example outside and certainly can be considered a precedent. It is therefore extremely important that Refugee Law, the transposition of the Directive into national legislation is of the highest possible standard and certainly not in contradiction with any international refugee law.

Outside the Union, the EU is very much helping the multilateral effort of the international community to develop refugee law further. I would just like to mention two points in that respect. One is capacity-building: how we help other countries to -in their turn- adopt asylum procedures, an asylum system, reception conditions of international standard.

Second point is the assistance that the Union is giving to actual refugee crises. On the first one, I would like to say that since the enlargement, more attention is being given to the bordering regions. That is Eastern Europe, the Balkans and the Mediterranean Basin, very important regions in the field of asylum and migration. At the end of last week, the Commission issued another policy paper on European neighbouring policies, and there, a wide range of issues were tackled, including a chapter on justice, home affairs, a chapter on asylum and migration, where they advocate strongly that we should help countries in that region to develop their system for a better reception of asylum seekers, as well as the control of migration. This is very important because it is a political support, a commitment on the part of the Union and a financial support, since a number of important instruments accompany this policy, programs such as Tacis or Aeneas, for building a capacity in this adjacent region. This, as understood by the Commission and the Union, is done in very close cooperation with the UN and the UNHCR in particular, where our expertise is sought for the implementation of these new policies. Europe is also assisting UNHCR and others in refugee crises around the world. John has mentioned this before, I would just like to reiterate that the Union is financing at least 40 % of the UNHCR budget, the Commission 10%. But this assistance goes far beyond what has been given to the UN, in close cooperation with us, it also implicates other partners in these areas. We can certainly progress on this, but as was mentioned before, we could have in the future a maybe less fragmented and more integrated approach, particularly when it comes to issues like linking the relief with the rehabilitation and development or the reintegration of returnees after a refugee crisis. There, progress is still to be made.

I have talked about two points, the partnership that we have within and outside the Union, and I think both are necessary and parallel. There have been some voices, recently, within Europe who tend to use one partnership, to the detriment of the other. They say that if we achieved better reception in the region of origin of refugees, then we wouldn't have to receive them in Europe. We have to be very careful with such notions, the two should go in parallel. We should continue to receive refugees in Europe, it is important. It is good to pay better attention to burden sharing, yet it should not become burden-shifting.

Charles Whiteley, European Commission, DG External Relations

I cover various issues in the Human Rights and Democratisation Units in DG External Relations, including policy on torture and children's rights, but I also follow the Commission on Human Rights and the 3rd Committee of the UN General Assembly. I thought I could first of all very briefly cover the basis for promoting human rights in EU policy and actions, then turn to the tools that the EU has at its disposal to pursue that policy, look at policy and funding cooperation with the UN and how that is developing,

and then just look at how we are taking examples from each other to improve our respective approaches to human rights.

First of all, what is the basis for promoting human rights in the EU policy? That is set out in the Treaties, i.e. that the development of democracies, the rule of law and the promotion of human rights are key objectives of the Common Foreign and Security Policy; as they are stated in art. 177 of the EC Treaty, dealing with the Development and Cooperation Law. And that basis in the Treaties is, of course, reflected in the various instruments that have been adopted, whether that be common strategies or common positions or joint actions, so, classic CFSP instruments. And every year the EU annual report on Human rights sets out which instruments have actually included references to human rights, so that is a very useful resource and overview. We have also increasingly seen the development of guidelines on human rights issues. The first guidelines related to the death penalty, followed by guidelines on torture, then on human rights dialogues and, finally, in December last year, a new guideline on children and armed conflicts. These are getting to be quite popular instruments, the Irish presidency is currently working on new guidelines, with NGOs, with EU institutions and so on, on human rights defenders. And what these guidelines try to do is set out a coherent approach for EU policy and practice in these specific areas. It may relate to raising an issue with countries, to demarches through political dialogue, but it also means that EU will raise the issue in international fora like the UN Commission on Human Rights and the 3rd Committee. So there is a clear link to what the EU does in a UN context.

Let's have a very quick look at the kind of instruments we have, and how they are put into practice. We have the Council working group on Human Rights with the acronym COHOM, which meets every month or so to try to coordinate EU positions with particular reference to the Commission on Human Rights and the 3rd Committee, but also to discuss other UN conferences and EU positions, demarches and so on. It is fair to say that preparations for the UN Commission on Human Rights and the third Committee are now taking up a lot more time than they used to. I think preparations for this year's Commission on Human Rights started in December because we have seen various disappointments with EU initiatives, where key resolutions on country themes such as on Sudan or on Zimbabwe have been rejected by the Commission on Human Rights. One of the ways the EU thinks this can be improved is by earlier and better coordination, so that rather than being closeted in coordination in Geneva or in New York, the EU can get out there and sell its resolutions to interested third countries, like-minded states, but also to countries that might change their position once they have had the issue properly discussed. So I think that is very much part of the developments that are happening at the moment, as is the development of shorter resolutions. That way we do not get bible-sized resolutions, which take hours to wade through. I think the EU is trying to move towards much shorter and more focused resolutions, which have better appeal to the other states. So all of that takes place in COHOM.

I will just briefly talk about what the EU did at this year's Commission on Human Rights under the Irish presidency, as you will be aware that the CHR sat from March to April and that the EU really is one of the major players in terms of the number of initiatives it brings. We had resolutions on a large range of country situations: Israeli settlements, Belarus, Chechnya, DPRK, the Democratic Republic of Congo, Sudan and Zimbabwe amongst others. The initiatives on Zimbabwe and Chechnya were again rejected by the CHR, but, on the other hand, all the others were passed. We also had thematic initiatives on the death penalty, rights of the child and for the first time as an EU initiative, a resolution on religious intolerance. And they were all adopted.

I think it is also fair to say that the EU is very much engaged in the discussion about how the CHR might be improved, so to say, in discussion with other states. The Swiss government has been very much in the vanguard of this discussion. They commissioned a report by Walter Carlin, which set out various ideas of how we might look at the functioning of the CHR, as a 53 member state body, with some states elected onto the CHR, whose human rights records – whilst all states have Human Rights problems – are very poor. Therefore, one of the things the EU was looking at with other partners was how this might be addressed?

We in the Commission were asked to prepare a report for Commissioner Patten two years ago, when he saw the dreadful results in the CHR for three resolutions and he wondered what to do. Can we suggest formal criteria for membership of the CHR? We looked at what those criteria might be, whether that be ratification of international instruments, or issuing a standing invitation to UN special rapporteurs, things like that. The conclusion was that this would not necessarily work because some of those countries with whom we work most closely, like the US, have not ratified all six or seven major Human Rights Covenants. Libya has, so it would be rather difficult to put forward these kinds of ideas as formal criteria. What the Carlin report has done is drawing various very good ideas for initiatives, including the idea of informal conditions or suggestions for states that seek election to the CHR and that might make some kind of public commitment to promoting human rights and having national human rights commissions. That debate will continue, the US is contributing actively to the ideas going round, e.g. the suggestion of creating a democracy caucus, which would improve cooperation between democracies in the context of the UN and in particular the CHR. That is under discussion at the moment. One of the challenges to the EU in making sure that it works effectively with and in the UN is, of course, preserving its own unity. We had enough difficulties with that with 15 states, now we have 25, but it has to be said that the signs are quite good. If you look at what happened in the CHR this year, and compare it to last year you see that last year we had 7 split votes within the EU, which was a pretty dismal record. This year we have only had one split vote, and although they weren't members as such, it is still a good reflection on the track record and the way things are looking for EU coordination in these bodies. That, coupled with earlier preparation, should ensure that the EU behaves in a more effective way.

I want to turn now to how the EU and the Commission cooperate with the UN bodies. I think we have an ever-developing cooperation on policy and funding issues. I would like to look principally at what we do in the Human Rights field. In terms of funding, we have an instrument which you may know: the European Initiative for Democracy and Human Rights. That has around and well over 100 million euros per year, which go to support NGOs and international organisations like UN bodies on projects of common concern, and what we are trying to do is ensuring that we are identifying projects which meet our priorities, but which also tie in very much with the priorities of the UN organisations. We have set out on paper where our interests coincide with both the Office of the HCR and now with Unicef, and we are identifying areas where we could develop projects. I think one very good example of where we have drawn together cooperation on policy and funding, is the area of children and armed conflict. I mentioned the EU has developed a new set of policy guidelines on this issue, which sets out that the EU will make demarches, raise the issue in dialogue and so on, but also looks at what the Commission does. Moreover, right from the beginning, Unicef and the UN Special Representative on Children and armed conflict were engaged in discussion with the EU. We had two informal brainstorming sessions in Florence, where all the ideas were put on the table and I think that has paid off in creating a set of guidelines which are a good basis for work. Now we have moved, with Unicef, to identifying possibilities for funding the issue of Children and armed conflicts, under the European Initiative for Democracy and Human Rights. We are particularly pushing the ratification and implementation of the relevant instruments, like the optional protocol, the Convention on the Rights of the Child, like the commitments made at the UN General Assembly Special session on children in May 2002. That cooperation follows a proper study of what we are already doing in the Commission on this issue, because it covers a huge range of issues from demobilization and rehabilitation of child soldiers, to supporting uprooted people, to de-mining and so on. So, what we are trying to do through the European Initiative is work with the UN body to plug the gap in EU and EC assistance, we are not being effective enough -at the moment- in pushing the implementation and the ratification of relevant instruments. So I think that is a good example of where we have cooperated constructively.

In the wider context of EC-UN cooperation we can learn from each other's approaches to key issues related to human rights, like the issue of mainstreaming. I think many bodies, the UN, the EC and so on, are wrestling with how to mainstream human rights effectively

in all policy and funding areas. In the Commission we try to make sure that human rights are properly reflected in the country strategy papers, which are being developed and reviewed. We are trying to ensure that there is proper training in human rights for officials, both officials in Brussels and officials going to delegations. We are finding that many of these issues are, of course, also being addressed in the UN context, so we are discussing this with UN bodies dealing with human rights and we are trying to make sure that we are not re-inventing the wheel. And again, to turn back to the Guidelines on Children and Armed Conflicts, one of the things that is mentioned in these guidelines is crisis management and ensuring that there is both reporting on Human rights from people in the field, but that there is also training. And we are very much looking at what the UN is doing training peace-keepers to ensure that children's rights are respected. So, I think there is a very much developing exchange on best practices.

I have no idea how long I have spoken for, so I think I will wind up there by saying that human rights is certainly an area where there is an –to quote the title- ever stronger partnership between the EC and the UN. Thank you.