The ASEM process currently involves the fifteen EU member states (before the enlargement and ten Asian countries: Brunei, China, Indonesia, Japan, South Korea, Malaysia, the Philippines, Singapore, Thailand, and Vietnam). In Hanoi, the ten new EU member states will join the process, as well as two other ASEAN members, namely Cambodia and Laos. The participation of Burma/Myanmar in the process depends on progress in the field of human rights and democracy.

Security concerns cannot be at the detriment of international human rights law

In China, the ruthless campaign against the Muslim community of the Xinjiang Uighur Autonomous Region has been tightened under the guise of fighting against terrorism. The “100 Days Strike Hard” campaign against the threats of so-called illegal religious activities, ethnic separatism and violent terrorism was launched in October 2003. It is part of an ongoing strategy to establish control over the region’s ethnic Uighur population. The political nature/undertones, the harsh penalties and the routine violations of due process and criminal procedural rights demonstrate how the authorities in Xinjiang deliberately seek to enforce their policies for this region through intimidation and fear.

In addition, the offences of ‘incitement to subverting state power,’ ‘leaking state secrets overseas,’ ‘endangering state security,’ and ‘illegal publishing’ are regularly used by the Chinese authorities against cyber-dissidents, labour leaders or underground churches practitioners in blatant violation of the rights to freedom of opinion, expression, religion and information.

In Indonesia, in March 2003, Parliament promulgated two «Perpu» anti-terrorist decrees. These decrees were adopted by the government following the terrorist attack in October 2002 in Bali. «Perpu» n° 1/2002 allows individuals to be detained for up to six months without being charged and without trial. Powers of investigators are increased, in that they can open personal mail and record telephone conversations, or any other communication, for a period of up to one year. Reports by the secret services can henceforth be used as legal evidence, which bestows considerable power on those services. As for the terrorist activities, they are very broadly defined, to the extent that political activities and legitimate opposition to the government can be considered to be terrorist activities.

In Japan, a law on the punishment of financing criminal acts intended to intimidate the population
was passed in June 2002. That legislation does not define the terrorism precisely, which means that the decision on whether an act is terrorist or not is up to the investigative agencies. In addition, an amendment to the definition of conspiracy in criminal law (in relation with international and organized crime) was recently proposed, which would expand the definition of conspiracy. Such a broad definition represents a threat to fundamental rights.

In Laos, the Penal Code forbids slandering the State, distortion of party or state policies, incitement of disorder, or propagation of information or opinions that weaken the State and participation in an organization for the purpose of demonstrations, protest marches, or other acts that cause "turmoil or social instability", providing for imprisonment of between one and five years. Any person who dares express positions contrary to official positions or ask for democratic reforms systematically faces risks of arrest and detention.

The Internal Security Act (ISA) in Malaysia has been widely criticised inside and outside the country, as it allows for indefinite detention without trial of persons for security concerns – those security concerns being defined very vaguely. The ISA is often used to suppress dissent. It violates the detainees' right to a fair trial, including the right to a legal counsel and to family visits. Detainees held under the ISA are reportedly often subjected to various forms of torture.

In a recent decision, the UN Working Group on Arbitrary Detention considered that “the incommunicado detention without trial is a violation of the fundamental human rights [of the detainees]. The authorities should produce them before a competent and impartial court and present evidence of their alleged acts or release them immediately if evidence can not be provided... The Working group considers that administrative detention on such grounds, even being in conformity with a domestic law means to deny the opportunity of a fair trial by an independent and impartial judiciary authority". It consequently considered the detention of five ISA detainees as arbitrary.

In the Philippines, two anti-terrorist draft laws are still pending before the Parliament. One of them carries the death penalty. In addition, the definition of terrorism in these laws is broad and vague, as was stressed by the UN Committee on Human Rights in December 2003. Those bills provide that "members of terrorist organizations" are guilty of the "crime of terrorism", which means that any member of an organization declared as “terrorist” will not have the right to be presumed innocent unless proven to the contrary in the courts. Some provisions infringe into one's right to privacy through electronic surveillance or wiretapping and inquiry into bank deposits of suspected terrorists. If adopted, those bills might result in prolonged detention without charges.

In Singapore, the Computer Misuse Act was amended in November 2003 in order to authorise preventive action against computer terrorism; in other words, threats to the computer system that could imperil national security, essential services, defence or the external relations of the nation. Before this, the security forces could only intervene after an electronic attack had taken place. Many voices were raised in Singapore to express concern over the possibility of the law being used abusively as an instrument of oppression.

In South Korea, the National Security Law (NSL) has long been used by the Korean government to suppress dissenting opinion. The UN Human Rights Committee expressed twice its grave concern regarding the continued existence and application of the National Security Law notably because it establishes special rules of detention, interrogation and substantive liability that are incompatible with various articles of the ICCPR¹. According to the authorities, the NSL is used to

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¹Concluding observations of the Human Rights Committee : Republic of Korea. 01/11/99.
deal with legal problems that arise from the division of Korea. However, people are still arrested under the NSL for discussing reunification, publishing socialist or pro-North Korean material or for having views considered close to those of the North Korean government.

In Thailand anti-terrorist laws were adopted after the September 11. The legislation was done by royal decree without debate by Parliament. Human rights organizations pointed out that there was no need to do it in this way.

In addition, the situation in the South of Thailand where the majority are Muslim has long been unsettled. The Government became alarmed when a military barracks was attacked on 4th January 2004 and 400 rifles seized. The Prime Minister blamed bandits and denied a political or social dimension to the situation. He declared a state of martial law in the four Southern provinces, ordering the military to find the perpetrators and lost weapons immediately. The incident remains obscure and there were suspicions that the weapons were sold by government officials; the military have claimed the recovery of only a single gun. Military action was initiated and culminated, on the 28th April in a raid on a famous mosque. The army, backed by tank and helicopter fire, attacked a group of youths in the mosque leaving 32 dead. As a result of the military action on this day a total of 105 people died. It was clear that the attack was out of all proportion against a group armed only with knives and swords. The attempt to obtain a quick military solution, resulting in the deaths of not less than 100 civilians since the 4th January, has led to a situation of conflict and deadlock.

In Vietnam, despite the recommendations of the UN Human Rights Committee, the government invokes broadly-defined “national security” legislation and the “abuse of democratic freedoms to threaten the interests of the State” in order to conceal a deliberate policy of suppression of all free expression. Religious and political dissidents are routinely arrested under Decree 31/CP on “administrative detention” which authorizes detention without trial for suspected national security offenders. Accusations of “terrorism” have been used to suppress peaceful demonstrations of indigenous Montagnards, and charges of “possession of state secrets” to arrest Buddhists human rights defenders such as Thich Huyen Quang and Thich Quang Do, who are currently held incommunicado in their monasteries after spending more than 20 years in detention.

Since 11 September 2001, Vietnam has stepped up restrictions on the right to impart information and ideas overseas, in violation of the right to freedom of expression enshrined in the Vietnamese Constitution (Article 68) and guaranteed in the ICCPR. In 2004 alone, three cyber-dissidents were condemned to prison sentences, and in August 2004, a unit of “cyber police” was set up to control the circulation of “banned” information on the Internet.

In the European Union, the framework-decisions on combating terrorism and on the European arrest warrant and the surrender procedures between Member states, were both adopted in June 2002. The draft was initiated in 1999, but the adoption of those new legal instruments was speeded up after September 11. The definition of a “terrorist act” enshrined in the framework-decision on combating terrorism is not sufficiently precise, allowing for implicit criminalisation of social upheavals (like, for instance, anti-war or anti-globalisation demonstrations).

Our organisations are also concerned about the December 2003 agreement on the transfer of personal data regarding passengers on flights going to, coming from and crossing over the United States’ territory concluded between the Commission and the United States. This agreement states that the transferred data may include credit card information, racial or ethnic origin as well as philosophical or political beliefs.

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In addition, in a number of EU member states, national legislations adopted to combat terrorism sometimes involve excessive restrictions on rights and freedoms. In the United Kingdom, the 2001 Anti Terrorism Crime and Security Act provides for the indefinite detention without charge or trial, pending deportation, of non-nationals of the United Kingdom who are suspected of terrorism-related activities. The possibility for the detained person to access his relatives and to legal advice is variable. Most of them are imprisoned merely on the grounds of a suspicion and not on a legitimate charge or evidence. Nevertheless they are treated like category A prisoners (high security Jail). The British Government has even admitted that evidence against prisoners has been obtained through the use of torture and this has been ruled to be acceptable in court. The overwhelming majority of those arrested under that legislation are Muslims. In December 2003, the UN Committee on the Elimination of Racial Discrimination expressed deep concerns with regard to the discriminative nature of such legislation.

The same criticism can be voiced regarding the German anti-terrorist legislation. In addition, in Germany, preventive monitoring, which is under discussion in many Länder and already enforced through laws in Thuringe, Low-Saxony, and in Rhineland-Palatinat, allows the seizure of any individual’s private communications in case “of facts justifying suspicions according to which the person has the will to commit a crime of great significance”, even though the “precise motives of the suspicion are not necessary at this stage”.

In France, under the guise of the fight against terrorism, the so-called “Sarkozy” law passed in 2003 allows body searches almost under any circumstance since they can be carried out on the basis of a “suspicion” that an offence has been committed or attempted. Furthermore, to prevent severe undermining of “law and order” and to ensure the security of the people and goods, vehicle searches as well as identity checks can be carried out, especially in the framework of demonstrations.

In Belgium, the law on terrorist crimes, which implements the EU framework-decision, enshrines the concepts of "terrorist acts" and "terrorist organisations". That legislation is questionable with regard to the right of privacy and it increasingly criminalises social movements. Certain activists using radical means (e.g. capturing vehicles) to, say, disturb a WTO summit might be labelled terrorist under that new legislation.

In Ireland, the Criminal Justice (Terrorist Offences) Bill 2002 blurs the distinction between the disturbance to public order during authorised demonstrations and terrorist offences. According to the law, offences committed with the intention to unduly force the government to do or to abstain from doing something are assimilated to terrorist acts. The same is true of damage caused to vehicles or goods. Here again, such legislation criminalises social movements.

**The situation of human rights defenders**

In China and Vietnam, the freedoms of expression, assembly and association are so restricted that human rights defenders have practically no possibility of getting organised. Courageous individuals manage - with extreme difficulty and at enormous risk - to circulate information on human rights violations committed by the authorities. In China and Vietnam, in addition to arrests and prison sentences inflicted on defenders, the authorities impose stringent controls on new information technology, and thereby on the circulation of information itself. In addition, international human rights NGOs still have no access to China and Vietnam.

In Cambodia, human rights defenders are regularly victims of threats (including death threats), intimidation and surveillance, sometimes physical assault, illegal arrest or unfounded criminal charges and civil lawsuits intended to intimidate. Such a climate challenges their ability to work...
safely and effectively and aims at reducing people's confidence in their work and in human rights in general.

In Indonesia, in Aceh, martial law is still in force. In that context, human rights defenders receive threats and are victims of disappearances and assassinations. Others have had to leave the province. Aceh is de facto banned from the national and international press, and from contact with humanitarian and human rights organisations. In that province, Mr Abdussalam Muhamad Deli has been missing since May 2003, and the same month, Mr Raja Ismail was killed. Both were volunteers for the Human Rights and Legal Aid Post (PB-HAM) East Aceh, an NGO that carries out advocacy through data collection, campaigning and legal assistance.

There is no space for human rights defenders in Laos. In practice, it is impossible to establish independent human rights groups inside the country. The Government registers and controls all associations and prohibits associations that might criticise its policy. For example, five members of the Lao Students Movement for Democracy of 26 October 1999 were arrested in October 1999 because they had publicly called for the respect of human rights, the release of political prisoners, a multi-party political system and elections for a new National Assembly. One of them died in custody and the four others are still unaccounted for. Some other people who participated in similar gatherings have simply “disappeared”, and their whereabouts remain unknown.

In the Philippines, in August 2004, Mr Rashid Manahan was killed in Davao City while he was on his way to attend a forum against the death penalty at the University of the Philippines Mindanao. In February 2004, in Mindoro Oriental, two human rights defenders, Juvy Magsino and Mrs. Leima Fortu, were shot dead by two unidentified men. In April 2003, Eden Marcellana and Eddie Gumanoy were found dead shortly after being kidnapped when they were investigating human rights violations committed in the eastern province of Mindoro. Our organisations call for an independent and impartial investigation into those killings of human rights defenders, and for the perpetrators to be brought to justice.

In Thailand, human rights defenders work in an increasingly difficult context. The human rights lawyer Mr. Somchai Neelaphaijit, chairman of the Muslim Lawyers Group and vice chairman of the Human Rights committee of the Law Society of Thailand, was abducted in March 2004. Mr. Somchai Neelaphaijitis has been missing ever since. Mr. Wat-aksorn, an environment activist, was killed in June 2004. His association had become well known for its successful campaign against the opening of a coal-fired power plant on public lands. Since January 30, 2001, seventeen community leaders, rights activists and environmentalists have been killed in the course of their work to protect the rights of their communities. Most of these cases remain unsolved. We are most concerned about the escalating environment of impunity for the perpetrators of such crimes in Thailand.

**The death penalty**

Of all Asian ASEM countries, only one has abolished death penalty (Cambodia, in 1989). In 2003 and 2004, executions have been recorded in 7 ASEM countries : China, Indonesia, Japan, the Philippines, Singapore, Thailand and Vietnam. In Burma, Laos, Malaysia and South Korea, people are still condemned to the death penalty but no executions have been recorded recently. In Brunei, no condemnations to death has been pronounced since 1957. It is consequently considered as de facto abolitionist.

While the situation is different from one country to another, the FIDH is seriously concerned about the **regional orientation towards a stricter application of the death penalty**. Contrary to the
international trend towards the abolition of the death penalty, worrying signals are sent by Asian countries.

**Indonesia** has broken its de facto moratorium on death penalty through an execution on 5 August 2004.

**The Philippines** announced the end of the moratorium on death penalty in December 2003, and executions are reportedly scheduled for September 2004.

**Malaysia** is considering reforming its Penal Code to impose mandatory death sentences for certain crimes.

**Vietnam** and **Thailand** face a rise in the number of condemnations to the death penalty in recent years.

Only the **Republic of South Korea** is considering the abolition of death penalty, but debates seem unlikely to progress in the near future.

Moreover, when death penalty is used, it is rarely done in conformity with the UN Safeguards guaranteeing the protection of the rights of those facing the death penalty.

**Burma-Myanmar**

While no executions have been reported recently, the death penalty is still a legal weapon in the hands of the Burmese authorities. Political opponents are condemned to the death penalty after unfair political trials. On 28 November 2003, the Burmese authorities sentenced 9 men to death on charges of high treason, for separate offences, mostly related to alleged plots to overthrow the military government. Charges were reportedly brought against some of the defendants on the ground of making contact with the International Labour Organization (ILO). One defendant was sentenced to death for having been found in possession of the report of the ILO Commission of Inquiry on Forced Labour in Burma. Following declarations issued by the ILO and the European Union, Myanmar's junta dropped the death sentence against the nine men and ordered new jail sentences on 12 May 2004. Five of them got a life sentence and the other four were ordered to serve three years in prison.

**China**

The extensive and politicized use of the death penalty and the lack of procedural safeguards in PRC legal system seriously infringe upon international human rights law. China regards the number of people executed each year to be a « state secret », so the exact number is difficult to ascertain. However, according to the declarations of a delegate of the National People's Congress made in March 2004, China sentence to death and immediately executes around 10000 convicted criminals every year. This is much more than the estimates available previously.

There has been an increase use of death penalty after the launch of the « strike hard » campaign whereby defendants are more likely to be sentenced to death for crimes that were previously punished by imprisonment. People are executed for drug offences, violent crimes, and nonviolent crimes (e.g. tax fraud and pimping). Execution is by shooting or lethal injection, sometimes within hours of sentencing. As in previous years, there were several reports of miscarriages of justice resulting from confessions extracted by torture.

The death penalty occurs most of the time after unfair or summary trials lacking any due process. Evidence extracted through torture, although illegal under the 1997 Criminal Procedure Law of the PRC, may still be admissible to convict people for crimes that carry the death penalty in China. The Ministry of Public Security ban on the use of evidence extracted through torture does not
extend to nonadministrative criminal cases, and the use of evidence extracted through torture continues to be widespread in the Chinese judicial system.

According to the UN Safeguards guaranteeing protection of the rights of those facing the death penalty, the death penalty can only be provided for the « most serious crimes », meaning that it should not go beyond intentional crimes with legal or other extremely grave consequences. In China, the death penalty is available for at least 65 offences, including minor and non-violent offences as well as alleged state security crimes.

The death penalty must be carried out in such a way as to cause the least possible physical and mental suffering (para 9 of the UN Safeguards). In 2003, there were announced reforms relating to capital punishment in the PRC, including:

- The Beijing judiciary instituted a measure granting prisoners on death row the right to a family visit before execution as a “humanitarian measure.”
- Lethal injection is increasingly being used as a means of execution instead of the firing squad. The Chinese government is also touting this as a “humanitarian measure” illustrating China’s commitment to becoming more “civilized” and “humane”. However, these minimal reforms do not address the serious problems of lack of adequate safeguards for the rights of those facing the death penalty.

**Indonesia**

Indonesia has recently abolished its *de facto* moratorium on the death penalty. Ayodhya Prasad Chaubey, an Indian national condemned for drug-trafficking in 1994, was executed in Medan on 5 August 2004. This execution is the first in the country in over three years, and occurred despite the European Union call on the Indonesian Government to maintain the *de facto* moratorium.

According to Amnesty International, at least 67 people are believed to be on death row in Indonesia. In recent years an increasing number of death sentences have been handed down to those convicted of drug trafficking. Out of the 8 death sentences handed down by courts of first instance in 2003, 7 have been for drug-related offences committed by foreign nationals. In June and July 2004, President Megawati Sukarnoputri rejected clemency for eleven people convicted of drug-related offences.

**Japan**

People are still executed in Japan. The last execution was held on 12 September 2003. The death sentence is generally meted out in violation of the right to a fair trial. Executions are carried out without the knowledge of families or lawyers; and are scheduled so as to prevent parliamentary or media scrutiny by coinciding with parliamentary recesses in summer and winter, or national holidays. The secrecy enshrouding the sentenced prisoners and the hanging itself makes the sentence even more inhuman and degrading.

**Laos**

According to Amnesty International, twenty-seven people were reportedly sentenced to death in 2003, at least four for drug-related offences. No executions were reported. A number of offences remain punishable by the death penalty, but no executions has been reported for over 10 years.

However, the death penalty is provided for the crimes of treason, murder, rape and some drug-related offences. Torture and inhuman treatments are common in Lao jails, including, according to

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3 See FIDH report The Death Penalty in Japan, A Practice Unworthy of a Democracy, n° 359/2, May 2003.
Hands Off Cain, threats of death and false executions, incommunicado detention, suffocation, almost drowning, electric chocks, and exposure to extreme temperature. Khamphouvieng Sisa-At, a prisoner of opinion, died in late 2001 after being exposed to heat for a long period of time. Although Laotian authorities had been concealing Mr Khamphouvieng Sisa-At's death, information about it emerged in May 2004 following the release of co-detainees who had witnessed his death.

**Malaysia**

According to Amnesty International, while no execution has been recorded recently, at least 7 people have been sentenced to death in 2003. 121 persons, including 4 women, are reported to be in death row. Discussions were held in early 2004 to reform the Penal Code. Indeed, the Malaysian Cabinet gave the green light in January for the amendment of Section 376 of the Penal Code in order to allow the imposition of mandatory death sentences for rapist who cause the death of their victims. Malaysia is the only country to have made an explicit reservations to article 37 of the Convention on the Rights of the Child, which prohibits the application of the death penalty to minors under eighteen, thus allowing such sentences.

**The Philippines**

In December 2003, President Arroyo decided to lift the three-year long moratorium on executions. Bills abolishing the death penalty were pending before the Congress. As of March 26, 2003, data from the Bureau of Corrections showed that death row population had reached a total of 994.

According to Mamamayang Tutol sa Bitay (MTB) - Movement for Restorative Justice, the mandatory death offences include qualified robbery, eleven (11) kinds of rape, 12 drug-related offenses, two (2) forms of kidnapping, and destructive arson. Crimes for which a range of penalties, including death, is imposed include: treason, qualified piracy, qualified bribery, parricide, murder, infanticide, three (3) forms of rape, kidnapping, robbery, destructive arson, plunder, eight (8) drug-related offences and carnapping with homicide.

No execution has been reported since the lifting of the moratorium.

**Singapore**

The death penalty is prescribed in Singapore for a wide range of offences. In recent years it has been imposed for drug trafficking, murder and firearms offences, all of which carry a mandatory death sentence. The Kidnapping Act also provides for the death penalty for the crime of kidnapping for ransom. There is no public debate on the death penalty in Singapore.

It is not known how many prisoners are currently on death row. According to Amnesty International, at least 13 prisoners were hanged at Changi prison in 2003.

**South Korea**

No executions have been carried out since February 1998. It has been reported in July 2004 that the governing Uri Party is preparing to submit legislation which, if enacted would put an end to the death penalty. As an option, the Uri Party said it was considering introducing life sentences with no parole possible for at least 10 years.

**Thailand**

Condemnations to the death penalty in Thailand have been increasing over the last three years. The death penalty is provided by the Criminal Code for a wide range of offences, including offences against the security of the Kingdom, rape, intentional murder, and drug-related offences. The Military criminal code also contains a number of offences involving the death penalty. As of
July, 2004, there were 971 inmates on death row, although it was anticipated that some of those would have their sentences commuted to life sentences by reason of a Royal Pardon granted in commemoration of the Queen’s 72nd birthday in August. The majority of those sentenced in recent years had been convicted of drug offences. Overcrowding is a matter of concern on death row and in the prisons generally. In October, 2003, the firing squad was replaced by lethal injection as the method of execution. Four executions took place in 2004, all four were convicted of drug offences. Executions are normally carried out within hours of receipt by the authorities of negative responses to petitions for a Royal Pardon.

**Vietnam**

The death penalty is increasingly enforced in Vietnam for a wide range of crimes, ranging from economic offences such as graft and embezzlement (in April 2004, a company director was sentenced to death for corruption), to drug-related and political crimes. The Vietnamese Criminal Code contains a whole Chapter on “crimes infringing upon national security”, many of which are punishable by death. Offences include non-political acts such as “gathering or supplying information and other materials (i.e. not State secrets) for use by foreign countries against the Socialist Republic of Vietnam” (Article 80). This means that dissidents may face the death penalty simply for circulating opposition views overseas.

Article 79 of the Criminal Code carries the death penalty for people who “establish or join organizations with intent to overthrow the people’s administration”. Dissidents may thus be put to death for the mere “intent” to criticize the government or form opposition movements. The UN Working Group on Arbitrary Detention has urged Vietnam to revise these provisions because of “the prejudice they bear on the legitimate exercise of the right to freedom of expression, association, thought and belief in Vietnam”.

The use of the death penalty is especially disturbing in view of the lack of independence of Vietnam’s judicial system and the lack of due process of law. Defendants do not receive a fair trial, and their rights as suspects under the ICCPR are routinely ignored.

Execution in Vietnam is by firing squad, usually at dawn. Some executions are held publicly. In other cases, prisoners’ families are not informed until after the execution has taken place. Conditions on death row are extremely poor. Three to four prisoners are detained in each cell with their legs chained to a long pole. They are generally lined up in order of execution – the first to be executed being nearest the door. Occasionally, for “humanitarian reasons”, prisoners are allowed to change places in the line.

In January 2004, Vietnam adopted a Decree classifying information and statistics on the death penalty as a state secret.

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