

**Excerpts Relating to Torture or
Other Forms of Cruel, Inhuman or Degrading Treatment**

VIENNA CONCLUDING DOCUMENT

1989

(Questions relating to Security, par. 23.2 to 23.6)

[The participating States will]

(23.2) - ensure that all individuals in detention or incarceration will be treated with humanity and with respect for the inherent dignity of the human person;

(23.3) - observe the United Nations Standard Minimum Rules for the Treatment of Prisoners as well as the United Nations Code of Conduct for Law Enforcement Officials;

(23.4) - prohibit torture and other cruel, inhuman or degrading treatment or punishment and take effective legislative, administrative, judicial and other measures to prevent and punish such practices;

(23.5) - consider acceding to the Convention against Torture and other Cruel, inhuman or Degrading Treatment or Punishment, if they have not yet done so;

(23.6) - protect individuals from any psychiatric or other medical practices that violate human rights and fundamental freedoms and take effective measures to prevent and punish such practices.

DOCUMENT

**OF THE COPENHAGEN MEETING OF THE CONFERENCE ON THE HUMAN DIMENSION
OF THE CSCE**

1990

(16) The participating States

(16.1) - reaffirm their commitment to prohibit torture and other cruel, inhuman or degrading treatment or punishment, to take effective legislative, administrative, judicial and other measures to prevent and punish such practices, to protect individuals from any psychiatric or other medical practices that violate human rights and fundamental freedoms and to take effective measures to prevent and punish such practices;

(16.2) - intend, as a matter of urgency, to consider acceding to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, if they have not yet done so, and recognizing the competences of the Committee against Torture under articles 21 and 22 of the Convention and withdrawing reservations regarding the competence of the Committee under article 20;

(16.3) - stress that no exceptional circumstances whatsoever, whether 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;

(16.4) - will ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment;

(16.5) - will keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under their jurisdiction, with a view to preventing any cases of torture;

(16.6) - will take up with priority for consideration and for appropriate action, in accordance with the agreed measures and procedures for the effective implementation of the commitments relating to the human dimension of the CSCE, any cases of torture and other inhuman or degrading treatment or punishment made known to them through official channels or coming from any other reliable source of information;

(16.7) - will act upon the understanding that preserving and guaranteeing the life and security of any individual subjected to any form of torture and other inhuman or degrading treatment or punishment will be the sole criterion in determining the urgency and priorities to be accorded in taking appropriate remedial action; and, therefore, the consideration of any cases of torture and other inhuman or degrading treatment or punishment within the framework of any other international body or mechanism may not be invoked as a reason for refraining from consideration and appropriate action in accordance with the agreed measures and procedures for the effective implementation of the commitments relating to the human dimension of the CSCE.

**DOCUMENT OF THE MOSCOW MEETING OF THE CONFERENCE ON
THE HUMAN DIMENSION OF THE CSCE
1991**

(23.1) The participating States will ensure that

[. . .]

(ix) a detained person or his counsel will have the right to make a request or complaint regarding his treatment, in particular when torture or other cruel, inhuman or degrading treatment has been applied, to the authorities responsible for the administration of the place of detention and to higher authorities, and when necessary, to appropriate authorities vested with reviewing or remedial power;

(x) such request or complaint will be promptly dealt with and replied to without undue delay; if the request or complaint is rejected or in case of inordinate delay, the complainant will be entitled to bring it before a judicial or other authority; neither the detained or imprisoned person nor any complainant will suffer prejudice for making a request or complaint;

(xi) anyone who has been the victim of an unlawful arrest or detention will have a legally enforceable right to seek compensation.

(23.2) The participating States will

- (i) endeavour to take measures, as necessary, to improve the conditions of individuals in detention or imprisonment;
- (ii) pay particular attention to the question of alternatives to imprisonment.

BUDAPEST DOCUMENT 1994
TOWARDS A GENUINE PARTNERSHIP IN A NEW ERA
(Chapter VIII, par. 20)

20. The participating States strongly condemn all forms of torture as one of the most flagrant violations of human rights and human dignity. They commit themselves to strive for its elimination. They recognize the importance in this respect of international norms as laid down in international treaties on human rights, in particular the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. They also recognize the importance of national legislation aimed at eradicating torture. They commit themselves to inquire into all alleged cases of torture and to prosecute offenders. They also commit themselves to include in their educational and training programmes for law enforcement and police forces specific provisions with a view to eradicating torture. They consider that an exchange of information on this problem is an essential prerequisite. The participating States should have the possibility to obtain such information. The CSCE should in this context also draw on the experience of the Special Rapporteur on Torture and other Cruelty Inhuman or Degrading Treatment or Punishment established by the Commission on Human Rights of the United Nations and make use of information provided by NGOs.

CHARTER FOR EUROPEAN SECURITY
Istanbul
1999

“We are committed to eradicating torture and cruel, inhumane or degrading treatment or punishment throughout the OSCE area. To this end, we will promote legislation to provide procedural and substantive safeguards and remedies to combat these practices. We will assist victims and co-operate with relevant international organizations and non-governmental organizations, as appropriate.”

Excerpts Relating to
International Humanitarian Law

INTERNATIONAL HUMANITARIAN LAW
HELSINKI 1992

(Decisions, chapter VI, par. 47 to 52)

The participating States

- (47) Recall that international humanitarian law is based upon the inherent dignity of the human person;
- (48) Will in all circumstances respect and ensure respect for international humanitarian law including the protection of the civilian population;
- (49) Recall that those who violate international humanitarian law are held personally accountable;

- (50) Acknowledge the essential role of the International Committee of the Red Cross in promoting the implementation and development of international humanitarian law, including the Geneva Conventions and their relevant Protocols;
- (51) Reaffirm their commitment to extend full support to the International Committee of the Red Cross, as well as to the Red Cross and Red Crescent Societies, and to the United Nations organizations, particularly in times of armed conflict, respect their protective emblems, prevent the misuse of these emblems and, as appropriate, exert all efforts to ensure access to the areas concerned;
- (52) Commit themselves to fulfilling their obligation to teach and disseminate information about their obligations under international humanitarian law.

BUDAPEST DOCUMENT 1994
TOWARDS A GENUINE PARTNERSHIP FOR A NEW ERA
(Chapter VIII, par. 33 to 35)

- 33. The participating States deeply deplore the series of flagrant violations of international humanitarian law that occurred in the CSCE region in recent years and reaffirm their commitment to respect and ensure respect for general international humanitarian law and in particular for their obligations under the relevant international instruments, including the 1949 Geneva Conventions and their additional protocols, to which they are a party.
- 34. They emphasize the potential significance of a declaration on minimum humanitarian standards applicable in all situations and declare their willingness to actively participate in its preparation in the framework of the United Nations. They commit themselves to ensure adequate information and training within their military services with regard to the provisions of international humanitarian law and consider that relevant information should be made available.
- 35. They highly value the developing cooperation between the CSCE and the International Committee of the Red Cross (ICRC), in particular in the case of CSCE missions, and welcome the readiness of the ICRC to develop this cooperation and commit themselves to further extend support to the ICRC, in particular by strengthening contacts already established between CSCE missions and the ICRC's delegations in the field.

CHARTER FOR EUROPEAN SECURITY
Istanbul
1999

[Paragraph 22]

In order to enhance the protection of civilians in times of conflict, we will seek ways of reinforcing the application of international humanitarian law.

**Excerpts Relating to
Derogation Clauses and the Protection of Human
Rights During a State of Public Emergency**

**DOCUMENT
OF THE COPENHAGEN MEETING OF THE CONFERENCE ON THE HUMAN DIMENSION
OF THE CSCE
1990**

(6) [The participating States] recognize their responsibility to defend and protect, in accordance with their laws, their international human rights obligations and their international commitments, the democratic order freely established through the will of the people against the activities of persons, groups or organizations that engage in or refuse to renounce terrorism or violence aimed at the overthrow of that order or of that of another participating State.

[. . .]

(25) The participating States confirm that any derogations from obligations relating to human rights and fundamental freedoms during a state of public emergency must remain strictly within the limits provided for by international law, in particular the relevant international instruments by which they are bound, especially with respect to rights from which there can be no derogation. They also reaffirm that

(25.1) — measures derogating from such obligations must be taken in strict conformity with the procedural requirements laid down in those instruments;

(25.2) — the imposition of a state of public emergency must be proclaimed officially, publicly, and in accordance with the provisions laid down by law;

(25.3) — measures derogating from obligations will be limited to the extent strictly required by the exigencies of the situation;

(25.4) — such measures will not discriminate solely on the grounds of race, colour, sex, language, religion, social origin or of belonging to a minority.

**DOCUMENT OF THE MOSCOW MEETING OF THE CONFERENCE ON
THE HUMAN DIMENSION OF THE CSCE
1991**

(17) The participating States

(17.1) — condemn unreservedly forces which seek to take power from a representative government of a participating State against the will of the people as expressed in free and fair elections and contrary to the justly established constitutional order;

(17.2) — will support vigorously, in accordance with the Charter of the United Nations, in case of overthrow or attempted overthrow of a legitimately elected government of a participating State by undemocratic means, the legitimate organs of that State upholding human rights, democracy and the rule of law, recognizing their common commitment to countering any attempt to curb these basic values;

[. . .]

- (28) The participating States consider it important to protect human rights and fundamental freedoms during a state of public emergency, to take into account the relevant provisions of the document of the Copenhagen Meeting, and to observe the international conventions to which they are parties.
- (28.1) The participating States reaffirm that a state of public emergency is justified only by the most exceptional and grave circumstances, consistent with the State's international obligations and CSCE commitments. A state of public emergency may not be used to subvert the democratic constitutional order, nor aim at the destruction of internationally recognized human rights and fundamental freedoms. If recourse to force cannot be avoided, its use must be reasonable and limited as far as possible.
- (28.2) A state of public emergency may be proclaimed only by a constitutionally lawful body, duly empowered to do so. In cases where the decision to impose a state of public emergency may be lawfully taken by the executive authorities, that decision should be subject to approval in the shortest possible time or to control by the legislature.
- (28.3) The decision to impose a state of public emergency will be proclaimed officially, publicly, and in accordance with provisions laid down by law. The decision will, where possible, lay down territorial limits of a state of public emergency. The State concerned will make available to its citizens information, without delay, about which measures have been taken. The state of public emergency will be lifted as soon as possible and will not remain in force longer than strictly required by the exigencies of the situation.
- (28.4) A de facto imposition or continuation of a state of public emergency not in accordance with provisions laid down by law is not permissible.
- (28.5) The participating States will endeavour to ensure that the normal functioning of the legislative bodies will be guaranteed to the highest possible extent during a state of public emergency.
- (28.6) The participating States confirm that any derogation from obligations relating to human rights and fundamental freedoms during a state of public emergency must remain strictly within the limits provided for by international law, in particular the relevant international instruments by which they are bound, especially with respect to rights from which there can be no derogation.
- (28.7) The participating States will endeavour to refrain from making derogations from those obligations from which, according to international conventions to which they are parties, derogation is possible under a state of public emergency. Measures derogating from such obligations must be taken in strict conformity with the procedural requirements laid down in those instruments. Such measures will neither go further nor remain in force longer than strictly required by the exigencies of the situation; they are by nature exceptional and should be interpreted and applied with restraint.
- (28.8) The participating States will endeavour to ensure that the legal guarantees necessary to uphold the rule of law will remain in force during a state of public emergency. They will endeavour to provide in their law for control over the regulations related to the state of public emergency, as well as the implementation of such regulations.
- (28.9) The participating States will endeavour to maintain freedom of expression and freedom of information, consistent with their international obligations and commitments, with a view to enabling public discussion on the observance of human rights and fundamental freedoms as well as on the lifting of the state of public emergency. They will, in conformity with international standards regarding the freedom of expression, take no measures aimed at barring journalists from the legitimate exercise of their profession other than those strictly required by the exigencies of the situation.
- (28.10) When a state of public emergency is declared or lifted in a participating State, the State concerned will immediately inform the CSCE Institution of this decision, as well as of any derogation made from the State's international human rights obligations. The Institution will inform the other participating States without delay.

Excerpts from Documents adopted by the
OSCE Parliamentary Assembly

**RESOLUTION ON
THE PREVENTION OF TORTURE, ABUSE, EXTORTION
OR OTHER UNLAWFUL ACTS**

Paris 2001

1. Noting the commitment made in the 1999 Charter for European Security by the participating States to eradicate torture and cruel, inhumane and/or degrading treatment or punishment throughout the region, to provide in law and practice procedural and substantive safeguards and remedies to combat these practices, and to assist the victims of such treatment and cooperate with relevant international organizations and non-governmental organizations;
2. Recognizing the commitment made in the 1994 Budapest Document for participating States to inquire into all alleged cases of torture and to prosecute offenders;
3. Recalling the 1990 Copenhagen Document which recognized that vigorous democracy depends on the existence of a range of institutions, including law enforcement entities, and the sharing of information, ideas and expertise regarding such institutions strengthens democratic values and practices;
4. Noting again that States should ensure that education and information regarding the prohibition of torture are fully included in the training of police, law enforcement personnel or any others who may be involved in the custody, interrogation or treatment of any individual who is arrested, detained or imprisoned and welcoming the efforts undertaken in some countries to improve and increase such training;
5. Understanding that an important component of the comprehensive concept of security is the fundamental service provided by local police authorities in the protection of a free society and the basic human rights of individuals;
6. Recalling the commitment made in the 1989 Vienna Concluding Document that participating States must ensure that all individuals in detention or incarceration will be treated with humanity and with respect for the inherent dignity of the human person;
7. Affirming that individuals, including labour migrants, require and deserve protection by law enforcement officials and need the confidence that the authorities are not themselves agents of torture, abuse, extortion, or other unlawful acts;
8. Disturbed by the prevalence of rape of prisoners by prison officials or other prisoners, which is tolerated for the purpose of intimidation and abuse;
9. Concerned about the ongoing use of torture and other cruel, inhuman or degrading treatment or punishment despite the commitment made in the 1989 Vienna Document by participating States to take effective legislative, administrative, judicial and other measures to prevent and punish such practices;

10. Recalling that incommunicado detention facilitates torture and may constitute, in and of itself, a form of cruel, inhuman or degrading treatment;

11. Concerned that race or ethnicity may be used, instead of actual evidence, as a means of targeting minorities for stops, searches, investigations, arrests and convictions and believing that such practices severely erode community confidence in police and other law enforcement bodies;

12. Noting the increased role the OSCE is playing in the provision of training to police cadets in a new and democratic context;

The OSCE Parliamentary Assembly

13. Urges all participating States to ensure the enactment and enforcement of laws and regulations which allow a detained person to register a complaint regarding his or her treatment, in particular when torture or other cruel, inhuman or degrading treatment is alleged, and provides for the investigation and conviction of authorities when it is shown that such practices have been employed;

14. Calls upon the participating States to treat confessions or other evidence obtained through the use of torture, or other cruel, inhuman or degrading treatment or punishment as inadmissible in courts of law or legal proceedings;

15. Implores participating States to encourage the development of treatment centers for victims of torture or other cruel, inhuman or degrading treatment and to protect medical personnel for their role in documenting and treating torture and other forms of abuse by police and other law enforcement officials;

16. Calls upon all participating States to prohibit, in law and in practice, incommunicado detention;

17. Urges all participating States to prohibit acts of violence, including rape, by law enforcement officials, prisoners or other detained individuals;

18. Condemns the practice of racial or ethnic profiling by police and other law enforcement agencies and urges the participating States to take steps to prohibit this insidious practice and provide effective remedies to combat such profiling;

19. Encourages the OSCE to build upon its work to ensure that human rights protection becomes an element of its police cadet training;

20. Deplores the tragic loss of human life that has recently occurred in the course of hunger strikes in Turkish prisons, expresses its concern about the continued practice of holding prisoners in isolation in Turkish prisons, and urges the Turkish Government to speed up implementation of recently announced measures, including the amendment of Section 16 of the Anti-Terror Act, aimed at reducing the scope of such practice.

RESOLUTION ON TORTURE

Edinburgh, 2004

1. Reiterating its Resolution on the Prevention of Torture, Abuse, Extortion, or Other Unlawful Acts adopted at the 2001 Annual Meeting in Paris,
2. Concerned about recent examples of prisoners being withheld for years with no access to trial or legal defence, for example at the United States military base at Guantánamo,
3. Appalled by recent examples of torture and other cruel, inhuman and degrading treatment against prisoners, for example in Iraq and Afghanistan,
4. Reiterating the importance of the Code of Conduct on politico-military aspects of security adopted at the 1994 Budapest Summit and the detailed commitments contained therein with respect to, *inter alia*, international humanitarian law and other provisions of international law,
5. Deploring the recent violations of international humanitarian law and non-compliance with commitments to prohibit torture and other cruel, inhuman or degrading treatment or punishment,

The OSCE Parliamentary Assembly calls upon all participating States to:

6. Fully respect existing OSCE commitments with regard to international humanitarian law and the prohibition of torture;
7. Abide by the obligation that no exceptional circumstances whatsoever, whether 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 and that an order from a superior officer or a public authority may not be invoked as a justification of torture; [Convention Against Torture]
8. Ensure that, while the Geneva Conventions do not preclude the interrogation of prisoners of war, no physical or mental torture, nor any other form of coercion, may be inflicted on prisoners of war to secure from them information of any kind whatsoever; and [Geneva III, art. 17]
9. Prohibit, in law and in practice, in times of armed conflict of an international character as well as armed conflict that is not of an international character, at any time and in any place whatsoever, prisoners of war or other persons in detention or internment from being subjected to violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture and outrages upon personal dignity, in particular humiliating and degrading treatment; [Common Article 3 of the Geneva Conventions]
10. Ensure that even civilians who are not prisoners of war are at all times humanely treated, and protected against all acts of violence or threats of violence, insults and public curiosity, as well as any other measures of brutality whether applied by civilian or military agents; [Geneva IV, art. 32]
11. Ensure that all persons in custody not enjoying the protection of the Third Geneva Convention on Prisoners of War are given the right to legal defence and trial;

12. Guarantee that the International Committee of the Red Cross has unimpeded access to areas of internment, detention and work of those persons protected by the Geneva Conventions and that the duration and frequency of such visits should not be restricted; [Geneva III, art. 126; Geneva IV, art. 143]
13. Sign and ratify the statutes of the International Criminal Court and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
14. Provide meaningful response to and implementation of the recommendations of the International Committee of the Red Cross;
15. Ensure that education and information regarding the prohibition against torture, or other forms of cruel, inhuman or degrading treatment or punishment, are fully included in the training of law enforcement personnel, civilian or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any detained individual; [Copenhagen Human Dimension Conference June 1990]
16. Guarantee that individuals who report allegations of torture, or other forms of cruel, inhuman or degrading treatment or punishment, are not subject to retribution, reprisal or other punishment;
17. Encourage all competent authorities to review all interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of detention, in order to ensure full compliance with relevant OSCE commitments prohibiting torture and other forms of cruel, inhuman or degrading treatment or punishment;
[see above, Copenhagen 1990]
18. Take every possible measure, if they have not already done so, to halt all acts of torture or other forms of cruel, inhuman or degrading treatment or punishment wherever they may take place;
19. Investigate, prosecute and punish all acts of torture or other forms of cruel, inhuman or degrading treatment or punishment including responsible individuals at the highest military and political level;
20. Support the critical work of medical personnel and torture treatment centres in the identification, treatment, and rehabilitation of victims of torture and other forms of cruel, inhumane, or degrading treatment or punishment.

Other OSCE Materials

Available at <www.osce.org/odihhr>.

Thematic Background Reports

- *Pre-Trial Detention in the OSCE Area* (September 1999)
- *Combating Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: The Role of the OSCE* (October 1998)

Handbooks

- PREVENTING TORTURE (A handbook for OSCE field staff) (1999)

Substantive Reports

- KOSOVO / KOSOVA AS SEEN, AS TOLD (An analysis of the human rights findings of the OSCE Kosovo Verification Mission, October 1998 to June 1999)