

**Second day of the Twenty-Seventh Meeting
MC(27) Journal, Agenda item 7**

DECISION No. 7/20
PREVENTION AND ERADICATION OF TORTURE AND OTHER
CRUEL, INHUMAN OR DEGRADING TREATMENT OR
PUNISHMENT

The Ministerial Council,

Strongly condemning all forms of torture and other cruel, inhuman or degrading treatment or punishment as one of the most flagrant violations of human rights and human dignity, and reaffirming that torture and other cruel, inhuman or degrading treatment or punishment are and shall remain prohibited at any time and in any place whatsoever,

Reaffirming that freedom from torture and other cruel, inhuman or degrading treatment or punishment is a non-derogable right under international law and 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 justification of torture,

Emphasizing that the prohibition of torture is a peremptory norm of international law without territorial limitation, which applies at all times and in all places,

Deeply concerned by the persistence of cases of torture and other cruel, inhuman or degrading treatment or punishment in many parts of the world, including in the OSCE area, that prevail as a consequence of, *inter alia*, the incomplete implementation of relevant obligations under international law and OSCE commitments and ongoing impunity for the perpetrators that often exists due to a lack of prompt, independent and effective investigation and prosecution of such crimes,

Deeply concerned about acts of torture and other cruel, inhuman or degrading treatment or punishment committed against persons for exercising their human rights and fundamental freedoms,

Deeply concerned that torture and other cruel, inhuman or degrading treatment or punishment is used to obtain information or a confession,

Recalling that all OSCE participating States are parties to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT),

Deeply concerned that enforced disappearances still occur in the OSCE area, which is a serious human rights violation, and recalling in this regard the United Nations Declaration on the Protection of All Persons from Enforced Disappearance, while noting the importance of the implementation of the International Convention for the Protection of All Persons from Enforced Disappearances (ICPPED) by its States Parties,

Recognizing that during conflict situations, including armed conflict, as well as civil unrest and mass protests, particular attention should be paid to preventing torture and other cruel, inhuman or degrading treatment or punishment,

Reaffirming that all participating States must comply fully with their obligations under international humanitarian law and international human rights law,

Emphasizing that, under the Geneva Conventions of 1949, acts of torture or inhuman treatment are grave breaches of these conventions, that acts of torture and cruel treatment in armed conflict are serious violations of international humanitarian law and in this regard constitute war crimes, that acts of torture can constitute crimes against humanity and that the perpetrators of all acts of torture must be prosecuted and punished in accordance with a court conviction,

Reminding all participating States that prolonged incommunicado detention or detention in secret places can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment,

Recognizing that the prevalence of corruption, including in law enforcement and justice systems, can have a negative impact on the fight against torture and other, cruel, inhuman or degrading treatment or punishment, including by eroding fundamental safeguards and preventing victims of torture and other, cruel, inhuman or degrading treatment or punishment from effectively seeking justice, redress and compensation through the justice system,

Stressing the importance of effective legal and procedural safeguards throughout all stages of detention, including early stages of police custody, as effective measures for the prevention of torture and other cruel, inhuman or degrading treatment or punishment,

Acknowledging that women and girls are at a particular risk of torture and other cruel, inhuman or degrading treatment or punishment when deprived of liberty, and recognizing the importance of adopting a gender-sensitive approach in the fight against torture and other cruel, inhuman or degrading treatment or punishment, that takes into account such particular risk and specific needs of women and girls, including by paying special attention to sexual violence against women and girls, as well as gender-based violence against women and girls, and taking into consideration the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules),

Recognizing the importance of adopting a victim-centred approach in the fight against torture and other cruel, inhuman or degrading treatment or punishment, paying special attention to the views and specific needs of victims and their immediate family members in policy development and other activities relating to rehabilitation, prevention and accountability for torture and other cruel, inhuman or degrading treatment or punishment,

Recognizing that effectively combating torture and other cruel, inhuman or degrading treatment or punishment requires an integrated and victim-centred approach encompassing prevention, access to justice, accountability, redress and the enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible,

Recognizing that participating States must safeguard the rights, and protect the human rights, of all persons deprived of their liberty, including those facing the death penalty, in accordance with their international obligations,

Reaffirming that all persons deprived of their liberty will be treated with humanity and with respect for the inherent dignity of the human person and recognizing the importance of participating States continuously taking appropriate measures to improve conditions in detention to better respect the human rights and dignity of those persons, including by taking into consideration the implementation of the UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) or similar standards,

Stressing the UNCAT requirements that all acts of torture, attempts to commit torture, and acts of complicity or participation in torture must be made offences under domestic criminal law, punishable by appropriate penalties reflecting their grave nature, and that no information or a confession that is established to have been obtained as a result of torture shall be invoked as evidence in any proceedings, under any circumstances, except against a person accused of torture as evidence that this offence took place,

Recognizing the role that international, regional and national preventive mechanisms or other relevant bodies, including national human rights institutions, can play in effectively preventing acts of torture and other cruel, inhuman or degrading treatment or punishment, as well as the importance of collaborating with international experts mandated to assist participating States in their efforts to prevent torture and other cruel, inhuman or degrading treatment or punishment,

Emphasizing the need to ensure that no authority or official orders, applies, permits or tolerates any sanction, reprisal or intimidation against any person, group or association for contacting, seeking to contact or having been in contact with any competent national or international body or mechanism active in the prevention and combating of torture and other cruel, inhuman or degrading treatment or punishment,

Stressing that national legal systems must ensure that victims of torture and other cruel, inhuman or degrading treatment or punishment have effective access to justice, including prompt impartial and effective investigation, without suffering any retribution for bringing complaints or giving evidence and that such victims obtain redress and have an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible,

Commending the persistent efforts of civil society at national and international level working to effectively prevent and combat torture and other cruel, inhuman or degrading treatment or punishment and alleviate the suffering of victims,

Underlining the importance of co-operation between the OSCE and other international and regional organizations and mechanisms so as to promote multilateral co-operation and to

achieve effective synergies, avoiding unnecessary overlapping, which can contribute to effectively preventing and combating torture and other cruel, inhuman or degrading treatment or punishment,

Recalling the notification and access obligations of participating States under the 1963 Vienna Convention on Consular Relations and relevant bilateral agreements,

Noting the work of the global Alliance for Torture-Free Trade and the adoption of the United Nations General Assembly resolution on Torture-Free Trade,

Calls on the participating States to:

1. Uphold the absolute prohibition of all forms of torture and other cruel, inhuman or degrading treatment or punishment as set forth in the UNCAT, implement fully and in good faith its provisions and act in full conformity with all its principles;
2. Fully implement their obligations under the UNCAT's Optional Protocol (OPCAT), if applicable, and give early consideration to becoming parties to OPCAT, if they have not yet done so;
3. Fully implement their obligations under the ICPPED, if applicable;
4. Fully implement their obligations under the 1949 Geneva Conventions with respect to the prohibition of torture, cruel, inhuman, humiliating and degrading treatment in the context of armed conflict;
5. Abandon and refrain from the use of interrogation techniques that constitute torture and other cruel, inhuman or degrading treatment or punishment, including to obtain information or a confession;
6. Implement effective legal and procedural safeguards throughout all stages of detention, including early stages of police custody;
7. Respect the safeguards concerning the liberty, security and dignity of the person and ensure that prolonged incommunicado detention and secret places of detention and interrogation are abolished, with the understanding that such detention can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment;
8. Make all acts of torture, attempts to commit torture, and acts of complicity or participation in torture offences under domestic criminal law, incorporating the definition of torture pursuant to Article 1 of UNCAT and providing for appropriate penalties reflecting their grave nature, and prohibit the use of information or a confession obtained through torture or other cruel, inhuman or degrading treatment or punishment as evidence in any proceedings except against a person accused of torture as evidence that this offence took place;
9. Ensure that any detained or imprisoned person or their counsel have the right to make a request or complaint regarding the detained or imprisoned person's treatment to relevant authorities, in particular when torture or other cruel, inhuman or degrading treatment or

punishment may have been applied, and that such request or complaint will be promptly dealt with and replied to without undue delay, and that neither the detained or imprisoned person nor any complainant or witness will suffer any prejudice or reprisal as a consequence of their request, complaint or any evidence given;

10. Incorporate education and information regarding the prohibition of torture and other cruel, inhuman or degrading treatment or punishment in the training of law enforcement personnel, civil, military and 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, including, as appropriate, on the proportionate use of force, all available modern scientific methods for the investigation of crimes and the critical importance of reporting instances of torture or other cruel, inhuman or degrading treatment or punishment to superior authorities;

11. Support the efforts of relevant national actors, such as national preventive mechanisms, national human rights institutions or other national bodies or mechanisms, active in preventing torture and other cruel, inhuman or degrading treatment or punishment, and, for those who have ratified the OPCAT, to fulfil their obligation to designate or establish national preventive mechanisms that are independent, adequately resourced and effective;

12. Ensure full and ongoing government co-operation, in line with their respective obligations under international law, with applicable international preventive bodies or mechanisms, such as the United Nations Committee against Torture, the Subcommittee on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and with relevant national bodies, such as national human rights institutions, including by allowing unrestricted access to places of detention if such access is an obligation for a participating State under the international law;

13. Fully co-operate with the International Committee of the Red Cross (ICRC) in conformity with the participating States' obligations under international humanitarian law;

14. Ensure that all allegations of torture or other cruel, inhuman or degrading treatment or punishment, as well as wherever there are reasonable grounds to believe that such an act has been committed, are investigated promptly, effectively, thoroughly, and impartially by competent and independent national authorities and ensure that complainants and witnesses are protected against ill-treatment and intimidation as a consequence of their complaint or evidence given;

15. Ensure that those who encourage, instigate, order, tolerate, acquiesce in, consent to or perpetrate acts of torture or other cruel, inhuman or degrading treatment or punishment are held responsible, brought to justice and punished in a manner commensurate with the severity of the offence, including the officials in charge of any place of detention or other place in which persons are deprived of their liberty where the prohibited act is found to have been committed;

16. Provide redress for the victims of torture or other cruel, inhuman or degrading treatment or punishment, encompassing effective remedy and adequate, effective and prompt reparation, which should include restitution, fair and adequate compensation, rehabilitation,

satisfaction and guarantees of non-repetition, taking into full account the specific needs of the victim;

17. Ensure that appropriate rehabilitation services are promptly available without discrimination to all victims and take effective measures for ensuring a safe and enabling environment for accessing and providing rehabilitation services to victims of torture;

18. Consider developing measures to support all persons affected by torture or other cruel, inhuman or degrading treatment or punishment, including victims' children and other immediate family members;

19. Promote dissemination of information for victims about the availability of rehabilitation services and ensure that the procedures for obtaining rehabilitation are transparent;

20. Support the efforts of civil society organizations working to prevent and combat torture and other cruel, inhuman or degrading treatment or punishment, enable their active contribution, as appropriate, and make use of information provided by them in alleged cases of torture and other cruel, inhuman or degrading treatment or punishment;

21. Take appropriate effective legislative, administrative, judicial and other measures to prevent and prohibit the production, trade, export, import and use of equipment that has no practical use other than for the purpose of torture or other cruel, inhuman or degrading treatment or punishment;

22. Continue to make use of, or consider drawing on, ODIHR's advice, expertise and technical assistance in the field of preventing and combating of torture and other cruel, inhuman or degrading treatment or punishment.

MC.DEC/7/20
4 December 2020
Attachment 1

Original: ENGLISH

**INTERPRETATIVE STATEMENT UNDER
PARAGRAPH IV.1(A)6 OF THE RULES OF PROCEDURE
OF THE ORGANIZATION FOR SECURITY AND
CO-OPERATION IN EUROPE**

By the delegation of the United States of America:

“The United States is pleased to join consensus on this decision on the prevention and eradication of torture and other cruel, inhuman, or degrading treatment or punishment. Torture and other cruel, inhuman, or degrading treatment or punishment are prohibited under international humanitarian law and States Parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment have obligations to prevent torture and other cruel, inhuman, or degrading treatment or punishment. Torture and other cruel, inhuman, or degrading treatment or punishment are an affront to human dignity and our values. This decision wisely recognizes that the prohibition of torture is a peremptory norm of general international law for the purposes of the rules articulated in Article 53 of the Vienna Convention on the Law of Treaties.

The United States places great importance on complying with its legal obligations related to torture and other cruel, inhuman, or degrading treatment or punishment and is deeply committed to preventing torture and other cruel, inhuman, or degrading treatment or punishment; to pursuing justice on behalf of victims; and to denying perpetrators safe haven in our country. In joining consensus on this decision, we refer to our obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, taking into account our reservations, understandings and declarations thereto. Further, the decision should be understood in the context of international humanitarian law, such as the 1949 Geneva Conventions, which is the *lex specialis* with respect to armed conflict and occupation, and, as such, is the controlling body of law with respect to the conduct of hostilities and the protection of war victims. The United States also wishes to underscore that OSCE decisions do not create or alter rights or obligations under international law, and we understand this resolution to be consistent with our current practices and policies, which effectively implement US obligations related to torture and other cruel, inhuman, or degrading treatment or punishment.

We further reiterate our view, expressed in the United Nations General Assembly and elsewhere, that trade matters belong before the World Trade Organization, not other multilateral bodies. The United States encourages other States to take all appropriate measures to prevent torture and to consider current US policies and practices as best practices for the implementation of their obligations regarding the prohibition of torture and other cruel, inhuman, or degrading treatment or punishments.

MC.DEC/7/20
4 December 2020
Attachment 1

I request that the text of this statement be attached to the Ministerial Council decision adopted and included in the journal of today's meeting.”

MC.DEC/7/20
4 December 2020
Attachment 2

Original: ENGLISH

**INTERPRETATIVE STATEMENT UNDER
PARAGRAPH IV.1(A)6 OF THE RULES OF PROCEDURE
OF THE ORGANIZATION FOR SECURITY AND
CO-OPERATION IN EUROPE**

By the delegation of the United States of America (also on behalf of the United Kingdom):

“In connection with the adoption of the decision on the prevention and eradication of torture and other cruel, inhuman or degrading treatment or punishment, I would like to make the following interpretative statement under paragraph IV.1(A)6 of the OSCE Rules of Procedure. I am making this statement on behalf of the United States as well as the United Kingdom.

We welcome the adoption of this decision. It is an important decision, in which we are jointly reaffirming our unwavering commitment to the prevention and eradication of torture and other cruel, inhuman or degrading treatment or punishment in the OSCE area.

Regarding the paragraph on the full co-operation with the International Committee of the Red Cross (ICRC), we would have hoped for a more detailed call to provide access to the ICRC to places of deprivation of liberty and detainees, in a manner consistent with its own working modalities and international humanitarian law.

Providing such access is addressed in the Geneva Conventions, specifically in Article 126 of Geneva Convention III and Articles 76 and 143 of Geneva Convention IV. Furthermore, impartial humanitarian organizations like the ICRC may offer their services to parties to an armed conflict, as notably provided in Article 3 common to the Geneva Conventions. Moreover, the working modalities of the ICRC have been standard practice and can be crucial, *inter alia*, to ascertain the true situation in places of detention and to ensure the confidentiality of these visits.

Mr. Chairperson, I request that this statement be attached to the decision and the journal of the day.”

MC.DEC/7/20
4 December 2020
Attachment 3

Original: ENGLISH

**INTERPRETATIVE STATEMENT UNDER
PARAGRAPH IV.1(A)6 OF THE RULES OF PROCEDURE
OF THE ORGANIZATION FOR SECURITY AND
CO-OPERATION IN EUROPE**

By the delegation of Switzerland (also on behalf of Andorra, Canada, Germany-European Union, Iceland, Liechtenstein, Norway and San Marino):

“Thank you, Mr. Chairperson.

In connection with the adoption of the decision on the prevention and eradication of torture and other cruel, inhuman or degrading treatment or punishment, I would like to make the following interpretative statement under paragraph IV.1(A)6 of the OSCE Rules of Procedure. I am making this statement on behalf of Andorra, Canada, the European Union and its Member States, Iceland, Liechtenstein, Norway, San Marino and Switzerland.

We welcome the adoption of this decision. It is an important decision, in which we are jointly reaffirming our unwavering commitment to the prevention and eradication of torture and other cruel, inhuman or degrading treatment or punishment in the OSCE area.

Regarding the paragraph on the full co-operation with the International Committee of the Red Cross (ICRC), we would have hoped for a stronger call to provide full access to the ICRC to all places of deprivation of liberty and detainees, in accordance with its own working modalities and international humanitarian law. Providing such access is a specific obligation under the Geneva Conventions, specifically in accordance with Article 126 of Geneva Convention III and Articles 76 and 143 of Geneva Convention IV. Furthermore, impartial humanitarian organizations like the ICRC have a right to offer their services to conduct their humanitarian activities, as notably provided in Article 3 common to the Geneva Conventions. Moreover, the working modalities of the ICRC have been standard practice and are crucial, *inter alia*, to establish the true situation in places of detention and to ensure the confidentiality of these visits.

Mr. Chairperson, I request that this statement be attached to the decision and the journal of the day.”

MC.DEC/7/20
4 December 2020
Attachment 4

Original: ENGLISH

**INTERPRETATIVE STATEMENT UNDER
PARAGRAPH IV.1(A)6 OF THE RULES OF PROCEDURE
OF THE ORGANIZATION FOR SECURITY AND
CO-OPERATION IN EUROPE**

The delegation of Germany, in its capacity as EU Presidency, passed the floor to the representative of the European Union, who delivered the following statement:

“In connection with the adoption of this decision on the prevention and eradication of torture and other cruel, inhuman or degrading treatment or punishment, I would like to make the following interpretative statement under paragraph IV.1(A)6 of the OSCE Rules of Procedure on behalf of the European Union and its Member States, Albania in its national capacity, Canada, Georgia, Iceland, Republic of Moldova, Montenegro, North Macedonia, Norway, Ukraine, United Kingdom and United States of America.

We welcome the adoption of this important decision, which we believe will reinforce the efforts of the OSCE and all participating States on the pressing issue of the prevention and eradication of torture and other cruel, inhuman or degrading treatment or punishment in the OSCE area.

We would like to stress that the prohibition of torture and other cruel, inhuman or degrading treatment or punishment is a peremptory norm of international law without territorial limitation, which applies at all times, in all places and under any circumstances, including situations of occupation.

We express our grave concern over the persistence of cases of torture and other cruel, inhuman or degrading treatment or punishment in the OSCE area, including areas under occupation as well as in the Autonomous Republic of Crimea and the city of Sevastopol illegally annexed by Russia and in certain areas of Donetsk and Luhansk oblasts of Ukraine currently not under Ukrainian Government control due to acts of aggression by the Russian armed forces since February 2014.

We believe that the decision would have benefited from having explicit language that underlined the need to provide access to places of deprivation of liberty and to detainees by international human rights monitors, within their mandates, which is an important safeguard and a crucial element to prevent torture and other cruel, inhuman or degrading treatment or punishment. This remains the position of the European Union and aligning participating States.

Mr. Chairperson, I request that this statement be attached to the decision and the journal of the day.”