



Opening Address by Ambassador Janez Lenarčič  
Director of the OSCE Office for Democratic  
Institutions and Human Rights (ODIHR)

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Prevention of Torture

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Excellencies, Distinguished Colleagues, Ladies and Gentlemen,

As far back as in 1764, Italian jurist and philosopher Cesare Beccaria called torture “a pretended test of truth, worthy only of cannibals.” In his treatise on Crimes and Punishments, Beccaria made an apt connection between torture and what he called “the right of power” – that is, the right one derives from the mere fact of wielding power, the institutionalized arbitrariness, and as such an opposite of the rule of law. This makes a very modern case against torture as something only the right of power would authorize.

Still, we are now in the 21<sup>st</sup> century and unfortunately eradication of torture remains a goal rather than an achievement. It is true that the past decades have seen a growing commitment by States to root out this abhorrent practice. This is evidenced by the adoption of the Convention against Torture thirty years ago, followed by the Optional Protocol (OPCAT) thereto, which opened detention facilities to international scrutiny and to regular visits by National Preventive Mechanisms (NPMs). The OSCE participating States have likewise committed to combating torture from the very beginning. However, the changing political and security landscape has brought about new challenges.

Over the past two decades we have witnessed unfortunate resurgence of torture practices, especially in the name of the fight against terrorism. In a number of instances attempts have been made to redefine torture in the context of the so called “war on terror.” I note with concern that

there has been complicity among some participating States in enabling this worrying “torture legitimization” trend.

I would like to stress that this has been happening after the 2001 Bucharest Ministerial Declaration as well as the Plan of Action on Combating Terrorism. In these documents OSCE participating States committed to “defend freedom and protect their citizens against acts of terrorism, fully respecting international law and human rights.” Importantly, this implies unequivocally rejecting torture as manifestly illegal and prohibited in absolute terms under international law.

It should be stressed, time and again that human rights and the fight against terrorism are not at odds, but on contrary, that full respect for human rights can reinforce the effectiveness of counter-terrorism efforts by strengthening public trust and, ultimately, the legitimacy of such measures.

No emerging threat or other exceptional circumstances can possibly justify torture. The prohibition of torture is in fact one of those human rights that shall remain absolute and non-derogable, regardless of how everyday realities of our lives may change, and the domestic laws should always uphold this stance. Still, outlawing and criminalizing torture is not enough to prevent it in practical terms. It is but the first step on the way to its full eradication. All too often well-intentioned laws are met with formidable obstacles to their implementation, which range from the suppression of evidence and denied access to justice for torture victims, to retaliation against those who file complaints. Participating States

should work on tearing down these barriers to allow cases of torture to be prosecuted without hindrance. We should bear in mind that impunity perpetuates torture, and take every possible effort to prevent impunity. Efforts made by participating States to bring past violations to light, in particular by declassifying information that is crucial to public debate on alleged torture incidents. Such efforts are indeed laudable as a key step towards enabling independent and effective inquiry into such incidents.

Torture is one of those crimes that statutes of limitations should not apply to. The United Nations Human Rights Committee has noted incompatibility of amnesty acts with the duty of the State to duly investigate acts of torture. In a nutshell, nobody who is guilty of torture should be ever able to get away with it, no matter how much time has elapsed since the reprehensible deed.

I would like to note that even where investigation of alleged incidents of torture is prompt and effective, where torture cases are independently adjudicated and the perpetrators punished, there are still challenges to break this vicious circle as well as to prevent torture. One of factors is to remove the pressure on the law enforcement to commit it in the first place. A number of law enforcement systems in the OSCE region continue to excessively rely on crime clearance rates in appraising performance of law enforcement officials. Obviously, this is an important indicator, but not the only one. And the risk here is not just getting some skewed statistics as a result. What we have at stake are human lives. Those of the victims but also those of officers, because someone who is diligent and invests time and effort into pursuing all investigative leads,

would be seen as lacking in efficiency, possibly even putting his or her job at risk, while someone less scrupulous and ready to apply coercion would have better prospects of not only keeping the job but also climbing the career ladder. In a nutshell, the institution would be, albeit inadvertently, creating incentives to perpetrate torture and ill-treatment. Tying efficiency to one indicator thus becomes a precarious misconception and even dangerous one.

The issue of accountability and access to justice is intrinsically related to that of adequate, effective and comprehensive redress for the victims. This includes the right to compensation and to holistic rehabilitation. The ultimate aim should be that a torture victim would have access not only to medical and psychological support, but to a wide array of services based on the victim's individual needs, for example, of vocational, educational or economic nature. The ultimate aim should be to empower the victim. However, even in States where the right to redress is enshrined in the law, the practical exercise of this right may be impeded by a host of circumstances. These can be seen in absence of directly enforceable remedies independent of criminal proceedings, or time- and effort-consuming requirements that the victims themselves gather evidence to support their claim. Another obstacle is lack of capacity.

Our Office has long provided capacity building to various governmental and non-governmental actors, and we stand ready to engage in a dialogue with participating States and other international organizations on how to better address the issues of torture prevention. This includes

providing legislative support and building institutional incentives for torture prevention.

The first Supplementary Human Dimension Meeting (SHDM) this year offers an excellent opportunity to take stock of the developments since the last SHDM on the Prevention of Torture that took place in 2003. This is opportunity to reflect on the lessons learned, and to see how these may apply to the changing circumstances and new challenges. As I mentioned in the beginning, much has changed in last decade. At the time of the 2003 SHDM, OPCAT was still a very new instrument. Today, 39 out of the 57 OSCE participating States are States Parties to OPCAT. However impressive, this ratification rate is still not enough, and I would like to call on all participating States that have not yet ratified OPCAT to do so. I also take this opportunity to welcome the dynamic pace at which participating States have created national preventive mechanisms. Within roughly a decade, the OSCE region has seen 36 NPMs established. I call on the participating States that have not yet designated a national preventive mechanism to do so, and to work tirelessly to ensure that this institution is truly independent and efficient.

On a final note, I would like to draw your attention to new or recent international actors, such as the SPT (Subcommittee on Prevention of Torture). Its emergence necessitates a renewed effort among international organizations to rethink their cooperation for maximum synergies, taking full advantage of each organization's mandate and added value.

I wish us all a productive discussion and hope that this event will provide good examples of effective practice to prevent torture and will thus bring us closer to achieving our ultimate goal: eradicating the shameful practice of torture in the OSCE space.

Thank you.