



Supplementary Human Dimension Meeting

on Torture and Other Grave Breaches of International Humanitarian Law and Gross Violations of International Human Rights Law

24-25 April 2023
(Vienna)

ANNOTATED AGENDA

BACKGROUND

All OSCE participating States have expressed their “determination to fulfil all of their human dimension commitments and to resolve by peaceful means any related issue, individually and collectively, on the basis of mutual respect and co-operation” (Helsinki 1975). OSCE participating States have also reaffirmed “that all OSCE principles and commitments, without exception, apply equally to each participating State” (Astana 2010), emphasizing that all participating States are accountable to their “citizens and responsible to each other for their full implementation” (ibid), thus regarding “these commitments as our common achievement, and therefore consider them to be matters of immediate and legitimate concern to all participating States” (ibid.) Furthermore, International Humanitarian Law (IHL) and International Human Rights Law (IHRL) lay down certain obligations which all States, including OSCE participating States, are bound to respect with regard to grave breaches of IHL and gross violations of IHRL.

In the event of armed conflicts, OSCE participating States have committed to “in all circumstances respect and ensure respect for international humanitarian law including the protection of the civilian population” (Helsinki 1992). In the same document, they focused attention “on the need for urgent action to enforce the strict observance of the norms of international humanitarian law”, and recalled “that those who violate international humanitarian law are held personally accountable”.

Furthermore, OSCE participating States have repeatedly expressed their strong condemnation of "all forms of torture as one of the most flagrant violations of human rights and human dignity" (Budapest 1994), as well as their commitment "to eradicating torture and cruel, inhumane or degrading treatment or punishment throughout the OSCE area" (Istanbul 1999).

In Ministerial Council Decision No. 7/20 (Tirana 2020), OSCE participating States reaffirmed 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.

OSCE participating States have commended "the persistent efforts of civil society working to prevent torture and other cruel, inhuman or degrading treatment or punishment and to alleviate the suffering of victims" (Athens 2009).

However, violations of international humanitarian law and international human rights law continue to be a reality. The international community needs to take further steps to prevent them occurring and ensure accountability when they occur.

This Supplementary Human Dimension Meeting (SHDM) will provide a forum for an exchange of views among OSCE participating States, OSCE institutions and executive structures, international organizations, and civil society on the issue of torture and other grave breaches of IHL and gross violations of IHRL. Sessions will provide clarifications of the terms ‘grave breaches of IHL’ and ‘gross violations of IHRL’, and ensuing obligations for States. Participants will explore specific aspects related to the documentation of cases of torture during armed conflict, including sexual and gender based violence (SGBV) as a form of torture, in accordance with the Istanbul Protocol. The role of national institutions, international organizations and civil society in preventing and responding to grave breaches of IHL and gross violations of IHRL, as well as practical ways to enhance cooperation among stakeholders, will also be explored.

Day 1

14.00 – 15.00

OPENING SESSION

Opening remarks
Introductory addresses
Technical information

15.00 – 17.00

SESSION I: Grave Breaches of International Humanitarian Law and Related Obligations

OSCE participating States have committed 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” (Budapest 1994) and have recalled “that those who violate international humanitarian law are held personally accountable” (Helsinki 1992).

Grave breaches are particularly serious violations of IHL listed in the four 1949 Geneva Conventions (GC I, art. 50; GC II, art. 51; GC III, art. 130; GC IV, art. 47) and 1977 Additional Protocol I (arts. 11 and 85). They include willful killing, torture and inhuman treatment, willfully causing great suffering or serious injury to body or health, compelling a prisoner of war or other protected person to serve in the forces of a hostile power, and unlawful deportation or transfer. Certain violations of the basic rules for the conduct of hostilities such as the extensive destruction and appropriation of property not justified by military necessity, making the civilian population or individual civilians the object of attack, and the taking of hostages constitute grave breaches. All grave breaches of IHL constitute war crimes (AP I, art. 85)

IHL creates specific obligations for States with respect to grave breaches. States must enact legislation to punish such grave breaches, must search for persons who have allegedly committed such crimes, and must bring them before their own courts, including through universal jurisdiction, or extradite them to another State for prosecution (GC I, Art. 49; GC II, Art. 50; GC III, Art. 129; GC IV, Art. 146 and AP I, Art. 85, para. 1). States must honor these obligations both in peacetime and during armed conflict. In order to be effective, appropriate steps must be taken before there is any opportunity for such grave breaches to occur. Some

States have not adopted the necessary legislation and sometimes allow, or even order, the commission of grave breaches, with complete impunity. Importantly, universal jurisdiction is applicable to all grave breaches of the Geneva Conventions, meaning that a State under its domestic laws, may prosecute crimes committed outside of its territory, and where neither the perpetrator nor the victim is their own citizen.

This session will offer an opportunity to contextualize what is understood by “grave breaches of IHL” as those serious violations that give rise to specific obligations for States to enact legislation and provide appropriate penal sanctions for their commission and to prosecute the responsible individuals. It will also explore States' obligations under international law in this respect, as well as the role played by international organizations in ensuring respect for IHL and accountability for grave breaches of IHL.

Questions for discussion:

- What is the link between grave breaches of IHL and war crimes?
- What measures can participating States take to fulfil their IHL obligations, especially with respect to grave breaches?
- How can international organizations such as the OSCE contribute to ensuring respect of IHL and accountability for grave breaches of IHL?

[17.30 – 18.30 – side events]

Day 2

[9.00 – 10.00 – side events]

10.30 – 12.30 **SESSION II: Documenting Cases of Torture in Situations of Armed Conflict**

The investigation and documentation of allegations of torture is crucial to ensuring that perpetrators are held accountable for their action and that victims obtain redress. Recognizing the importance of adopting a victim-centred approach in the fight against torture and other cruel, inhuman or degrading treatment or punishment, in Ministerial Council Decision No. 7/20 (Tirana 2020) OSCE participating States committed to paying special attention to the views and specific needs of victims in policy development and other activities relating to rehabilitation, prevention and accountability for torture and other cruel, inhuman or degrading treatment or punishment.

The Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol, revised in 2022), considered the global standards in this regard, provides valuable guidance on investigation and documentation of torture. The methods outlined in the Istanbul Protocol are applicable in many contexts, including in situations of armed conflicts. Para. 213 underlines that “*Investigations taking place in challenging contexts, such as during armed conflict or in extremely resource-limited contexts, must nevertheless take all reasonable steps to comply with the standards set out in this manual.*”

Documenting torture in situations of armed conflict presents particular challenges, notably because access to conflict-affected areas can be limited. Access to victims may also be difficult, and there is a risk that the evidence collected will be damaged or destroyed. Those involved in

the documentation of torture must thus ensure that evidence is stored in a safe and secure way. Those who interview victims of torture, with a view to collect evidence, must maintain a trauma-informed and victim-centred approach, ensuring that victims remain safe and are not re-traumatized.

SGBV has been recognized as a form of torture or other ill-treatment. Dealing with victims of SGBV as a form of torture requires specific sensitivity, skills and training; in situations of armed conflict peace times alike, these crimes tend to be under-reported for reasons such as stigma and shame.

Civil society plays a crucial and complementary role in documenting torture and other ill-treatment. In conflict-affected zones, frontline civil society organizations (CSOs) may be the only actors who have access to victims, although often with limited resources and capacities. It is imperative that civil society is able to document torture in accordance with international standards and that the evidence collected is properly preserved and can be used in criminal proceedings.

This session will discuss the importance of timely documentation torture and other ill-treatment, including SGBV as a form of torture, in accordance with the standards set in the Istanbul Protocol. It will examine the main challenges that arise when documenting torture in situations of armed conflict, including when dealing with victims, and when collecting, storing and preserving evidence. It will also explore the important role that civil society play in documenting torture and discuss how to enhance cooperation among stakeholders, with the ultimate aim of strengthening accountability for acts of torture.

Questions for discussion:

- What can be done to ensure that acts of torture, including SGBV, are documented in accordance with the Istanbul Protocol?
- What are the main challenges when documenting torture in situations of armed conflict, and how are these challenges best addressed?
- How should evidence be collected in a victim-centered and trauma-informed manner, be properly stored and preserved for accountability purposes?
- How can co-operation among participating States, international organizations and civil society be strengthened in this regard?

[13.15 – 14.15 – side events]

14.30 – 16.30

SESSION III: Responses to Gross Violations of International Human Rights Law During Times of Crisis

There are no formal definitions of what constitutes "gross violations" of IHRL. However, this term has been generally understood as encompassing those violations that affect the most basic human rights, notably the right to life and the right to physical and moral integrity. It is generally assumed that genocide, slavery and slave trade, murder, enforced disappearances, torture or other cruel, inhuman or degrading treatment or punishment, prolonged arbitrary detention, deportation or forcible transfer of population, and systematic racial discrimination fall into this category.

Gross violations of IHRL can occur in times of war and in times of peace, including during times of crisis, in situations of political instability and national emergencies. They give rise to several obligations. Similar to cases of serious violations of IHL, cases of gross violations of

IHRL require States to investigate. As a result, and if there is sufficient evidence, States have a duty to submit to prosecution the person allegedly responsible for the violations and, if found guilty, the duty to punish them. It is also imperative on all States to adopt all necessary legislative and other measures to give effect to human rights. Providing effective remedies against human rights violations and equal and effective access to justice and reparation to victims are also important elements of the response to gross IHRL violations (*UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, A/RES/60/147, 16 December 2005).

National Human Rights Institutions and National Preventative Mechanisms under the Optional Protocol to the Convention Against Torture, international organizations and civil society all have a role to play to ensure prevention of and efficient responses to gross violations of IHRL during times of crisis. Justice sector actors also serve a crucial function in upholding the rule of law and safeguarding human rights and fundamental freedoms and ensuring accountability in these contexts.

This session will offer participants an opportunity to explore what may constitute a gross IHRL violation and when they commonly occur, including during times of crisis, political instability and national emergencies. Discussions will focus on specific responses to such violations, as well as the roles and responsibilities of different stakeholders, including national institutions, international organizations and civil society.

Questions for discussion:

- What measures can participating States take to prevent gross violations of IHRL including in times of crisis, political instability and national emergencies?
- What redress is available to victims of gross violations of IHRL?
- What role can national institutions, international organizations and civil society play in responding to gross violations of IHRL in times of crisis?

16.30 – 17.30

CLOSING SESSION

Reports from the working sessions

Comments from the floor

Closing remarks

17.30

Closing of the meeting

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