Declaration of Minimum Humanitarian Standards (1990)  
Introduction by Asbjørn Eide and Allan Rosas (1997)

It is a well-known fact that human rights are often at considerable risk in situations of internal violence and public emergency. Apart from the political and emotional tensions, the normative framework is rather weak. If the situation falls short of an armed conflict, humanitarian law does not apply.\(^1\) Even if the situation can be considered a non-international armed conflict, the rather minimal guarantees of Article 3 common to the 1949 Geneva Conventions may be the only applicable humanitarian law instrument.\(^2\) As far as human rights law is concerned, states may in such situations be able to proclaim a public emergency and consequently derogate from many, if not all, of the provisions of human rights conventions to which they have adhered.\(^3\) Furthermore, in this ‘grey zone’ between humanitarian law and human rights law, national systems of democratic and legal controls may often break down or be considerably flawed.

In June 1987, the Norwegian Institute of Human Rights convened an expert meeting in Oslo to discuss these problems. The meeting adopted the Oslo Statement on Norms and Procedures in Times of Public Emergency or Internal Violence.\(^4\) The meeting drew upon draft declarations on internal strife which had been prepared by Theodor Meron.\(^5\)

As a follow-up to the Oslo meeting, an expert meeting was convened by the Åbo Akademi University Institute for Human Rights in Turku/Åbo, Finland, on 30 November – 2 December 1990. The so-called Turku Declaration of Minimum Humanitarian Standards was adopted by the participants of this meeting. The Turku meeting was a private expert

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\(^1\) The most important instruments are the four Geneva Conventions of 1949 and their two Additional Protocols of 1977. Protocol I of 1977 relates to the protection of victims of international armed conflicts and Protocol II to the protection of victims of non-international armed conflicts.

\(^2\) It will be noted that Additional Protocol II (see supra, note 1) is according to its Article 1, paragraph 1, applicable only in non-international armed conflicts ‘which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol’. In paragraph 2 of the same Article, it is made clear that the Protocol does not apply ‘to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts’.

\(^3\) The most important derogation clauses are contained in Article 4 of the International Covenant on Civil and Political Rights of 1966; Article 15 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950; Article 30 of the European Social Charter of 1961; and Article 27 of the American Convention on Human Rights of 1969.


meeting in which everyone took part in her or his personal capacity. Later on, however, the Turku Declaration has been acknowledged in several inter-governmental contexts as well.

Without commenting on the text in greater detail, some major features of the Declaration should be pointed out. This will be done especially with a view to record the differences between this Declaration and some earlier documents, which likewise address situations of public emergency and civil strife. We are thinking mainly of the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, adopted by an expert meeting in 1984; the Paris Minimum Standards of Human Rights Norms in a State of Emergency, adopted by the International Law Association in 1984; and a Code of Conduct in the Event of Internal Disturbances and Tensions, proposed by Hans-Peter Gasser and published in 1988.

The following features of the new Declaration should be mentioned in this context:

* The Declaration contains substantive standards rather than procedural rules;

* It is of a general character and is not linked to any particular existing legal instrument;

* The Declaration combines elements of both humanitarian law and human rights law;

* It is, in principle, applicable in all situations, during peacetime as well as wartime, and thus does not contain any particular threshold of applicability;

* The standards affirmed in the Declaration cannot be derogated from under any circumstances (so-called non-derogable rights) and must be respected, whether or not a state of emergency has been proclaimed;

* The standards shall be respected by, and applied to, all persons, groups and authorities, thus including both governments and their possible opponents;

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6 The participants were: Gudmundur Alfredsson (Geneva); Theo van Boven (Maastricht); Luigi Condorelli (Geneva); Leandro Despouy (Buenos Aires); Krzysztof Drzewicki (Gdansk and Oslo); Asbjørn Eide (Oslo), Katarina Frostell (Turku/Åbo); Hans-Peter Gasser (Geneva); Françoise Hampson (Colchester); Lauri Hannikainen (Helsinki and Turku/Åbo); Raija Hanski (Turku/Åbo); Göran Melander (Lund); Theodor Meron (New York); Lars Adam Rehof (Copenhagen); Allan Rosas (Turku/Åbo); Martin Scheinin (Helsinki) and Emile K.M. Yakpo (London and Accra).

7 For more detailed comments, see the Background Paper by Asbjørn Eide, Allan Rosas and Theodor Meron, included in UN doc. E/CN.4/1995/116 (31 January 1995).


* The Declaration is fairly elaborate and may include elements not only of the reaffirmation of existing treaty and customary law but also of progressive development.

Such a Declaration is, of course, only one effort to affirm the minimum normative standards which should be respected in all circumstances and does not solve all the problems posed by these situations. The need for further action is recognized in the last preambular paragraph of the Turku Declaration, where attention is drawn to the development and strict implementation of national legislation, the strengthening of cooperation necessary for more efficient implementation of national and international norms, including international mechanisms of monitoring, and the dissemination and teaching of such norms.

States as well as the United Nations and other international organizations were invited to consider and endorse the Turku Declaration. Already in 1991, two members of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities submitted the text of the Declaration for circulation as a UN document. It was also disseminated as a pamphlet by the Åbo Akademi Institute for Human Rights, and published in the American Journal of International Law and the International Review of the Red Cross.

The text of the Declaration was also submitted by the Finnish Delegation to the Moscow meeting on the CSCE Human Dimension in September-October 1991, and some of its elements are reflected in the section on public emergencies (paragraphs 28 and 28.1–28.10) of the Moscow Document. At the CSCE Human Dimension meeting of September-October 1993 in Warsaw, an informal recommendation was adopted, according to which the participating States ‘should lend their support to the idea of further promotion within the United Nations of a declaration on minimum humanitarian standards’. Similar informal recommendations were also made at the OSCE Implementation Meetings on human dimension issues in Warsaw (1995) and Vienna (1996). The CSCE (later to become OSCE) Budapest Summit Meeting of Heads of State or Government emphasized ‘the potential significance of a declaration on minimum humanitarian standards applicable in all situations’ and declared ‘their willingness to actively participate in its preparation in the framework of the United Nations’.

Formal recognition of the Turku Declaration in a UN context took place in 1994, when the Sub-Commission on Prevention of Discrimination and Protection of Minorities adopted by consensus resolution 1994/26. In this resolution, the Sub-Commission, having

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17 In this context, it should also be mentioned that in 1993 the World Conference on Human Rights called upon states and all parties to armed conflicts ‘strictly to observe international humanitarian law, as set forth in the Geneva Conventions of 1949 and other rules and principles of international law, as well as minimum standards for protection of human rights, as laid down in international conventions’. The Vienna Declaration
considered the Declaration of Minimum Humanitarian Standards and having noted that the Declaration, having been adopted by a group of experts, does not in itself constitute an international legal instrument but aims at the reaffirmation and progressive development of international law, decided to transmit the text of the Declaration to the Commission on Human Rights and recommended that the Commission ‘examine the Declaration with a view to its further elaboration and eventual adoption’.

In September of the same year, the Norwegian Institute of Human Rights organized a new meeting of experts to discuss the implications of the above inter-governmental developments. At this meeting, some proposals were put forward for possible improvements in the text of the Declaration itself.18

During its fifty-first session in 1995, the UN Commission on Human Rights in resolution 1995/29 took note of the resolution adopted in the previous year by the Sub-Commission. The Commission, by consensus, recognized ‘the need to address principles applicable to situations of internal and related violence, disturbance, tension and public emergency in a manner consistent with international law and the Charter of the United Nations’ and requested the UN Secretary-General to transmit the text of the Turku Declaration to governments and inter-governmental and non-governmental organizations for their comments and to submit a report on this matter to the Commission on Human Rights at its fifty-second session (1996).

The report of the Secretary-General was submitted in November 1995.19 Comments on the Declaration were received from fifteen governments, seven UN specialized agencies and inter-governmental organizations and eight non-governmental organizations.20

At its 1996 session, the Commission on Human Rights adopted, again by consensus, resolution 1996/26, where the Commission, taking note of the previous resolutions on this matter by the Sub-Commission and the Commission, inter alia, welcomed the offer by the Nordic countries to organize, in cooperation with the International Committee of the Red Cross, a workshop for governmental and non-governmental experts from all regions to consider the question of minimum humanitarian standards and to make the outcome of the workshop available for dissemination to governments and inter-governmental and non-governmental organizations. Already before the adoption of this resolution, an informal meeting on minimum humanitarian standards was organized in Vienna in February 1996 in the context of the OSCE process.

The workshop mentioned in the UN Commission on Human Rights resolution 1996/26 was organized in Cape Town, South Africa, 27–29 September 1996. In its final report, the workshop suggested that the UN Commission on Human Rights request the UN Secretary-General to undertake, in coordination with the International Committee of the Red Cross, an analytical study of the issues addressed at the Cape Town workshop. Governments, treaty bodies, international organizations, particularly the UN High Commissioner for Refugees, as well as regional organizations and non-governmental

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18 These proposals are explained at the end of the Background Paper contained in UN doc. E/CN.4/1995/116.
organizations should be invited to contribute to the study as appropriate. The study should, among other things, assess the need for a UN document setting out and promoting minimum humanitarian standards or standards of humanity applicable in all circumstances.21 These recommendations were taken into account and largely confirmed by the Commission on Human Rights in its resolution 1997/21 adopted on 11 April 1997.

It is thus clear that the discussion on the need for minimum humanitarian standards will not only continue but be intensified at the inter-governmental level. It is obvious that the Turku Declaration has played a crucial role in promoting an increased focus on situations of internal violence and public emergencies and the need for non-derogable minimum standards especially in such situations.

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