

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

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.

⁴ See *Mennesker og Rettigheter: Nordic Journal on Human Rights*, Vol. 5, No. 3 (1987), pp. 2–15, with briefer notes written by some of the participants and the text of the Oslo Statement.

⁵ One version has been published in *Mennesker og Rettigheter: Nordic Journal on Human Rights*, Vol. 5, No. 3 (1987), pp. 12–15, and a slightly revised version in *International Review of the Red Cross*, No. 262 (1988), pp. 66–76. See also T. Meron, 'On the Inadequate Reach of Humanitarian and Human Rights Law and the Need for a New Instrument', *American Journal of International Law*, Vol. 77 (1983), pp. 589–606; T. Meron, 'Towards a Humanitarian Declaration on Internal Strife', *American Journal of International Law*, Vol. 78 (1984), pp. 859–868; T. Meron, *Human Rights in Internal Strife: Their International Protection* (Cambridge: Grotius Publications, 1987), pp. 135 *et seq.*

meeting in which everyone took part in her or his personal capacity.⁶ Later on, however, the Turku Declaration has been acknowledged in several inter-governmental contexts as well.

Without commenting on the text in greater detail,⁷ 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;⁸ the *Paris Minimum Standards of Human Rights Norms in a State of Emergency*, adopted by the International Law Association in 1984;⁹ and a *Code of Conduct in the Event of Internal Disturbances and Tensions*, proposed by Hans-Peter Gasser and published in 1988.¹⁰

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;

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).

⁸ Text published in UN doc. E/CN.4/1984/4; *Review of the International Commission of Jurists*, No. 36 (1985), pp. 47–56; *Human Rights Quarterly*, Vol. 7 (1985), pp. 3–14.

⁹ Text published in International Law Association, *Report of the Sixty-first Conference* (1984), pp. 58 *et seq.*; *American Journal of International Law*, Vol. 79 (1985), pp. 1072–1081; S. R. Chowdhury, *Rule of Law in a State of Emergency: The Paris Minimum Standards of Human Rights in a State of Emergency* (London: Pinter Publishers, 1989).

¹⁰ H-P. Gasser, 'A Measure of Humanity in Internal Disturbances and Tensions: Proposal for a Code of Conduct', *International Review of the Red Cross*, No. 262 (1988), pp. 38–50, text of Code, pp. 51–53, commentary, pp. 54–58.

- * 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.¹¹ It was also disseminated as a pamphlet by the Åbo Akademi Institute for Human Rights, and published in the American Journal of International Law¹² and the International Review of the Red Cross.¹³

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.¹⁴ 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).¹⁵ 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’.¹⁶

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 1994/26.¹⁷ In this resolution, the Sub-Commission, having

¹¹ UN doc. E/CN.4/Sub.2/1991/55 (Working Paper by Mr Theo van Boven and Mr Asbjørn Eide).

¹² Vol. 85 (1991), pp. 377–381.

¹³ Vol. 31, No. 282 (1991), pp. 330–336.

¹⁴ Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE (1991).

¹⁵ See OSCE Implementation Meeting on Human Dimension Issues (Warsaw, 2–19 October 1995), Rapporteur’s Report, Subsidiary Working Body 1; and Implementation of OSCE Commitments in the Human Dimension, Report of Working Group One, Review Meeting, Vienna, 4–28 November 1996.

¹⁶ Budapest Document 1994: ‘Towards a Genuine Partnership in a New Era’, Budapest Decisions, Chapter VIII: The Human Dimension, para. 34.

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

and Programme of Action, UN doc. A/CONF.157/23, Part II, para. 29. Also, the International Criminal Tribunal for the Former Yugoslavia has referred to the Turku Declaration when discussing limitation of the rights of the parties to conflicts to apply methods and means of warfare. See case No. IT-94-1-AR72, The Prosecutor v. Duško Tadić a/k/a 'Dule', decision of 2 October 1995.

¹⁸ These proposals are explained at the end of the Background Paper contained in UN doc. E/CN.4/1995/116.

¹⁹ UN doc. E/CN.4/1996/80.

²⁰ See UN docs. E/CN.4/1996/80 and Addendums 1–3; and UN doc. E/CN.4/1997/77.

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.

²¹ Report of the International Workshop on Minimum Humanitarian Standards, Cape Town, 27–29 September 1996, UN doc. E/CN.4/1997/77/Add.1.

DECLARATION OF MINIMUM HUMANITARIAN STANDARDS

Adopted by an expert meeting convened by the Institute for Human Rights, Åbo Akademi University, in Turku/Åbo, Finland, 30 November – 2 December 1990 (list of participants annexed).

Recalling the reaffirmation by the Charter of the United Nations and the Universal Declaration of Human Rights of faith in the dignity and worth of the human person;

Considering that situations of internal violence, disturbances, tensions and public emergency continue to cause serious instability and great suffering in all parts of the world:

Concerned that in such situations human rights and humanitarian principles have often been violated;

Recognizing the importance of respecting existing human rights and humanitarian norms;

Noting that international law relating to human rights and humanitarian norms applicable in armed conflicts do not adequately protect human beings in situations of internal violence, disturbances, tensions and public emergency;

Confirming that any derogations from obligations relating to human rights during a state of public emergency must remain strictly within the limits provided for by international law, that certain rights can never be derogated from and that humanitarian law does not admit of any derogations on grounds of public emergency;

Confirming further that measures derogating from such obligations must be taken in strict conformity with the procedural requirements laid down in those instruments, that the imposition of a state of emergency must be proclaimed officially, publicly, and in accordance with the provisions laid down by law, that measures derogating from such obligations will be limited to the extent strictly required by the exigencies of the situation, and that such measures must not discriminate on the grounds of race, colour, sex, language, religion, social, national or ethnic origin;

Recognizing that in cases not covered by human rights and humanitarian instruments, all persons and groups remain under the protection of the principles of international law derived from established custom, from the principles of humanity and the dictates of public conscience;

Believing that it is important to reaffirm and develop principles governing behaviour of all persons, groups, and authorities in situations of internal violence, disturbances, tensions and public emergency;

Believing further in the need for the development and strict implementation of national legislation applicable to such situations, for strengthening cooperation necessary for more efficient implementation of national and international norms, including international mechanisms for monitoring, and for the dissemination and teaching of such norms,

Now, therefore...

Proclaim this Declaration of Minimum Humanitarian Standards.

Article 1

This Declaration affirms minimum humanitarian standards which are applicable in all situations, including internal violence, disturbances, tensions, and public emergency, and which cannot be derogated from under any circumstances. These standards must be respected whether or not a state of emergency has been proclaimed.

Article 2

These standards shall be respected by, and applied to all persons, groups and authorities, irrespective of their legal status and without any adverse discrimination.

Article 3

1. Everyone shall have the right to recognition everywhere as a person before the law. All persons, even if their liberty has been restricted, are entitled to respect for their person, honour and convictions, freedom of thought, conscience and religious practices. They shall in all circumstances be treated humanely, without any adverse distinction.

2. The following acts are and shall remain prohibited:

- a) violence to the life, health and physical or mental well-being of persons, in particular murder, torture, mutilation, rape, as well as cruel, inhuman or degrading treatment or punishment and other outrages upon personal dignity;
- b) collective punishments against persons and their property;
- c) the taking of hostages;
- d) practising, permitting or tolerating the involuntary disappearance of individuals, including their abduction or unacknowledged detention;
- e) pillage;
- f) deliberate deprivation of access to necessary food, drinking water and medicine;
- g) threats or incitement to commit any of the foregoing acts.

Article 4

1. All persons deprived of their liberty shall be held in recognized places of detention. Accurate information on their detention and whereabouts, including transfers, shall be made promptly available to their family members and counsel or other persons having a legitimate interest in the information.

2. All persons deprived of their liberty shall be allowed to communicate with the outside world including counsel in accordance with reasonable regulations promulgated by the competent authority.

3. The right to an effective remedy, including habeas corpus, shall be guaranteed as a means to determine the whereabouts or the state of health of persons deprived of their liberty and for identifying the authority ordering or carrying out the deprivation of liberty. Everyone who is deprived of his or her liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of the detention shall be decided speedily by a court and his or her release ordered if the detention is not lawful.

4. All persons deprived of their liberty shall be treated humanely, provided with adequate food and drinking water, decent accommodation and clothing, and be afforded safeguards as regards health, hygiene, and working and social conditions.

Article 5

1. Attacks against persons not taking part in acts of violence shall be prohibited in all circumstances.

2. Whenever the use of force is unavoidable, it shall be in proportion to the seriousness of the offence or the objective to be achieved.

3. Weapons or other material or methods prohibited in international armed conflicts must not be employed in any circumstances.

Article 6

Acts or threats of violence the primary purpose or foreseeable effect of which is to spread terror among the population are prohibited.

Article 7

1. The displacement of the population or parts thereof shall not be ordered unless their safety or imperative security reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the population may be transferred and received under satisfactory conditions of shelter, hygiene, health, safety, and nutrition. Persons or groups thus displaced shall be allowed to return to their homes as soon as the conditions which made their displacement imperative have ceased. Every effort shall be made to enable those so displaced who wish to remain together to do so. Families whose members wish to remain together must be allowed to do so. The persons thus displaced shall be free to move around in the territory, subject only to the safety of the persons involved or reasons of imperative security.

2. No persons shall be compelled to leave their own territory.

Article 8

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his or her life.
2. In addition to the guarantees of the inherent right to life, and the prohibition of genocide, in existing human rights and humanitarian instruments, the following provisions shall be respected as a minimum.
3. In countries which have not yet abolished the death penalty, sentences of death shall be carried out only for the most serious crimes. Sentences of death shall not be carried out on pregnant women, mothers of young children or on children under eighteen years of age at the time of the commission of the offence.
4. No death sentence shall be carried out before the expiration of at least six months from the notification of the final judgment confirming such death sentence.

Article 9

No sentence shall be passed and no penalty shall be executed on a person found guilty of an offence without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by the community of nations. In particular:

- a) the procedure shall provide for an accused to be informed without delay of the particulars of the offence alleged against him or her, shall provide for a trial within a reasonable time, and shall afford the accused before and during his or her trial all necessary rights and means of defence;
- b) no one shall be convicted of an offence except on the basis of individual penal responsibility;
- c) anyone charged with an offence is presumed innocent until proved guilty according to law;
- d) anyone charged with an offence shall have the right to be tried in his or her presence;
- e) no one shall be compelled to testify against himself or herself or to confess guilt;
- f) no one shall be liable to be tried or punished again for an offence for which he or she has already been finally convicted or acquitted in accordance with the law and penal procedure;
- g) no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under applicable law, at the time when it was committed.

Article 10

Every child has the right to the measures of protection required by his or her condition as a minor and shall be provided with the care and aid the child requires. Children who have not yet attained the age of fifteen years shall not be recruited in or allowed to join armed forces or armed groups or allowed to take part in acts of violence. All efforts shall be made not to allow persons below the age of eighteen to take part in acts of violence.

Article 11

If it is considered necessary for imperative reasons of security to subject any person to assigned residence, internment or administrative detention, such decisions shall be subject to a regular procedure prescribed by law affording all the judicial guarantees which are recognized as indispensable by the international community, including the right of appeal or to a periodical review.

Article 12

In every circumstance, the wounded and sick, whether or not they have taken part in acts of violence, shall be protected and treated humanely and shall receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. There shall be no distinction among them on any grounds other than their medical condition.

Article 13

Every possible measure shall be taken, without delay, to search for and collect wounded, sick and missing persons and to protect them against pillage and ill-treatment, to ensure their adequate care, and to search for the dead, prevent their being despoiled or mutilated, and to dispose of them with respect.

Article 14

1. Medical and religious personnel shall be respected and protected and shall be granted all available help for the performance of their duties. They shall not be compelled to carry out tasks which are not compatible with their humanitarian missions.

2. Under no circumstances shall any person be punished for having carried out medical activities compatible with the principles of medical ethics, regardless of the person benefitting therefrom.

Article 15

In situations of internal violence, disturbances, tensions or public emergency, humanitarian organizations shall be granted all the facilities necessary to enable them to carry out their humanitarian activities.

Article 16

In observing these standards, all efforts shall be made to protect the rights of groups, minorities and peoples, including their dignity and identity.

Article 17

The observance of these standards shall not affect the legal status of any authorities, groups, or persons involved in situations of internal violence, disturbances, tensions or public emergency.

Article 18

1. Nothing in the present standards shall be interpreted as restricting or impairing the provisions of any international humanitarian or human rights instrument.

2. No restriction upon or derogation from any of the fundamental rights of human beings recognized or existing in any country by virtue of law, treaties, regulations, custom, or principles of humanity shall be admitted on the pretext that the present standards do not recognize such rights or that they recognize them to a lesser extent.

Turku/Åbo, 2 December 1990

MINIMUM HUMANITARIAN STANDARDS

International Symposium
Turku/Åbo 30 November – 2 December 1990

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Declaration of Minimum Humanitarian Standards (1990)

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Sub-Commission on Prevention of Discrimination and Protection of Minorities

E/CN.4/Sub.2/1991/55 - Review of further developments in fields with which the Sub-Commission has been concerned: Declaration of minimum humanitarian standards, Working paper submitted by Mr Theo van Boven and Mr Asbjørn Eide

Commission on Human Rights

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