



## United States Mission to the OSCE

### Prevention of Torture Statement

Delivered by Ambassador Stephan M. Minikes  
at the Supplementary Human Dimension Meetings  
November 6, 2003

Mr. Chairman,

The United States is extremely concerned that there continue to be credible reports of torture in a number of OSCE participating States. Torture should be an anachronism in the modern world, a thing of the past. It is simply and completely unacceptable, yet it exists. There is no justification for torture and it must be completely eradicated.

For example, we continue to be gravely concerned about reports of torture and deaths in detention in Turkmenistan. Following reports of last year's November 25 attack on President Niyazov's motorcade, there have been multiple, credible reports of torture of persons detained in connection with that event, as well as information from persons since released who have reported seeing others tortured. Some family members even described hearing their loved ones being tortured in the next room, an appallingly cruel means of extracting information from them. The persons reportedly tortured include a former Turkmenistan Ambassador to the OSCE, Batyr Berdiev, as well as Boris Shikmuradov, Yklim Yklimov, Yazgeldy Gundogdiyev, Timur Jumayev and Akmurad Kabulov. In addition, Gurbanmurad Niyazov and Khait Kakayev have died in custody - apparently from malnutrition and a lack of medical care. Extraordinary all the more so, when one considers that these are acts of state.

These reports obviously require vigorous investigation and remedy, and should not be swept under the rug by the Government of Turkmenistan. International efforts to investigate these reports and to learn more about specific cases have been thwarted by Turkmenistan officials. The OSCE, through its Moscow Mechanism, provided an effective tool for investigating these allegations of torture but unfortunately, the Government of Turkmenistan has not cooperated with OSCE's special rapporteur, nor has the Government responded to the recommendations put forth in this year's resolution on Turkmenistan in the U.N. Commission on Human Rights. The Government of Turkmenistan has done nothing to address these concerns, which deal directly with issues of torture, such as allowing international access to prisoners. For example, during my recent visit to Turkmenistan I specifically asked to visit Ambassador Batyr Berdiev in order to dispel rumors that he had perhaps even died in prison. I was denied this access, and Turkmen authorities refused to offer reassurances that Ambassador Berdiev indeed was still alive. Instead, Foreign Minister Meredov

characterized my request as showing a lack of trust in the Government of Turkmenistan. Clearly, when Turkmenistan refuses to abide by even its most basic international commitments, something is terribly wrong.

We also note that the government of Uzbekistan publicly acknowledged the problem of serious abuses in its prisons and detention facilities soon after the UN Special Rapporteur on Torture made his February 2003 report. We appreciate this frank acceptance of the need to confront the problem, as well as Uzbekistan's subsequent dialogue on the issue with foreign ambassadors and UN officials. Unfortunately, the underlying problem continues to persist. People continue to die in the custody of Uzbek authorities. There have been two such deaths this year and four such deaths last year, each likely the result of torture, and all unaccounted for. We therefore urge President Karimov to state clearly that torture in Uzbekistan's prisons is unacceptable and that it must stop. We call on the Government of Uzbekistan to conduct credible investigations of these deaths and appropriately punish those responsible.

The United States appreciates the process underway in Uzbekistan to craft an action plan to combat torture. To be meaningful, of course, such a plan must also lead to concrete action. We recommend that the Government of Uzbekistan include in its action plan the following steps, all of which are addressed in the three sessions of this Supplementary Human Dimension Meeting:

First - officials at the highest levels of government should issue and widely publicize a clear, unequivocal condemnation of torture and other cruel, inhuman or degrading treatment or punishment.

Second - measures providing for the right of habeas corpus should be enacted and implemented within months, not within years.

Third - testimony as a result of torture should be prohibited as evidence in criminal trials, both in law and in practice.

Uzbek authorities must investigate and prosecute instances of torture.

Consistent with the OSCE commitment adopted at the Istanbul Summit, the government of Uzbekistan should assist victims of torture, and cooperate with international and non-governmental organizations in identifying torture victims and ensuring treatment for them.

In the Caucasus, we remain deeply concerned about torture used as a means of coercing confessions from suspects. Most governments do not do enough to investigate the majority of allegations of torture, and do not dismiss or discipline perpetrators. There have been credible reports in Azerbaijan that some detained in the wake of the October election have been beaten. This spotlights a continuing problem of police beatings in detention facilities there. We urge the

Government of Azerbaijan to continue to provide prison access to the Council of Europe, OSCE and the International Committee of the Red Cross officials, and to investigate and prosecute according to the rule of law all election-related violence, whether committed by police or civilians. In Armenia, the beating of pretrial detainees remains a routine part of criminal investigations, and many cases of police brutality go unreported because of fear of police retribution. On the positive side, we congratulate Ambassador Reeve and his able staff in Georgia on the positive contributions the OSCE Mission has made toward reform of the penitentiary system, developing a Public Defender's Office, and the issuance of a National Plan of Action against Torture. Follow up by the Georgian government on this plan will of course be key to its success. Accountability is essential as a deterrent against future torture.

In Russia, we continue to receive credible reports of torture, among a number of human rights abuses, in Chechnya. In addition, human rights groups have described torture as widespread throughout Russia, although changes effected by the new criminal procedure code that limit pre-trial detention have reduced opportunities for such methods. We urge Russian authorities to hold accountable those who engage in torture.

Our recommendations apply equally to all OSCE participating States. Let me state unequivocally that the United States practices what it preaches. At the national level, President George Bush has restated the U.S. commitment against torture and the infliction of severe physical or mental pain or suffering on any persons within its custody or control. The United States Constitution also prohibits and quoting the words from the Constitution itself, "cruel and unusual punishment". This limits methods of police investigation, formal sentences, and actual conditions in jail. The so-called "exclusionary rule" means that statements obtained under torture will not be admitted into evidence in a prosecution. Allegations of police violence are investigated and wherever possible, they are prosecuted. These safeguards apply both to federal, state, and local criminal justice systems.

Specifically on the issue of procedural safeguards during detention: We note that the majority of reports of torture concerns persons under detention or in custody; law enforcement officials are often among those accused. It is therefore important to increase OSCE efforts to train and professionalize police. In addition, governments must make it absolutely clear to police, detention, and prison officials that torture will not be tolerated and that persons found to have tortured will be punished. The OSCE should ensure that its training programs - including police and judicial training programs - incorporate information on preventing and punishing acts of torture, stressing the procedural safeguards that accomplish this. Ultimately, however, combating torture requires the political will and leadership of individual participating States.

One of the structural factors that fosters and sustains the use of torture is the set of rules and practices of legal systems. For example, having the procurator look after the rights of the defendant **and** prosecute the case. This represents the age-old problem of a clear conflict of trying to serve two masters. And, since promotions are based upon convictions, confessions - even when they are extracted by torture - are clearly expedient. Similarly, in some systems, judicial officials are paid by the number of cases they try, creating another incentive to bring a case to the quickest and most expedient conclusion, in some cases leading to the use of beatings and torture in investigative proceedings. In other situations, police in far-off regions of a country face little accountability for violating the human rights and legal protections of local citizens. In some cases, problems that occur may be the result of democratic transition filtering down too slowly from the offices of elected leaders to the local police station.

Hence, Mr. Chairman, I would like to suggest a few concrete measures to mitigate some of the procedural and structural factors that can contribute to torture and other illegal practices:

- The job of defending the accused should be separated from that of prosecuting the case.
- Compensation and promotions must be decoupled from caseload and convictions. Convictions, per se, should not be the goal of a judicial system, which must strive to get to the truth, and to administer justice correctly and impartially, with full respect for the constitution and for human rights.

This is not to say that other countries, including the United States, are without problems. My delegation views it as critical, however, that governments at the highest levels commit to ensuring satisfactory protection from police abuse and guarantee the rights of citizens in their homes or in detention. When police abuses do occur, governments must be held responsible. The OSCE also needs to do more to address the needs and the rights of victims of torture.

I do not wish Mr. Chairman to have the many instances of police abuse in OSCE States in any way imply that police are inherently at odds with human rights or are a threat to society. By and large, the police in my country and in most OSCE States are dedicated to protecting the public and partnering with the public to solve and prevent crimes. This is a fundamental concept in Community Policing, on which we had a Supplementary Human Dimension Meeting last November. The police can learn from civil society, and vice versa. We hope that the OSCE will continue to integrate the concepts of Community Policing into training programs for OSCE participating States.

In closing Mr. Chairman, if there is a political will to engage in genuine police reform and in the prevention of torture, the OSCE and its participating States

should be willing to help with that reform and we appreciate ODIHR and the Senior Police Advisor's ongoing efforts in providing that assistance. We hope that the ODIHR Experts Panel on the Prevention of Torture will be reinvigorated and be used as a tool to assist participating States in meeting their obligations in this very critical area.

Thank you.