

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 1995 Nr. 91

A. TITEL

*Verdrag tegen foltering en andere wrede, onmenselijke of onterende
behandeling of bestraffing;
New York, 10 december 1984*

B. TEKST

De Engelse en de Franse tekst van het Verdrag zijn geplaatst in *Trb.* 1985, 69.

Voor de ondertekeningen zie *Trb.* 1985, 69, *Trb.* 1989, 20¹⁾, *Trb.* 1990, 5 en *Trb.* 1993, 42. Het Verdrag is voorts nog ondertekend voor de volgende Staat:

Zuid-Afrika 29 januari 1993

¹⁾ De Regering van de Verenigde Staten van Amerika heeft op 3 juni 1994 de volgende mededeling gedaan:

“nothing in this Convention requires or authorizes legislation, or other action, by the United States of America prohibited by the Constitution of the United States as interpreted by the United States.”

C. VERTALING

Zie *Trb.* 1985, 69.

D. PARLEMENT

Zie *Trb.* 1989, 20.

Bij brieven van 21 oktober 1994 (Kamerstukken II 1994/95, 23 973 (R 1526) nr. 1) is de wijziging van het Verdrag in overeenstemming met artikel 2, eerste en tweede lid, en artikel 5, eerste en tweede lid, van de Rijkswet goedkeuring en bekendmaking verdragen overgelegd aan de Eerste en de Tweede Kamer der Staten-Generaal en aan de Staten van de Nederlandse Antillen en van Aruba.

De toelichtende nota die de brieven vergezelde, is ondertekend door de Minister van Buitenlandse Zaken H. A. F. M. O. VAN MIERLO.

De goedkeuring door de Staten-Generaal is verleend op 4 december 1994.

E. BEKRACHTIGING

Zie *Trb.* 1989, 20, *Trb.* 1990, 5¹⁾ en *Trb.* 1993, 42.

Behalve de aldaar genoemde hebben nog de volgende Staten in overeenstemming met artikel 25, tweede lid, van het Verdrag een akte van bekrachtiging nedergelegd bij de Secretaris-Generaal van de Verenigde Naties:

Marokko ²⁾	21 juni 1993
Costa Rica.	11 november 1993
de Verenigde Staten van Amerika ³⁾	21 oktober 1994

¹⁾ De Regering van het Verenigd Koninkrijk van Groot-Brittannië heeft op 8 december 1992 verklaard haar bekrachtiging van het Verdrag uit te breiden tot het Baljuwschap Guernsey, het Baljuwschap Jersey, het eiland Man, Bermuda en Hong-Kong.

²⁾ Onder de volgende voorbehouden:

“1. In accordance with Article 28, paragraph 1, the Government of the Kingdom of Morocco declares that it does not recognize the competence of the Committee provided for in Article 20.

2. In accordance with Article 30, paragraph 2, the Government of the Kingdom of Morocco further declares that it does not consider itself bound by paragraph 1 of the same article.” (*vertaling*)

³⁾ Onder de volgende voorbehouden, mededelingen en verklaringen:

Voorbehouden

“The Senate’s advice and consent is subject to the following reservations:

1. That the United States considers itself bound by the obligation under Article 16 to prevent ‘cruel, inhuman or degrading treatment or punishment,’ only insofar as the term ‘cruel, inhuman or degrading treatment or punishment’ means the cruel, unusual and inhumane treatment or punishment prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution of the United States.

2. That pursuant to Article 30(2) the United States declares that it does not consider itself bound by Article 30(1), but reserves the right specifically to agree to follow this or any other procedure for arbitration in a particular case.

Mededelingen

The Senate’s advice and consent is subject to the following understandings, which shall apply to the obligations of the United States under this Convention:

1. a) That with reference to Article 1, the United States understands that, in order to constitute torture, an act must be specifically intended to inflict severe physical or mental pain or suffering and that mental pain or suffering refers to prolonged mental harm caused by or resulting from: 1. the intentional infliction or threatened infliction of severe physical pain or suffering; 2. the administration or application, or threatened administration or application, of mind altering substances or other procedures calculated to disrupt profoundly the senses or the personality; 3. the threat of imminent death; or 4. the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the admin-

istration or application of mind altering substances or other procedures calculated to disrupt profoundly the senses or personality.

b) That the United States understands that the definition of torture in Article 1 is intended to apply only to acts directed against persons in the offender's custody or physical control.

c) That with reference to Article 1 of the Convention, the United States understands that 'sanctions' includes judicially-imposed sanctions and other enforcement actions authorized by United States law or by judicial interpretation of such law. Nonetheless, the United States understands that a State Party could not through its domestic sanctions defeat the object and purpose of the Convention to prohibit torture.

d) That with reference to Article 1 of the Convention, the United States understands that the term 'acquiescence' requires that the public official, prior to the activity constituting torture, have awareness of such activity and thereafter breach his legal responsibility to intervene to prevent such activity.

e) That with reference to Article 1 of the Convention, the United States understands that noncompliance with applicable legal procedural standards does not *per se* constitute torture.

2. That the United States understands the phrase, 'where there are substantial grounds for believing that he would be in danger of being subjected to torture,' as used in Article 3 of the Convention, to mean 'if it is more likely than not that he would be tortured.'

3. That it is the understanding of the United States that Article 14 requires a State Party to provide a private right of action for damages only for acts of torture committed in territory under the jurisdiction of that State Party.

4. That the United States understands that international law does not prohibit the death penalty, and does not consider this Convention to restrict or prohibit the United States from applying the death penalty consistent with the Fifth, Eighth and/or Fourteenth Amendments to the Constitution of the United States, including any constitutional period of confinement prior to the imposition of the death penalty.

5. That the United States understands that this Convention shall be implemented by the United States Government to the extent that it exercises legislative and judicial jurisdiction over the matters covered by the Convention and otherwise by the state and local governments. Accordingly, in implementing Articles 10-14 and 16, the United States Government shall take measures appropriate to the Federal system to the end that the competent authorities of the constituent units of the United States of America may take appropriate measures for the fulfillment of the Convention.

Verklaringen

The Senate's advice and consent is subject to the following declarations:

1. That the United States declares that the provisions of Articles 1 through 16 of the Convention are not self-executing.

2. That the United States declares, pursuant to Article 21, paragraph 1, of the Convention, that it recognizes the competence of the Committee against Torture to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the Convention. It is the understanding of the United States that, pursuant to the above-mentioned article, such communications shall be accepted and processed only if they come from a State Party which has made a similar declaration."

F. TOETREDING

Zie *Trb.* 1989, 20, *Trb.* 1990, 5 en *Trb.* 1993, 42.

Behalve de aldaar genoemde hebben nog de volgende Staten in overeenstemming met artikel 26 van het Verdrag een akte van toetreding nedergelegd bij de Secretaris-Generaal van de Verenigde Naties:

Mauritius	9 december 1992
Burundi	18 februari 1993
Slovenië	16 juli 1993
Antigua en Barbuda	19 juli 1993
Armenië	13 september 1993
Sri Lanka	3 januari 1994
Ethiopië	14 maart 1994
Albanië	11 mei 1994
Georgië	26 oktober 1994
Namibië	28 november 1994

Verklaring van voortgezette gebondenheid

De volgende Staten hebben een verklaring van voortgezette gebondenheid afgelegd:

Kroatië	12 oktober 1992
de Tsjechische Republiek ¹⁾	22 februari 1993
Slowakije ¹⁾	28 mei 1993
Bosnië-Herzegowina	1 september 1993
De Voormalige Joegoslavische Republiek Macedonië	12 december 1994

¹⁾ Onder de verklaring zich gebonden te achten aan het door Tsjechoslowakije bij de ondertekening gemaakte en bij de bekrachtiging bevestigde voorbehoud overeenkomstig artikel 20, eerste lid.

G. INWERKINGTREDING

Zie *Trb.* 1989, 20.

J. GEGEVENS

Zie *Trb.* 1985, 69, *Trb.* 1989, 20, *Trb.* 1990, 5 en *Trb.* 1993, 42.

Verwijzingen

Voor het op 26 juni 1945 te San Francisco tot stand gekomen Handvest der Verenigde Naties zie ook, laatstelijk, *Trb.* 1994, 277.

Voor het op 26 juni 1945 te San Francisco tot stand gekomen Statuut van het Internationale Gerechtshof zie ook *Trb.* 1987, 114.

Voor het op 19 december 1966 te New York tot stand gekomen Verdrag inzake burgerrechten en politieke rechten zie ook *Trb.* 1995, 18.

Voor het op 13 februari 1946 te Londen tot stand gekomen Verdrag nopens de voorrechten en immuniteiten van de Verenigde Naties zie ook *Trb.* 1994, 210.

Verklaring door Staten die partij zijn bij het Verdrag betreffende de erkenning van de bevoegdheid van het Comité tegen Foltering krachtens de artikelen 21 en 22 van het Verdrag

Australië op 28 januari 1993

“The Government of Australia declares that it recognises, for and on behalf of Australia, the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the aforesaid Convention; and

The Government of Australia hereby declares that it recognises, for and on behalf of Australia, the competence of the Committee to receive and consider communications from or on behalf of individuals subject to Australia’s jurisdiction who claim to be victims of a violation by a state Party of the provisions of the aforesaid Convention.”

Bulgarije op 12 mei 1993

“1. In accordance with article 21(1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Republic of Bulgaria declares that it recognizes the competence of the Committee against Torture to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under this Convention.

2. In accordance with article 22(1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Republic of Bulgaria declares that it recognizes the competence of the Committee against Torture to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of this Convention.”

Cyprus op 8 april 1993

“The Government of the Republic of Cyprus hereby declares that the Republic of Cyprus recognizes the competence of the Committee established under Article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the United Nations General Assembly on 10 December 1984:

1. to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the Convention (Article 21), and

2. to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention (Article 22).”

Kroatië op 12 oktober 1992

“[The] Republic of Croatia accepts the competence of the Committee in accordance with Article 21 and 22 of the said Convention.”

Polen op 12 mei 1993

“The Government of the Republic of Poland, in accordance with Article 21 and 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the United Nations General Assembly on 10 December 1984, recognizes the competence of the Committee against Torture to receive and consider communications to the effect that a State Party claims that the Republic of Poland is not fulfilling its obligations under the Convention or communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by the Republic of Poland of the provisions of the Convention.”

Slovenië op 16 juli 1993

“1. The Republic of Slovenia declares that it recognizes the competence of the Committee against Torture, pursuant to Article 21 of the said Convention, to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under this Convention.

2. The Republic of Slovenia also declares that it recognizes the competence of the Committee against Torture, pursuant to Article 22 of the said Convention, to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention.”

Venezuela op 26 april 1994

“The Government of the Republic of Venezuela recognizes the competence of the Committee against Torture as provided for under articles 21 and 22 of the Convention.....”

Verenigd Koninkrijk op 8 december 1992

Op de uitbreiding tot het Baljuwschap Guernsey, het Baljuwschap Jersey, het eiland Man, Bermuda en Hong-Kong is de verklaring krachtens artikel 21 afgelegd door het Verenigd Koninkrijk op 8 december 1989 (zie *Trb.* 1990, 5, blz. 8 en 9) van toepassing.

Wijziging van het Verdrag

Wijziging d.d. 9 september 1992 van artikelen 17 en 18

De wijziging (voor de tekst zie *Trb.* 1993, 42, blz. 7 en 8) is aanvaard voor de volgende Staten:

Finland.	5 februari 1993
Zweden	14 mei 1993
de Seychellen	23 juli 1993

Denemarken	3 september 1993
Noorwegen	6 oktober 1993
Nieuw-Zeeland	8 oktober 1993
Australië	15 oktober 1993
Zwitserland	10 december 1993
het Verenigd Koninkrijk van Groot-Brit- tannië en Noord-Ierland	7 februari 1994
Cyprus	22 februari 1994
Frankrijk	24 mei 1994
Oekraïne	17 juni 1994
Liechtenstein	24 augustus 1994
het <i>Koninkrijk der Nederlanden</i>	24 januari 1995
(voor het gehele Koninkrijk)	

Uitgegeven de *zevende* april 1995.

De Minister van Buitenlandse Zaken,

H. A. F. M. O. VAN MIERLO