



United States Mission to the OSCE

Session 5

Rule of Law II: Capital Punishment; Prevention of Torture; and Protection of Human Rights while Countering Terrorism

As prepared for delivery by Ambassador Avis Bohlen
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The prohibition against torture is a fundamental precept of international law and a core OSCE commitment to which all participating states must adhere. The U.S. government's human rights reports, which compile and assess information on the human rights conditions in 194 countries, speak to our belief that it is imperative for countries, including our own, to ensure that respect for human rights is an integral component of foreign policy. Other governments, individuals, and organizations use the human rights reports as essential sources of information about conditions in countries around the world.

President Obama has repeatedly affirmed that the United States rejects torture as unlawful, counter to American values, and inconsistent with the universal rights and freedoms that should be enjoyed by all men, women, and children wherever they live. Torture is abhorrent: we do not practice it, and we will not countenance it or transfer individuals to any country where they will be subjected to it. As a matter of law and policy, United States Government personnel are strictly prohibited from engaging in acts of torture or cruel, inhuman, or degrading treatment of any person in U.S. custody.

President Obama has also affirmed the importance of defending U.S. national security "with an abiding confidence in the rule of law and due process; in checks and balances and accountability." During his second full day in office, President Obama ordered a comprehensive review of U.S. policy regarding the detention, trial, transfer, release, or other disposition of detainees apprehended in armed conflict or counter-terrorism operations; ordered the closure of the detention facility at Guantanamo Bay, Cuba, and the review of the appropriate disposition options for detainees held there consistent with U.S. foreign policy and national security interests and the interests of justice; and ordered a review of U.S. interrogation practices to ensure the humane treatment of detainees and compliance with U.S. treaty obligations and domestic law. He instructed the Central Intelligence Agency to close as expeditiously as possible any detention facilities that it operated and ordered the CIA not to operate any detention facilities in the future.

The United States is committed to protecting human rights while countering terrorism. This is demonstrated in part by our support for bilateral and multilateral efforts – including

through the UN Counterterrorism Implementation Task Force – to strengthen the capacity of criminal justice institutions to prevent and counter terrorism under a rule of law-based, human rights-compliant framework and in furtherance of the UN Global Counter-Terrorism Strategy. Furthermore, we welcome the Irish Chairmanship’s vision in hosting a high-level rule-of-law counterterrorism event in Vienna in mid-November. Promoting the rule of law is a core competence of the OSCE, and we look forward to helping make the planned event successful.

To remain relevant on counterterrorism-related issues, however, the OSCE must actively engage in ongoing international counterterrorism efforts, such as by building collaboration with the recently launched Global Counterterrorism Forum (GCTF). The United States Government strongly supports the GCTF’s adoption of the Rabat Memorandum on Good Practices for Effective Counterterrorism Practice in the Criminal Justice Sectors, which provides a practical guide for police, the courts, and prisons to fight terrorism. We also strongly support the GCTF’s Rome Memorandum for the Rehabilitation and Reintegration of Violent Extremist Offenders, which emphasizes that these types of programs have the best chance of succeeding when they are nested within a rule of law-based approach to prison management. The OSCE and ODIHR, in particular, can become pivotal GCTF implementing partners by providing technical assistance and promoting the implementation of these good practices throughout the OSCE region, while also providing training to Partner States, upon request. In today’s constrained fiscal environment, we strongly urge collaborative counterterrorism efforts among the various international actors active in this field.

President Obama has continued to implement the U.S. commitment to upholding the rule of law, including through ensuring notice of and timely access for the International Committee of the Red Cross (ICRC) to any individual detained in any armed conflict in the custody or under the effective control of the U.S. Government, consistent with Department of Defense regulations and policies; ensuring the humane treatment of all persons in U.S. custody; the expansion of the review procedures for detainees held by the Department of Defense in Afghanistan in order to ensure that we do not detain anyone longer than necessary to mitigate the threat posed; and establishing a thorough periodic review process to assess, individually, the necessity of continuing to hold Guantanamo detainees based on whether they present a continuing significant threat to our national security. The Administration also remains committed to closing the detention facility at Guantanamo Bay. While that commitment has not wavered, the task has proven enormously complex. Our intensive efforts to close the facility continue every day. We are grateful to those countries, including those represented around this table, that have helped by accepting detainees for resettlement.

The United States has a flourishing media and civil society, which reflect a robust exercise of the freedoms of assembly, association, and expression. In the United States, individuals have the freedom to gather facts and to form their own opinions based on those facts. They need not fear arrest, imprisonment, or worse simply for asking questions and searching for answers. They have the ability to request and receive information in the possession of the government through the Freedom of Information Act. We know that this makes our democracy stronger, because the free flow of ideas and vigorous public debate provide individuals the tools they need to choose their leaders and determine their future.

With respect to capital punishment, we recognize that there is intense public discussion and debate on the issue of the death penalty both within and among nations. While we respect the views of those who seek to abolish capital punishment, the ultimate decision regarding this issue must be made through the domestic democratic processes of individual states and be consistent with their obligations under international law. The people of the United States, acting through their freely elected representatives, have enacted laws, at the federal level and in the majority of states, which authorize the death penalty for the most serious crimes, such as murder. U.S. constitutional restraints generally limit the use of the death penalty at the federal and state levels to crimes resulting in death, when carried out in aggravating or depraved circumstances, or by offenders with aggravated criminal histories.

We additionally note that international law does not prohibit capital punishment when imposed in accordance with a state's international obligations. The International Covenant on Civil and Political Rights (ICCPR) specifically recognizes the authority of countries to impose the death penalty for "the most serious crimes," carried out pursuant to a final judgment rendered by a competent court and in accordance with appropriate safeguards and observance of due process. Thus, for example, the U.S. judicial system provides an exhaustive system of protections to ensure that the death penalty is not applied in a summary or arbitrary manner and that its imposition does not constitute cruel or unusual punishment as prohibited by the United States Constitution, in keeping with our international obligations and OSCE commitments.