



United States Mission to the OSCE

Warsaw Human Dimension Conference

Right of Reply

Plenary Session 4: Fundamental Freedoms II

Freedom of Thought, Conscience, Religion or Belief;
Freedom of Peaceful Assembly and Association;
National Human Rights Institutions

As prepared by Ambassador Michael Kozak
Head of Delegation
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The United States exercises its right of reply to statements made during Plenary Session IV to clarify the United States' approach to implementing and monitoring compliance with our human rights obligations and claims regarding the Guantánamo Bay detention facility.

I. U.S. Human Rights Treaty Obligations

President Biden has said: “Demonstrating that our commitment to human rights begins at home is among the most powerful and persuasive tools in our foreign policy kit.” “Leading by example means taking action at home to renew and defend our own democracy; to advance equity and promote justice; to defend the sacred right to vote in free, fair and secure elections . . . We make the best case for gender equality, racial justice and equity, religious freedom, the rights of LGBTQ+ people and other marginalized communities around the world by practicing what we preach.”

The United States is, of course, obliged to fully implement its obligations under human rights treaties to which we are a party. We take those obligations seriously. Generally, there is no specific method a State Party must employ to implement its human rights treaty obligations—that is a matter left to domestic law. The U.S. determined that it could fully implement its human rights treaty obligations through vigorous enforcement of its federal, state and territorial laws which protect human rights, without the need for those treaties to be directly enforceable by individuals or otherwise in U.S. courts. For example, the U.S. implements its obligations under the International Covenant on Civil and Political Rights (ICCPR) through the U.S. Constitution and numerous laws which protect civil and political rights, including the Civil Rights Act. Federal and state courts and administrative proceedings provide ample opportunities for effective, independent and impartial review and recourse for those who, despite the protections, nevertheless are denied enjoyment of their human rights.

Under our federal system, complying with our treaty obligations is a collective effort among the federal, state, local, tribal and territorial governments. We have multiple complementary protections and mechanisms to safeguard human rights, including through our independent judiciary at both federal and state levels and numerous state and local human rights institutions. At the national level, the U.S. submits to regular monitoring by human rights treaty bodies and other mechanisms, such as ODIHR election monitoring missions, and engages in civil society consultations concerning a wide array of human rights issues. Further, on an ongoing basis, a range of federal agencies, including the Department of Justice, Department of Homeland Security, Equal Employment Opportunity Commission,

and the Department of Education, provide information, training and outreach at the state and local level on domestic protections that relate to, and in many cases implement, our human rights treaty obligations and related commitments. The United States also promotes public awareness of human rights treaties by making an extensive amount of information about our treaty obligations and reporting activities publicly available.

While we note that international law does not require states to establish a single focal point for coordinating sub-national reporting and implementation, we will continue to engage with civil society on ways to improve our implementation efforts.

II. Guantánamo Bay Detention Facility

The detainees who remain at the Guantánamo Bay detention facility continue to be detained lawfully both as a matter of international law and under U.S. domestic law. The circumstances that justify their detention have not ceased, because the United States remains engaged in ongoing armed conflict with al-Qaida and associated forces. As part of this conflict, the United States has captured and detained enemy belligerents and is permitted under the law of war to hold them until the end of hostilities. Further, as a matter of domestic law, detention is authorized by the 2001 Authorization for Use of Military Force (AUMF), as informed by the laws of war. Although U.S. forces completed their withdrawal from Afghanistan by August 31, 2021, the President has also made clear that al-Qaida and associated forces continue to pose a threat to the U.S. and that the U.S. continues its fight against them in Afghanistan and in other countries. U.S. federal courts have considered and rejected detainees' claims that the U.S. withdrawal from Afghanistan constitutes an end of hostilities and thus removes the lawful basis for their detention.

The U.S. government has repeatedly reaffirmed its commitment to closing the detention facility at Guantánamo. To that end, the Biden-Harris Administration has made significant progress towards responsibly reducing the detainee population and closing the Guantánamo facility. Ten individuals have been transferred out of Guantánamo since the start of the Biden-Harris Administration—one-quarter of the population we inherited. We are actively engaged in the process of identifying suitable transfer locations and engaging in intensive diplomatic efforts to facilitate transfers – with appropriate security and humane treatment assurances provided by receiving countries – for the transfer-eligible detainees. Current U.S. law prohibits the use of funds to transfer Guantánamo detainees to the United States and to Yemen, Libya, Somalia, Afghanistan, and Syria.

Further, the United States will not transfer any detainee from the Guantánamo detention facility to another State if it is more likely than not that the person would be tortured in the receiving country. In cases where the U.S. Government cannot repatriate a detainee to his country of origin, the United States must engage in complex diplomatic efforts to identify and facilitate third-country resettlement. For those few remaining detainees not yet eligible for transfer, we conduct periodic reviews to determine whether continued detention under the law of war is warranted. Separately, the military commissions process continues for those detainees subject to criminal prosecution.

The U.S. was pleased to facilitate the visit of the UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism (SR) to the U.S. detention facility at Guantánamo Bay. As Secretary Blinken noted at the time: “Responsible nations must not shrink from scrutiny of their human rights record; rather, they should acknowledge it with the intent to improve.” We provided the SR unprecedented access and detailed information with confidence that the conditions of

confinement at Guantánamo Bay are humane and reflect our respect for and protection of human rights for all who are within our custody. We are gratified that the SR acknowledges our openness, transparency, and leadership by example, as well as our ongoing commitment to upholding human rights. That said, the U.S. disagrees in significant respects with factual and legal assertions the SR made in her June 2023 report and we emphasize that the SR's conclusions are solely her own and do not reflect the official views of the UN. We are nonetheless carefully reviewing the SR's recommendations and will take any appropriate actions, as warranted.

The U.S. condemns cruel, inhuman, and degrading treatment and punishment for any reason. Such treatment is prohibited under both international and domestic law. These prohibitions exist everywhere and at all times. We are committed to providing safe and humane treatment for detainees at Guantanamo, in full accordance with international and U.S. domestic law-and we do so. Among other things, detainees live communally and prepare meals together; receive specialized medical and psychiatric care; are given full access to legal counsel; and communicate regularly with family members. Further, the U.S. has effective mechanisms to ensure compliance with law of war protections for detainees, including incident reporting, assessments, investigations, inquiries, or other reviews of incidents needed to determine appropriate responses, which may include:

- Additional review or investigation, such as referral to a responsible Defense Criminal Investigative Organization or inspector general's office of competent jurisdiction;
- Transmission to relevant U.S. departments and agencies, partner governments, or other authorities with responsibilities with respect to the reportable incident; and
- Accountability or improvement actions.

Appropriate actions to ensure accountability and to improve efforts to prevent violations of the law of war in U.S. military operations may include:

- Providing additional training;
- Taking adverse or corrective administrative action, including non-judicial punishment;
- Initiating criminal proceedings; and
- Revising or issuing policies, regulations, instructions, procedures, training documents, or other guidance to incorporate lessons learned.