



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 Cynthia Efir
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Mr. Moderator,

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.

In our own country, President Obama has 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 respecting the detention, trial, transfer, release, or other disposition of detained apprehended in armed conflict or counter-terrorism operations; ordered the closure of the detention center 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 CIA to close any detention facilities that it operated as expeditiously as possible and ordered the CIA not to operate any detention facilities in the future.

President Obama has since continued to implement the U.S. commitment to upholding the rule of law, including through measures related to 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; and 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. The Administration also remains committed to closing the detention facility at Guantanamo Bay. While that commitment has not waived, the task has proven enormously complex. President Obama cannot close Guantanamo alone; that also involves our allies, the courts and our Congress. Our intensive efforts to close the facility continue every day.

We are grateful to those countries, including those around this table, which have helped by accepting detainees for resettlement.

Moreover, as President Obama recently reaffirmed in commemorating the International Day in Support of Victims of Torture, “under no circumstances is torture ever justified.” As he stated on that occasion, “Torture and abusive treatment violate our most deeply held values, and they do not enhance our national security – they undermine it by serving as a recruiting tool for terrorists and further endangering the lives of U.S. personnel.” The United States does not permit its personnel to engage in acts of torture or cruel, inhuman or degrading treatment of people in its custody, either within or outside U.S. territory, and President Obama has “made it clear that the United States will prohibit torture without exception or equivocation.”

Capital punishment in the United States must be viewed within the context of U.S. federalism, whereby States have broad powers to regulate their own general welfare, including enactment and enforcement of criminal laws. The death penalty is authorized by 34 States, the Federal Government, and the U.S. Armed Forces. There are currently 16 jurisdictions that do not authorize it. Authorization was repealed most recently in New Mexico in 2009 and in Illinois in 2011. Several states with legislation permitting the death penalty have not used it in the past 30 years. In a number of other states, although capital punishment remains on the books, it is rarely, if ever, imposed. Nine states that retain the death penalty, for example, have not conducted an execution in the last decade. Although New York has a capital statute, the highest state court held in 2007 that a portion of the law was unconstitutional. As a result, no defendants may be sentenced to death until the legislature corrects the deficiencies in this statute.

The United States is a party to the International Covenant on Civil and Political Rights (ICCPR), which specifically recognizes the ability 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. The U.S. judicial system provides an exhaustive system of protections to ensure that the death penalty is not applied in an extra-judicial, 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.