



United States Mission to the OSCE

Session 9: Rule of Law II Protection of Human Rights and Fighting Terrorism

As prepared for delivery by EUR/RPM Director Gary Robbins
to the OSCE Human Dimension Implementation Meeting
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Mr. Moderator,

Governments face a difficult question in ascertaining when actual or planned attacks by terrorist groups pose a sufficiently grave threat to a State that military force is needed to combat that threat. Given the magnitude of the September 11 attacks, al Qaida's continued operations against the United States and its allies, including in Iraq, and the desire of al Qaida to obtain weapons of mass destruction to commit a mass slaughter of civilians on an unprecedented scale, the United States believes that it continues to be engaged in an armed conflict with al Qaida. Immediately after September 11, the UN Security Council explicitly recognized the right of the United States to act in self-defense in response to these armed attacks, and declared terrorism a threat to international peace and security. But not all situations are as clear as the massive September 11th attacks; the question of whether and when it is appropriate to use military force, and thus, trigger application of the law of war, is an extraordinarily complex issue and one that certainly cannot be addressed effectively in four minutes.

The United States considers this a critical, threshold question that deserves further discussion and consideration. Accordingly, we are particularly interested in recommendations made by Senator Anne Marie Lizin, the OSCE Parliamentary Assembly Special Representative on Guantanamo, in her recent report to the OSCE Parliamentary Assembly (and also presented to the Permanent Council). Senator Lizin's report says experts should "reflect on a possible development of international law with regard to the general question of 'new categories of combatants' and of the recent trend of international terrorism." We agree.

The question of how we protect human rights while effectively combating terrorism is one of the most critical human rights issues we face today – and one that will be with us for the foreseeable future.

It is, of course, an essential responsibility of governments to protect their citizens from acts of terrorism. While we all agree that a strong response to those who commit acts of terrorist violence is imperative, in doing so all governments must fully respect their obligations under international law, keeping in mind the importance of ensuring that the rule of law and democratic principles are respected.

Despite this, some countries, on grounds of combating terrorism, have taken repressive internal measures that restrict human rights and fundamental freedoms. The United States believes that, in order to ensure that human rights are adequately protected in this endeavor, civil society, non-governmental organizations and a free and independent media must be protected.

For civil society and non-governmental organizations, this means several things. First and foremost, onerous registration requirements should be avoided altogether and should not be a proxy for political censorship. Such registration requirements, in effect, act as a means to limit freedom of association and expression.

Non-governmental organizations must also be able to do their peaceful work – which, whether governments like it or not – may include criticizing the government, without fear of retaliation. Unfortunately, as we have seen, retaliation can take many forms, including sudden and unwarranted tax investigations.

It is also critical that freedom of speech and a free and independent media be vigorously safeguarded. Clearly, in a country where the media itself is under threat, the ability to report on the government's protection of human rights – or lack thereof – will be impeded. We are particularly concerned that those who criticize counter-terrorism actions may find themselves, in certain countries, charged with inciting hatred or even, ironically, extremism.

Mr. Moderator, even if no government wants to see its actions challenged in court, as the United States has been in our vigorous domestic legal system, an independent legal bar, capable of challenging government action before an independent court, is a critical means by which governments can be held to account for their actions and policies. OSCE participating States must ensure that lawyers do not find themselves subject to disbarment efforts for defending those charged by the government, or merely for attempting to sue the government. Frivolous tax investigations, unwarranted searches and other forms of harassment serve to intimidate independent legal professionals and limit their willingness to take on human rights cases that would challenge their governments.

The United States remains deeply concerned by public discourse that portrays Muslims as terrorists. This notion is flat-out wrong. In addition, the United States is concerned that some governments have argued that the threat of terrorism justifies heavy-handed efforts to restrict the practice of Islam to only state-sanctioned versions. This unduly restricts religious practice and may have additional negative consequences.

Finally, the United States wishes to reiterate its commitment to upholding our national laws and international obligations on the prohibition of torture and cruel, inhuman, or degrading treatment. It is against the law for U.S. personnel – be they from the armed services or any other government agency – to torture anyone. Anywhere. And it is against the law for U.S. personnel – be they from the armed services or any other government agency – to engage in cruel, inhuman or degrading treatment of anyone. Anywhere. All U.S. personnel engaged in detention operations are required to act in accordance with U.S. domestic law and our international treaty obligations, including Common Article 3 of the Geneva Conventions.

Despite these prohibitions and mechanisms for enforcing them, some individuals have committed abuses against detainees being held as a result of our current armed conflict in Iraq and against Al Qaida and its affiliates. Such abuses are inexcusable and indefensible. The U.S. Government deplores such abuses and has taken steps to hold those responsible accountable. The United States investigates all allegations of abuse vigorously and, when they are substantiated, holds the perpetrators accountable.

We welcome today's discussion. We will pay careful attention to the concerns and questions raised.

Thank you.