



## **United States Mission to the OSCE**

# **Response to the Russian Federation on the Continued Operation of the Guantanamo Detention Facility**

As delivery by Ambassador Ian Kelly  
to the Permanent Council, Vienna  
January 19, 2012

We thank the delegation of the Russian Federation for raising the issue of the continued operation of the Guantanamo Bay Detention Facility and provisions of the recently enacted National Defense Authorization Act for Fiscal Year 2012 (NDAA). We value an open debate, both in this forum and in the media, and are actively engaged in protecting the right of free expression, even when it's critical of us.

In response, I would like to stress the core values of the United States and the principles guiding our response to the threat of international terrorism. President Obama has stated unequivocally that this serious threat must be countered "with an abiding confidence in the rule of law and due process; in checks of balances and accountability." This has been and remains the consistent policy of this Administration.

The Obama Administration made clear to Congress that it did not seek any change to detention authorities present in existing law. Consistent with this position, Section 1021 of the National Defense Authorization Act for Fiscal Year 2012 (NDAA) affirms the existing authority of the executive branch to detain persons covered by the 2001 Authorization for Use of Military Force (AUMF) [Public Law 107-40; 50 U.S.C. 1541 note]. As limiting provisions in Section 1021 confirm, it does not create any new detention authorities. The United States Supreme Court has recognized that the AUMF grants the President the authority to detain individuals pending the cessation of the conflict covered by that statute, and lower courts have repeatedly reaffirmed this authority.

Under Section 1021(e), the bill may not be construed to affect any "existing law or authorities relating to the detention of United States citizens, lawful resident aliens of the United States, or any other persons who are captured or arrested in the United States." The Obama Administration strongly supported the inclusion of these limitations in order to make clear beyond doubt that the legislation does nothing more than confirm authorities that the Federal courts have recognized as lawful under the 2001 AUMF. Moreover, the Administration will not authorize the indefinite military detention without trial of American citizens. Doing so would break with our most important traditions and values as a Nation. In signing the NDAA, President Obama affirmed his intent to interpret Section 1021 "in a manner that ensures that any detention it authorizes complies with the Constitution, the laws of war, and all other applicable law."

I also note that the President has established by Executive Order, and Section 1023 of the NDAA reaffirms, a process of periodic review for certain detainees at Guantanamo Bay to

ensure that their detention “is carefully evaluated and justified.” The NDAA does not alter key features of the review process described in the President’s Executive Order, which provides that detainees may be assisted by counsel (in addition to an appointed personal representative), and permits the detainee to introduce any relevant information to the review board, among other provisions.

The Administration has made clear that closing Guantanamo is in the interest of our national security and is continuing its efforts to close the facility. Progress has been made under this and the previous Administration. However, given U.S. legislation in place, it is clear that it will take some time to fully close the detention facility at Guantanamo Bay. Since the beginning of this Administration, we have transferred 67 detainees to numerous destinations, including the transfer of 40 detainees to third countries. In addition, in that time frame, four detainees have been convicted in either Military Commissions or federal court.

Mr. Chairman, let me assure you that the government of the United States remains committed to upholding its OSCE commitments and its obligations under applicable international law in its struggle against the terrorist threat, as it does in all other areas.

Thank you, Mr. Chairman.