



United States Mission to the OSCE

Russia Rebuttal

As prepared for delivery by Ambassador Richard Williamson
to the OSCE Human Dimension Implementation Meeting
Warsaw, October 4, 2007

Mr. Moderator,

It is with sadness and disappointment that I take the floor to reply to various Russian interventions. The OSCE Human Dimension Implementation Meeting is unique among multilateral fora for the spirit of openness in which we conduct it. We give civil society equal time with participating States. This is important because all states, including my own, occasionally fail to fully live up to our OSCE commitments, even when those commitments are fully reflected in national legislation. It takes constant vigilance, not only from governments themselves, but also from civil society and a free and independent media, to hold each participating state accountable for its progress towards our common OSCE commitments.

Yes, it can make us uncomfortable to hear criticism leveled against our own government by civil society representatives here or at home, but this process ultimately strengthens democracy and human rights.

We were therefore disappointed by the Russian Federation's walk-out from Friday's session in an effort to limit civil society participation in the HDIM specifically to exclude the Russian-Chechen Friendship Society. My government remains concerned that actions such as the effort to bar RCFS from this session are symptoms of a much broader negative trend with respect to democracy and democratic institutions within Russia. We are concerned about the increasingly narrow and controlled space within which NGOs are forced to operate. We will continue to monitor the implementation of the new NGO law enacted in April 2006. We are also concerned about the misapplication of the law on extremism and the law on terrorism to limit legitimate NGOs and their activities.

The increasing pressure on Russian journalists is likewise troubling. A vigorous, independent and probing media is indispensable in a democracy. In Russia today, unfortunately, most national broadcast media, which is the primary source of news for most Russians, are either in the hands of the government or of individuals and entities allied with the Kremlin. Those journalists who dare take an independent line frequently face reprisal attacks. The unresolved murders of Paul Klebnikov and Anna Politkovskaya, among others, remain a serious source of concern.

Actions to suppress genuine opposition, abridgement of the right to non-violent protest, constriction of civil society, and the decline of media freedom are all serious setbacks. They are inconsistent with the Russian Federation's OSCE commitments to building and preserving the foundations of a democratic state.

I want to be clear that we raise these concerns as a friend worried about the trends we see unfolding, not simply to lecture. We also do so as a matter of principle.

We look forward to Russia's invitation to the OSCE to observe Russia's upcoming Duma elections in December 2007 and Presidential elections in March 2008. The United States, I would point out, accepts and welcomes ODIHR observation of our elections.

At the same time, however, we welcomed the Russian Federation's use of the HDIM's forum for open dialogue to challenge the United States' record in fulfilling our OSCE commitments. In that spirit, we will submit a detailed written reply for the record, responding to some of these points.

Thank you.

Addenda

The “Jena Six” Matter

The “Jena Six” matter is a well-publicized case involving a criminal prosecution that has been ongoing since December 2006.

The case is currently under review in U.S. courts. Indeed the only conviction yet issued in this case recently was overturned by a Louisiana appeals court, while Louisiana prosecutors have reduced the severity of the charges against the other five defendants currently being prosecuted.

The United States Attorney's Office for the Western District of Louisiana, the FBI, and the Department of Justice's Civil Rights Division and Community Relations Service have been closely monitoring the situation in Jena for some time. The FBI is taking allegations that threats have been made against those involved in the case and their families seriously and is currently investigating these allegations, together with local law enforcement.

The over 10,000 people who flocked to Jena from all over the country to express concern over these events demonstrates the operation of free speech and free assembly in a democracy, where respect for the right to air one's grievances is guaranteed. It also attests to the general level of disapproval within American society of racial intolerance and injustice. The case is being closely followed by diverse media, as well as numerous non-governmental organizations.

President Bush has expressed concern over the events in Jena and has assured the public that appropriate branches within the Justice Department are monitoring the situation "to make sure lives are safe, as well as to make sure that justice is fair."

FREEDOM OF SPEECH/ASSEMBLY - ARRESTS AT D.C. ANTI-WAR PROTEST

The United States Constitution protects freedom of speech and the right of people to assemble peaceably. Courts in the United States vigorously enforce these protections.

In democracies, free speech and free assembly are encouraged, and demonstrations are a common way to exercise these rights. At the same time, as in every free society, demonstrations in the United States are subject to reasonable, content-neutral restrictions on the time, place, and manner in which they may take place. Such restrictions may be necessary to ensure public safety and that the rights of all citizens are respected. It's important to note that United States authorities routinely allow demonstrations in the heart of Washington D.C., and the demonstrations in question took place right next to the Capitol building.

On September 15, thousands of anti-and pro-war demonstrators gathered in front of the U.S. Capitol building. Police reportedly arrested 189 protestors after they ignored police efforts to keep them from breaking through police ranks and jumped over a security barricade erected at the foot of the Capitol steps. Those arrested were charged with a misdemeanor for illegally crossing a police line, and they were all released shortly thereafter.

If anything, this example shows the great lengths to which free speech and assembly are protected in the United States and the great restraint routinely exercised by U.S. law enforcement authorities in dealing with physical disturbances sometimes associated with public demonstrations.

Declaration on the Rights of Indigenous Peoples (DRIP):

We find the Russian Federation's remarks about the United States' stance on the DRIP mystifying given that the Russian Federation voted against the declaration at the Human Rights Council in 2006 and abstained on the vote to adopt the declaration earlier this month at the UN General Assembly. Russia's explanation of its vote was critical of both the substance of the declaration and the process that generated it, stating:

"...we cannot agree with the provisions of the document relating in particular to the rights of indigenous peoples to land and natural resources, and also the procedure for compensation and redress. Mr. President, this text clearly does not enjoy consensus support. It has not been duly approved by all interested parties. Furthermore, in the course of this session, a non-transparent format was chosen for work on this document, which meant that at a decisive stage, a group of countries was excluded from the negotiation process, a group on whose territory live a significant number of people falling within the category of indigenous peoples. Such an approach is not just a source of regret for us, but a source of fundamental disagreement. We hope that the way in which this declaration is being adopted will not create a negative precedent for the activities of the General Assembly and all the work of the UN when it develops new norms and standards. Having adopted a responsible approach to this important aspect of the UN activities, nevertheless, the Russian Federation notes with regret that, in the light of what we have said, we cannot support the UN Draft Declaration on the Rights of Indigenous Peoples, and we shall abstain in the voting on draft resolution L.67..."

- While the United States government has made clear at the UNGA the reasons it could not lend support to the Declaration on the Rights of Indigenous Peoples, it continues to actively protect and promote indigenous rights in both domestic and international forums.

Internal Revenue Service (IRS) AUDITS OF NGOS

There is no requirement for any non-governmental organization to be registered with any United States government institution to operate.

If an NGO wishes to collect funds for not-for-profit charitable activities, it needs to provide information about its activities to the tax authorities. This allows those who contribute funds to the NGO to deduct the contribution from their taxes – in essence, providing a tax benefit for the NGO. In such cases, the NGO then needs to report yearly how much money was collected and in general, what it was used for to ensure that the tax-free contributions were not used for any profit-making activity. Sometimes, the IRS asks for additional information about income and expenses. However, it is important to note that, during the period of any registration procedure or tax inquiry, the NGO can continue to operate with no restrictions.

Religious Freedom

The Russian Federation expressed concern for religious freedoms in the United States, arguing that the line between separation of church and state is blurred through the participation of religious groups in political campaigns and State Department support for U.S.-based religious groups. The United States does in fact welcome religious groups to engage in our open political process. But they do so just as any other interest group does, including environmental, business and multitudes of others. Russia's criticism has confused the political advocacy process – which provides a level playing field for both religious and secular organizations on a non-discriminatory basis – with a policy outcome that would favor a particular religious group. Our independent court system, however, has been vigorous in enforcing the constitutional separation of church and state that exists in the United States.

Journalist Contempt-of-Court Cases

San Francisco freelance video journalist Joshua Wolf was jailed for 226 days in 2006-07 for refusing to cooperate with a grand jury by turning over 30 minutes of video evidence of violence by anarchists that he filmed at a July 2005 protest during the G-8 economic summit. At the time, Wolf sold some of the footage to San Francisco TV stations and posted it on his website, but he refused to turn over unpublished material. His case was reviewed by a federal appeals court in 2006. After losing his appeal, he reported to prison. Prosecutors dropped their insistence that Wolf testify before the grand jury after he posted the unaired video online, upon which a federal judge released him from prison.

The case of New York Times reporter Judith Miller involved the issue of confidentiality of sources. Ms. Miller refused to cooperate with a federal grand jury seeking evidence from her in an investigation of leaked confidential information. A federal district court found that 1) the information sought from Ms. Miller was very limited; 2) all available alternative means of obtaining it had been exhausted; and 3) the testimony sought was

necessary for the completion of the investigation and was expected to constitute direct evidence of innocence or guilt in the investigation of deeds by other persons. She was jailed in 2005 for 85 days and then released after her source relieved her of confidentiality. She subsequently appeared before the grand jury and was relieved of contempt charges.

The United States has the strongest freedom of expression protections in the world. Freedom of the press is guaranteed in the Bill of Rights to the U.S. Constitution and is protected under U.S. law to a significantly greater degree than is provided for in the International Covenant on Civil and Political Rights. The U.S. courts have a long, distinguished history of protecting freedom of the press.

There is no absolute protection under international law for the confidentiality of sources used by the press, and the U.S. Supreme Court has never held that the U.S. Constitution grants protection for the confidentiality of press sources, or of evidence of possible criminal activity that journalists may possess.

A 1972 Supreme Court precedent requires everyone, including journalists, to testify before grand juries if summoned.

There is no “reporter’s privilege” under U.S. federal law, but most states provide some form of this privilege in their state courts. This reflects ongoing, vibrant public debate in America about how best to balance the media’s need to protect sources to ensure the press’s role as a provider of transparency and knowledge in a democratic society and society’s vital interest in law enforcement.