



## United States Mission to the OSCE

### **Session 4: Rule of Law II**

*Exchange of views on the question of capital punishment;  
Prevention of torture;  
Protection of human rights and fighting terrorism*

As prepared for delivery by Ambassador Robert Pearson  
to the OSCE Human Dimension Implementation Meeting,  
Warsaw, October 1, 2008

Mr./Madam Moderator,

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.

The United States believes that, in order to ensure that human rights are adequately protected in combating terrorism, civil society, non-governmental organizations and a free and independent media also 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 expression 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.

Mr. Moderator, even if no government wants to see its actions challenged in court, a strong and independent legal bar, capable of challenging government action before an independent judiciary, is a critical means by which governments can be held to account for their actions and policies. Our system is not perfect, but it does continue to evolve and allow for challenges. For example, the U.S. Supreme Court recently ruled that the unlawful enemy combatants detained at Guantanamo Bay have a constitutional right to challenge their detention in federal court through petitions for habeas corpus. In addition, we reiterate, as President Bush has made clear, we are working toward the closure of detention operations in Guantanamo.

OSCE participating States must ensure that lawyers do not find themselves subject to disbarment for defending those charged by the government, or merely for attempting to sue the government. Cases of lawyers charged with violating state secrets laws in providing a defense for their clients are particularly troubling. 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 stereotypes 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.

The United States also 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 or to engage in cruel, inhuman or degrading treatment of anyone. Anywhere.

Finally, with respect to the death penalty, while we note that it is not prohibited under international law, nor does it violate any OSCE commitments, the International Covenant on Civil and Political Rights recognizes that it may only be imposed for the most serious crimes, carried out pursuant to the final judgment rendered by a competent court and in accordance with appropriate safeguards and observance of due process. The U.S. judicial system provides exhaustive protections to ensure that the death penalty is not applied in an extra-judicial, summary or arbitrary manner.

We would also note that the United States has consistently urged all governments that employ the death penalty to do so in conformity with the international human rights obligations and to make sure it is not applied in an extrajudicial, summary or arbitrary manner.

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

Thank you.