



## United States Mission to the OSCE

### **Session 15**

# **Rule of Law II: Capital Punishment; Prevention of Torture; and Protection of Human Rights while Countering Terrorism**

As prepared for delivery by Ambassador Bradtke,  
Head of Delegation  
OSCE Human Dimension Implementation Meeting  
Warsaw, October 2, 2013

The prohibition against torture is a fundamental precept of international law and a core OSCE commitment to which all participating States must adhere.

President Obama has repeatedly affirmed that the United States rejects torture as unlawful, counter to American values, and inconsistent with the universal rights and freedoms that should be enjoyed by all men, women, and children, wherever they live. As a matter of law and policy, U.S. government personnel are strictly prohibited from engaging in acts of torture or cruel, inhuman, or degrading treatment of any person in U.S. custody.

We are concerned by numerous credible reports that law enforcement personnel in several OSCE participating States routinely engage in torture, abuse, and violence to coerce confessions from suspects, and that authorities do not consistently hold officials accountable for such actions. In the North Caucasus regions of the Russian Federation, for instance, non-governmental organizations continue to report that government forces torture and otherwise mistreat civilians and insurgents in holding facilities.

Torture is also a serious concern in Central Asia. Poor prison conditions and abuse of detainees, torture, and denial of due process and fair trial safeguards are ongoing problems in the region, particularly in Uzbekistan and Turkmenistan. Both countries have denied numerous requests for visits from UN Special Procedures Mandate Holders. We urge these countries to invite independent international observers to observe prison conditions and to investigate and prosecute, where appropriate, those who commit torture.

Promoting the rule of law is a core competence of the OSCE. We strongly support the OSCE's work, within the participating States, to strengthen counterterrorism capacities that promote norms and standards of responsible state behavior. We note the work of ODIHR and its Human Rights and Anti-Terrorism Program for sharing rule-of-law best practices and providing assistance to participating States as they develop human rights-compliant counterterrorism policies. To remain relevant on counterterrorism-related issues, the OSCE must also actively engage in ongoing international counterterrorism efforts, such as by building collaboration with the Global Counterterrorism Forum (GCTF). In this regard, the United States strongly supports the GCTF's adoption of the Rabat Memorandum on Good Practices for Effective Counterterrorism Practice in the Criminal Justice Sectors, and the Rome Memorandum for the Rehabilitation and Reintegration of Violent Extremist Offenders.

These good practices are based on existing UN instruments and have broad applicability, beyond terrorism, to fighting organized crime generally. The OSCE and its Office for Democratic Institutions and Human Rights (ODIHR), in particular, can become pivotal GCTF implementing partners by providing technical assistance and promoting the implementation of these good practices throughout the OSCE region, while also providing training to Partner States, upon request.

The United States continues to demonstrate its commitment to the rule of law in many ways. These include ensuring notice to and timely access for the International Committee of the Red Cross (ICRC) for any individual detained in any armed conflict and in the custody or under the effective control of the U.S. government; ensuring the humane treatment of all persons in U.S. custody; and training Afghan guards and monitoring those facilities to which detainees are transferred in Afghanistan.

As the United States transitions out of wartime detention operations in Afghanistan, and as the United States continues to work to close the detention facility at Guantanamo Bay, we remain committed to applying the highest standards of care and custody in detention operations. The United States has taken a leadership role in developing review procedures for those we detain that go beyond what is required by our international legal obligations. We continue to work with our allies and partners to establish best practices in detention operations. These practices have been acknowledged in the recent Copenhagen Process, a state-led initiative to identify principles and guidelines for detention in non-international armed conflict. We urge the OSCE to recognize these standards as best practices for wartime detention operations.

As for capital punishment, although we respect the views of those who advocate for abolition of or a moratorium on capital punishment, that decision must be addressed through the domestic democratic processes of individual states and be consistent with their obligations under international law. Thus, for example, the people of the United States, acting through their freely elected representatives, have enacted laws at the federal level that authorize the death penalty for the most serious crimes, such as murder. At the state level, the people in the majority of U.S. states, acting through the freely elected state legislatures, have also enacted laws authorizing the death penalty for the most serious crimes, while the people of other U.S. states, most recently New Jersey, New Mexico, Illinois, Connecticut, and Maryland, have abolished the death penalty, although not retroactively, in each state.

Capital punishment is not prohibited by international law, when imposed in accordance with a state's international obligations, including Article 6 of the International Covenant on Civil and Political Rights (ICCPR), which specifically recognizes the authority of countries to impose the death penalty for "the most serious crimes," in accordance with the law in force at the time of the commission of the crime and when carried out pursuant to a final judgment rendered by a competent court and not contrary to the provisions of the Covenant. We would emphasize the exacting procedural safeguards required under Articles 14 and 15 of the ICCPR, in particular. Thus, for example, U.S. law and the U.S. judicial system provide an exhaustive system of protections at both the federal and state levels to ensure that the death penalty is not applied in a summary or arbitrary manner and that its imposition does not constitute cruel or unusual punishment as prohibited by the U.S. Constitution, in keeping with our international obligations and OSCE commitments.

Respectfully, we believe that greater focus is needed on addressing and strengthening compliance with existing international obligations regarding the application of the death penalty. The United States urges all States to address and prevent human rights violations that may result from the improper imposition and application of capital punishment. We strongly urge States to ensure that capital punishment is not applied in an extrajudicial, summary, or arbitrary manner. Capital defendants must be provided a fair trial before a competent, independent, and impartial tribunal established by law, with full procedural guarantees. Moreover, through their legal processes, States should carefully evaluate both the class of defendants subject to the death penalty, and the crimes for which it may be imposed, in order to ensure that their use of capital punishment comports with their international obligations. Methods of execution designed to inflict undue pain or suffering must be strictly prohibited. Careful attention to these important protections will ensure that this serious penalty is properly applied to the most serious cases and with due observance of the human rights of the defendants.