



United States Mission to the OSCE

Session 8: Rule of Law I

As prepared for delivery by Ambassador Steven Pifer
to the OSCE Human Dimension Implementation Meeting
Warsaw, October 6, 2006

Madame Moderator,

In any society it is difficult to balance both freedom and security. This is particularly true in time of war, as we seek to ensure the latter while preserving the former. The United States has tried to do so in a thoughtful, just fashion that is consistent with both American values and our international commitments.

We have heard the concerns raised this week and in this forum about U.S. practices in our armed conflict with al Qaida and the Taliban. These questions have also been the subject of vigorous debate within the United States. We welcome the opportunity to engage in an open discussion about how best to stay true to the values that we as free societies share while combating the scourge of transnational terrorism.

It is clear that this is a new kind of war, on a new kind of battlefield. We have sought to convey to the world the lack of clarity surrounding the pre-existing legal framework for combating transnational terrorism. Transnational terrorists specifically and primarily target civilians, do not fight in organized military units, and do not observe the laws of war. The United States was not, and no country could have been, prepared to deal with the type of massive terrorist attacks and worldwide terrorist network that we confronted on September 11. There was no book on a shelf somewhere that contained a ready legal guide to combating armies of transnational terrorists.

In recent months a number of European officials have acknowledged that lack of a clear legal framework. In her July 2006 report, the OSCE Parliamentary Assembly's Special Representative for Guantanamo, Belgian Senator Anne Marie Lizin, recommended the formation of an international commission of legal experts to examine the question.

Because we are on new terrain, U.S. policies and practices have had to evolve significantly since September 11. These changes demonstrate the self-correcting mechanisms inherent in the U.S. system of checks and balances. Every branch of our government has been part of this effort. Congress has passed new laws, including the Detainee Treatment Act, which codified long-standing U.S. policy prohibiting cruel, inhuman, or degrading treatment of any detainee in U.S. control anywhere in the world. Our courts have issued numerous rulings, including the decision by our Supreme Court that Common Article 3 of the Geneva Conventions applies to the conflict with al Qaida. The Department of Defense has issued a new Field Manual and Detentional Directive to provide clear rules for the detention and interrogation of all individuals detained by the U.S. military. We recently enacted new legislation providing for the establishment of military commissions that are fully compliant with Common Article 3.

The United States is absolutely committed to upholding our national laws and international obligations to eradicate torture and to prevent cruel, inhuman, or degrading treatment or punishment worldwide. Let me be clear. It is against the law for U.S. personnel – be they from the armed services or any other government agency – to torture anyone, anywhere. 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. Abuses such as those that notoriously occurred at Abu Ghraib sickened the American people – just as they appalled people around the world. They were inexcusable and indefensible. The U.S. Government deplores those 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 accountable the perpetrators. Indeed, since September 11, 2001 more than 100 members of the U.S. armed forces have been court-martialed for detainee mistreatment, with an 86% conviction rate, and others have been held accountable through non-judicial punishments and administrative measures.

Madame Moderator, all governments are imperfect because they are made up of human beings who are, by nature, imperfect. We welcome today's discussion and will pay careful attention to the concerns and questions raised. One of the great strengths of our nation is its ability to recognize its faults, deal with them, and act to make things better. The United States is committed to complying fully with its international obligations, both at home and abroad.