



United States Mission to the OSCE

Warsaw Human Dimension Conference

Right of Reply
Plenary Session VI: Rule of Law II

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The United States first wishes to respond to statements by the Russian-based so-called NGO “International Peacekeeping Movement Women’s Dialogue” -- which for much of the session sat behind the Russian Federation’s name tent. Russia’s diplomats failed to show up to this conference. Instead, the Kremlin apparently sends GONGOs to face the entirely just criticism for its heinous acts. This “group” attempted to deny reports that Russia has tortured Ukrainian children (although they did not attempt to deny broader allegations that members of Russia’s forces have tortured citizens of Ukraine). However, even these attempted denials ring hollow.

Reports of torture of Ukrainian children have been documented in a number of sources, including in the July 2022 Moscow Mechanism Report, a September 2022 Human Rights Council Independent International Commission of Inquiry report on Ukraine, and Ukraine’s Office of the Prosecutor General has opened up at least 75 cases of torture against children. Other delegations here today also noted Russia’s use of torture, including against children, is well documented.

The United States has long recognized that the prohibition of torture is a peremptory norm of international law, from which no derogation is permitted, reflecting the condemnation of torture by the international community as a whole. In the United States, a range of federal and state laws prohibit conduct constituting torture or other cruel, inhuman, or degrading treatment or punishment (CIDTP).

Regarding the comment that the death penalty constitutes CIDTP, this is not an accurate reflection of the prohibition on CIDTP under international law.

International law does not prohibit capital punishment; nor is capital punishment in contravention of OSCE commitments. In fact, the International Covenant on Civil and Political Rights (ICCPR) specifically recognizes the authority of countries to impose the death penalty for the most serious crimes, carried out pursuant to a final judgment rendered by a competent court and in accordance with the laws of the country and all applicable legal protections, including fair trial guarantees. U.S. law and practice are consistent with these requirements. The judicial system in the

United States provides a system of protections at the state and federal levels intended to ensure that implementation of the death penalty is undertaken, after multiple layers of judicial review, in conformity with the U.S. Constitution and U.S. international obligations. Furthermore, U.S. constitutional restraints, federal and state laws, and governmental practices have limited the death penalty to the most serious offenses, such as murder, and prohibit the use of any method of execution that would inflict cruel and unusual punishment.

Calls to abolish the death penalty are properly viewed as continuing differences over policy, not differences about what U.S. international obligations require. The use of capital punishment remains the subject of serious discussion and close examination in the United States. On July 1, 2021, U.S. Attorney General Merrick B. Garland imposed a moratorium on all federal executions pending review of certain Justice Department capital case policies and procedures. No federal executions will be scheduled while the reviews are pending. This moratorium, however, does not suspend the use of the death penalty for state criminal offenses, as that is a decision left to democratically elected governments at the state level. As such, any moratorium on the use of the death penalty by particular states as sentences for state criminal offenses would have to be issued separately by each of the states that choose to employ capital punishment.