



United States Mission to the OSCE

Right of Reply on the Death Penalty

Statement Delivered by Mr. Francis Gaffney
U.S. Delegation to the Human Dimension Implementation Meeting
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Thank you, Mr. Chairman.

We take note of the statements by the EU and a number of other speakers concerning the death penalty in the United States. Dr. Wedgwood spoke on behalf of the United States in some detail at this morning's session regarding the extensive due process protections in place in the event of the use of military commissions at Guantanamo, so I will not revisit that issue here.

As we have frequently noted in OSCE fora, the use of the death penalty in the United States is a decision left to democratically elected governments at the federal and individual state levels. As speakers here have recognized, while international law requires limiting capital punishment to the most serious crimes and requires certain safeguards, most notably due process, it does not prohibit capital punishment. Within these bounds, we believe that, in a democratic society, the criminal justice system, including the punishments prescribed for the most serious crimes, should reflect the will of the people, freely expressed and appropriately implemented. In the United States, the Supreme Court has strictly limited the application of the death penalty in a manner that conforms to the international obligations we have accepted.

I want to move on here to address the specific issues speakers have raised today about the imposition of the death penalty in the United States. With respect to the mentally retarded, the U.S. Supreme Court in June 2002 banned the execution of mentally retarded criminals as constituting "cruel and unusual" punishment prohibited by the 8th Amendment to the U.S. Constitution. On the mentally ill, in 1986 the U.S. Supreme Court prohibited the execution of the mentally insane and required an adversarial process for determining mental competency. This is an area of continuing debate, however, as legal definitions and concepts of insanity and competency do not always coincide with medical opinion.

Regarding crimes committed by juveniles: U.S. laws on the execution of juveniles are consistent with international obligations of the United States. When the United States ratified the United Nations International Covenant on Civil and Political Rights (ICCPR), it expressly reserved the right to continue to impose the death penalty for crimes committed by those under the age of 18. The U.S. Supreme Court has drawn a line at age 16, holding that the imposition of the death penalty on offenders beneath that age violates the 8th Amendment of the U.S. Constitution. I would note here that no international consensus has emerged to a sufficient point where application of this standard would be considered a violation of customary international law.

However, I must emphasize here that, as on the world stage, U.S. law on the imposition of the death penalty is in constant ferment. The EU noted today the example of the decision by the Governor of the State of Illinois to commute the death sentences of all prisoners on death row. I have already

mentioned last year's U.S. Supreme Court decision prohibiting the execution of mentally retarded criminals. In August of this year, the Supreme Court of the State of Missouri, citing the U.S. Supreme Court's reasoning in that case, concluded that execution of persons for crimes committed when they were under 18 years of age violates "evolving standards of decency" and is prohibited by the 8th Amendment of the U.S. Constitution. Since the U.S. Supreme Court is the ultimate arbiter on this issue, I imagine this will not be the last word.

But all of the foregoing serves to reinforce something that Ambassador Smith, the head of our delegation, noted in her statement to the opening plenary: Issues such as the imposition of the death penalty continue to be the subject of vigorous and open discussion among the American public. This is the genius of democracy. And, Mr. Moderator, as that debate proceeds, the United States will continue to be mindful of its obligations under international law.