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TAGS: PHUM, PREL, OSCE

SUBJECT: HDIM MEMBERS USE RULE-OF-LAW SESSION TO CRITICIZE

THE UNITED STATES

1. SUMMARY: THE UNITED STATES TOOK SUBSTANTIAL CRITICISM FOR ITS TREATMENT OF DETAINEES AT GUANTANAMO BAY, ITS POSITION ON THE INTERNATIONAL CRIMINAL COURT (ICC) AND ITS USE OF THE DEATH PENALTY DURING THE TWO DAYS OF THE OSCE

HUMAN DIMENSION IMPLEMENTATION MEETING (HDIM) DEDICATED TO RULE-OF-LAW ISSUES. THOUGHTFUL RIGHT-OF-REPLY REPONSES BY U.S. DELEGATION MEMBERS, WHILE NOT CHANGING THE THINKING OF THOSE WHO ENTERED THE SESSIONS WITH SET POSITIONS, NEVERTHELESS CLEARLY OFFERED SOME INDIVIDUALS -- ESPECIALLY SOME NGOS FROM CENTRAL ASIA AND THE CAUCASUS -- A BROADER UNDERSTANDING OF U.S. CONCERNS. IN DISCUSSIONS WITH REPRESENTATIVES FROM THE HUMAN RIGHTS SECTION OF THE OSCE'S OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS (ODIHR), A DELEGATION MEMBER NOTED THAT PRO-ABOLITION VOICES ARE DROWNING OUT CONSIDERATION OF THE NEED TO OBSERVE INTERNATIONAL STANDARDS AND DUE PROCESS WHEN THE DEATH PENALTY IS USED. SURPRISINGLY, THE ODIHR REPRESENTATIVE AGREED AND INVITED THE UNITED STATES TO PARTICIPATE IN TRAINING IN THIS AREA FOR CENTRAL ASIAN COUNTRIES. WHILE U.S. PARTICIPATION IN THIS INITIATIVE WOULD BE UNLIKELY TO CHANGE MOST ABOLITIONISTS' MINDS, IT COULD OFFER AN OPPORTUNITY TO HELP REFOCUS THE DEBATE OVER THE DEATH PENALTY

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UNITED STATES DEPARTMENT OF STATE REVIEW AUTHORITY: ARCHIE M BOLSTER DATE/CASE ID: 04 NOV 2004 200303827 ACLU-RDI 4409 p.1

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ON THE NEED ENSURE THAT USE OF THE DEATH PENALTY IS DONE IN A TRANSPARENT WAY CONSISTENT WITH INTERNATIONAL STANDARDS. END COMMENT AND SUMMARY.

2. THE OSCE'S ANNUAL HDIM IS EUROPE'S LARGEST HUMAN RIGHTS AND DEMOCRATIZATION CONFERENCE, BRINGING TOGETHER HUNDREDS OF REPRESENTATIVES FROM GOVERNMENTS, INTERNATIONAL ORGANIZATIONS, NGOS AND INTERNATIONAL EXPERTS. DURING ISSUE-SPECIFIC WORKING SESSIONS AND SIDE MEETINGS, PARTICIPANTS HAVE THE OPPORTUNITY TO DISCUSS HUMAN-DIMENSION PROBLEMS AND RAISE CONCERNS OVER PARTICIPATING STATES' IMPLEMENTATION OF THEIR COMMITMENTS IN THESE AREAS. A SERIES OF WORKING SESSIONS AND SIDE MEETINGS HELD ON OCTOBER 9 AND

10 ALLOWED HDIM PARTICIPANTS TO FOCUS ON ISSUES RELATED TO THE RULE OF LAW, INCLUDING LEGISLATIVE TRANSPARENCY, INDEPENDENCE OF THE JUDICIARY, POLICING, PREVENTION OF TORTURE, THE ICC, USE OF THE DEATH PENALTY, AND INTERNATIONAL HUMANITARIAN LAW.

LEGISLATIVE TRANSPARENCY, INDEPENDENCE OF THE JUDICIARY, AND RIGHT TO A FAIR TRIAL

 DURING THE SESSION ADDRESSING LEGISLATIVE TRANSPARENCY, INDEPENDENCE OF THE JUDICIARY AND RIGHT TO A FAIR TRIAL, A NUMBER OF DELEGATIONS, INCLUDING GREECE (SPEAKING ON BEHALF OF THE EU), SWITZERLAND, FRANCE AND THE COUNCIL OF EUROPE, ELABORATED ON STANDARDS AND GUIDELINES COUNTRIES NEED TO MEET TO MAKE THE RULE OF LAW A REALITY. IN ITS STATEMENT, FRANCE SINGLED OUT VICTIMS' RIGHTS AS A HITHERTO-OVERLOOKED CONCERN REQUIRING GREATER ATTENTION FROM PARTICIPATING STATES. UZBEKISTAN, KYRGYZSTAN, BELARUS, UKRAINE AND TAJIKISTAN, WHICH MADE SPECIFIC REQUESTS TO THE OSCE FOR ASSISTANCE IN CREATING A UNIFIED JUDGE TRAINING PROGRAM, GAVE PRESENTATIONS OUTLINING WHAT THEY DESCRIBED AS THE "NUMEROUS GUARANTEES" OF THE RULE OF LAW BUILT INTO THEIR POLITICAL AND LEGAL SYSTEMS. EACH OF THEIR STATEMENTS WAS REBUTTED BY AT LEAST ONE NGO, INCLUDING THE TASHKENT CITY BAR ASSOCIATION, INTERNATIONAL HELSINKI FEDERATION (IHF), KYRGYZ COMMITTEE FOR HUMAN RIGHTS, POLITICAL AND LEGAL REFORM CENTER OF UKRAINE, AND CENTER FOR HUMAN RIGHTS IN BELARUS. TURKMENISTAN, WHICH DID NOT APPEAR TO HAVE SENT A REPRESENTATIVE TO THE HDIM AS FAR AS THE U.S. DELEGATION COULD DETERMINE, CAME IN FOR A DRUBBING FROM SEVERAL GOVERNMENT AND NGO DELEGATIONS.

U.S. CRITICIZED FOR TREATMENT OF GUANTANAMO DETAINEES

4. DELEGATIONS ALSO RAISED CONCERNS ABOUT MAINTAINING THE

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RIGHT TO A FAIR TRIAL AND OTHER LEGAL SAFEGUARDS IN THE CONTEXT OF FIGHTING TERRORISM, BUT ONLY IHF CRITICIZED THE UNITED STATES (AND UZBEKISTAN) BY NAME. SWITZERLAND CALLED ON PARTICIPATING STATES TO RESPECT INTERNATIONAL HUMANITARIAN LAW FOR DETAINEES AND ARGUED THAT ODIHR SHOULD ENSURE THAT ANTI-TERRORISM LEGISLATION PROTECTS FUNDAMENTAL LEGAL RIGHTS. NORWAY URGED PARTICIPATING STATES TO RATIFY THE TWO ADDITIONAL PROTOCOLS TO THE GENEVA CONVENTIONS AND TO PROVIDE ALL GUARANTEES FOUND IN COMMON ARTICLE THREE OF THE GENEVA CONVENTIONS. IHF DIRECTLY CRITICIZED THE SITUATION OF THE GUANTANAMO DETAINEES AND TERRORIST SUSPECTS HELD ELSEWHERE BY THE UNITED STATES, ALLEGING, FOR EXAMPLE, THAT THEY ARE HELD INCOMMUNICADO AND THAT THE POSSIBILITY OF BRINGING THEM BEFORE MILITARY TRIBUNALS RAISES THE PROSPECT OF A "SECOND-CLASS JUSTICE SYSTEM" FOR NON-U.S. CITIZENS. U.S. RIGHT-OF-REPLY STATEMENT, PUBLIC MEMBER OF THE U.S. DELEGATION PROFESSOR RUTH WEDGWOOD SYSTEMATICALLY REBUTTED --IN A FRIENDLY WAY -- IHF ARGUMENTS BY EXPLAINING THE FIRM BASIS IN INTERNATIONAL HUMANITARIAN LAW FOR U.S. DECISIONS REGARDING THE DETAINEES AND THE NUMEROUS LEGAL PROTECTIONS AFFORDED THEM IN ACCORDANCE WITH INTERNATIONAL HUMANITARIAN

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E RULE OF LAW WAS

SET ASIDE FOR REMARKS ON COMMUNITY POLICING AS A FOLLOW-UP TO THE OCTOBER 28-29, 2002 SUPPLEMENTARY HUMAN DIMENSION MEETING ON THE ROLE OF COMMUNITY POLICING IN BUILDING CONFIDENCE IN MINORITY COMMUNITIES. THE SESSION DREW ONLY THREE INTERVENTIONS (BY THE U.S., CANADA, AND SERBIA AND MONTENEGRO), BUT ENABLED OSCE SENIOR POLICE ADVISER RICHARD MONK TO DISCUSS HIS OFFICE'S EFFORTS. MONK EXPLAINED THAT HIS APPROACH IN ASSISTING STATES WITH TRAINING POLICE IS TO START WITH IDENTIFYING A SPECIFIC POLICE UNIT IN A COUNTRY IN A DEFINED GEOGRAPHIC AREA, THAT CAN BE TURNED INTO A MODEL FOR THE REST OF THE FORCE. ECHOING THE U.S. STATEMENT, MONK APPEALED TO PARTICIPATING STATES' TO PROVIDE CREDIBLE PERSONNEL FOR HIS OFFICE TO DEPLOY.

INTERNATIONAL HUMANITARIAN LAW

6. THE HDIM SESSION ON INTERNATIONAL HUMANITARIAN LAW GENERATED MORE INTERVENTIONS THAT WERE, AT LEAST IN PART, AIMED AT THE UNITED STATES, ALTHOUGH NONE OF THE SPEAKERS MENTIONED THE USG BY NAME. FRANCE (SPEAKING ON BEHALF OF THE EU), CANADA, SWITZERLAND, THE INTERNATIONAL COMMITTEE OF THE RED CROSS (ICRC), AND COALITION FOR THE INTERNATIONAL CRIMINAL COURT EXPRESSED STRONG SUPPORT FOR THE ICC. CANADA

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EXPLAINED THAT IT HAS LAUNCHED A DIPLOMATIC CAMPAIGN ON BEHALF OF THE ICC, WHICH INCLUDES EFFORTS TO ENCOURAGE ACCESSION TO THE ROME STATUTE, PARTICULARLY IN AREAS OF THE WORLD WHERE RATIFICATION IS NOT COMMON, AND EFFORTS TO ENSURE THE COURT'S EFFECTIVE OPERATION SO THAT IT BUILDS

CREDIBILITY. FRANCE, ON BEHALF OF THE EU, REITERATED THE UNION'S COMMON POSITION THAT STATES SHOULD NOT ENTER INTO AGREEMENTS GRANTING IMMUNITY TO A NON-SIGNATORY'S NATIONALS UNLESS THE AGREEMENT IS NOT RECIPROCAL AND THE NON-SIGNATORY STATE GUARANTEES THAT THERE WILL NOT BE IMPUNITY FOR SUSPECTED WAR CRIMES PERPETRATORS. ALTHOUGH THE COALITION FOR THE ICC DID NOT SPECIFICALLY REFER TO ARTICLE 98 AGREEMENTS, IT ENCOURAGED STATES TO "FIERCELY RESIST" SUCH ARRANGEMENTS. IT ALSO RECOMMENDED THAT ODIHR DEVOTE A WORKING SESSION DURING THE 2004 HDIM TO THE "FIGHT AGAINST IMPUNITY."

7. SEVERAL SPEAKERS, INCLUDING THOSE REPRESENTING THE EU, SWITZERLAND, ICRC, AND THE COALITION FOR THE ICC, ALSO STRONGLY PUSHED FOR STATES TO FULLY IMPLEMENT THE 1949 GENEVA CONVENTIONS AND, IF THEY HAVE NOT DONE SO, RATIFY AND IMPLEMENT THE 1977 ADDITIONAL PROTOCOLS TO THE GENEVA CONVENTIONS. SPEAKING IN HIS EU CAPACITY, THE FRENCH REPRESENTATIVE ALSO CALLED ON PARTICIPATING STATES TO ABIDE BY RULES AND PRINCIPLES ON THE PROTECTION OF INTERNATIONAL HUMANITARIAN PERSONNEL, PUNISH VIOLATORS OF THESE STANDARDS, AND GUARANTEE FULL AND FREE ACCESS FOR INTERNATIONAL HUMANITARIAN PERSONNEL TO THOSE IN NEED. IN A PROBABLE VEILED REFERENCE TO THE WAR ON TERRORISM, THE ICRC REPRESENTATIVE CONTENDED THAT PARTICIPATING STATES SHOULD REFRAIN FROM INVOKING PROVISIONS OF INTERNATIONAL HUMANITARIAN LAW IN SITUATIONS THAT ARE NOT ARMED CONFLICTS.

U.S. REBUTS "OVERHEATED RHETORIC" ON THE ICC

- 8. THE COALITION FOR THE ICC'S SIDE MEETING ON OCTOBER 9 CENTERED ON EFFORTS TO PROMOTE RATIFICATION AND IMPLEMENTATION OF THE ROME STATUTE. IN PARTICULAR, THE EVENT FOCUSED ON STRENGTHENING NGO CAPACITY, INCLUDING RESOURCES AVAILABLE FROM INTERNATIONAL ORGANIZATIONS SUCH AS THE ICRC, AND ON THREATS TO THE ICC (I.E. THE UNITED STATES).
- 9. IN HER SECOND POWERFUL RESPONSE TO CRITICISM, U.S. DELEGATION PUBLIC MEMBER PROFESSOR WEDGWOOD, SPEAKING IN HER CAPACITY AS A FACULTY MEMBER AT YALE AND JOHNS HOPKINS LAW SCHOOLS, COGENTLY WARNED AGAINST "OVERHEATED RHETORIC" ON THE ICC ISSUE. SHE EXPLAINED U.S. CONCERNS ABOUT THE ROME STATUTE AND OPERATION OF THE ICC, AND CAUTIONED AGAINST THE

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USE BY ICC PROPONENTS OF ADVERSARIAL LANGUAGE, SUCH AS "DEFENDING THE INTEGRITY OF THE ROME STATUTE," AS DESTRUCTIVE AND A MISCHARACTERIZATION OF PRINCIPLED DISAGREEMENTS ON DIFFICULT ISSUES OF INTERNATIONAL LAW. THE EVENT ORGANIZERS DID NOT APPEAR RECEPTIVE TO THAT ADVICE.

10. POINTING OUT THAT ARTICLE 98 AGREEMENTS DO NOT IMPLY "IMPUNITY," DR. WEDGWOOD ALSO REMINDED HER AUDIENCE THAT THE ORIGINAL DRAFTERS OF THE ROME STATUTE HAD INTENDED IT TO BE "CONSENT-BASED." SHE ALSO QUESTIONED THE APPROPRIATENESS OF ALLOWING ICC TO RULE ON THE LAWS OF WAR WHEN THERE STILL EXISTS CONSIDERABLE DISAGREEMENT AMONG STATES AS TO WHAT THOSE RULES ENTAIL. RESPONDING TO THE ICRC OFFICIAL'S

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, PROFESSOR WEDGWOOD

ALSO HIGHLIGHTED HOW AL-QAIDA AND RELATED GROUPS WERE GROUPS THAT HAD DECLARED WAR AGAINST THE UNITED STATES, DEMONSTRATED THEIR ABILITY TO ACT ON THEIR INTENTIONS AND, THEREFORE, RIGHTLY FELL WITHIN THE LAWS OF WAR.

NOTES FROM MID-WAY PLENARY SESSION: EU WELCOMES "WORLD DAY AGAINST THE DEATH PENALTY"

11. THE FIRST WEEK OF THE HDIM ENDED WITH A PLENARY SESSION DURING WHICH RAPPORTEURS SUMMARIZED THE DISCUSSIONS OF THE FIRST WEEK AND ONLY A SMALL NUMBER OF DELEGATIONS CHOSE TO SPEAK ODIHR DIRECTOR AMBASSADOR STROHAL OPENED THE SESSION WITH A REQUEST TO THE PARTICIPANTS TO MAKE SUGGESTIONS ON HOW TO MARKET AND "IMPROVE THE IMPACT" OF THE REPORT ON THE HDIM THAT ODIHR WOULD EVENTUALLY MAKE AVAILABLE ON ITS WEBSITE AND THAT HE WOULD PRESENT TO THE PERMANENT COUNCIL IN VIENNA. ITALY, SPEAKING ON BEHALF OF THE EU, TOOK THE FLOOR TO WELCOME THE COALITION AGAINST THE DEATH PENALTY'S ANNOUNCEMENT THAT IT HAD DECLARED OCTOBER 10 THE "WORLD DAY AGAINST THE DEATH PENALTY" AND TO REITERATE EU POSITIONS ON CAPITAL PUNISHMENT. AMBASSADOR FERRARIS AGAIN STRESSED THE IMPORTANCE OF ACTING ON THE OSCE ACTION PLAN AGAINST HUMAN TRAFFICKING AND INDICATED THE EU'S SUPPORT FOR THE PROPOSAL OF THE DUTCH CIO TO ESTABLISH A SPECIAL MECHANISM WITHIN THE OSCE TO FIGHT TRAFFICKING IN PERSONS.

RULE OF LAW II: ABOLITION OF CAPITAL PUNISHMENT

12. COUNTRIES THAT PRESENTED INTERVENTIONS DURING THE SESSION ON HUMANITARIAN ISSUES, INCLUDING INTERNATIONAL

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HUMANITARIAN LAW, FELL INTO TWO DIFFERENT CATEGORIES: THOSE THAT STILL HAD THE DEATH PENALTY, BUT IMPOSED IT UNDER A NARROW SET OF CONDITIONS AND ONLY FOR SEVERE CRIMES (I.E., THE UNITED STATES); AND PARTICIPATING STATES THAT HAD ABOLISHED THE DEATH PENALTY. ALL MEMBERS OF THE LATTER GROUP CRITICIZED THE UNITED STATES. MUCH FOCUS WAS PAID TO KAZAKHSTAN AND ITS SPORADIC IMPOSITION OF A MORATORIUM. STATES WITHOUT THE DEATH PENALTY COMMENDED ARMENIA FOR ITS RECENT ABOLITION OF CAPITAL PUNISHMENT. CRITICISM ALSO FOCUSED ON SECRET EXECUTIONS AND CASES IN WHICH THE VICTIMS' FAMILIES WERE NOT INFORMED OF THEIR DEATHS. LARGELY REFLECTING THE EU'S POSITION ON THE DEATH PENALTY, THE SESSION'S CONCLUDING RECOMMENDATIONS INCLUDED: CEASE ALL EXECUTIONS; IMPOSE IMMEDIATE MORATORIUMS; INTENSIFY EFFORTS TO CREATE TRANSPARENCY IN COUNTRIES THAT CARRY OUT SECRET EXECUTIONS; AND URGE ALL TO ULTIMATELY ABOLISH THE DEATH PENALTY.

PREVENTION OF TORTURE

13. DURING THE SESSION ON PREVENTION OF TORTURE, SPEAKERS CITED UZBEKISTAN, TURKMENISTAN, CHECHNYA AND TURKEY FOR THEIR ABUSE. THE HUMAN RIGHTS FOUNDATION OF TURKEY AND THE KURDISH HUMAN RIGHTS PROJECT ALSO DESCRIBED ABUSE IN TURKEY AS SYSTEMATIC. IN ITS RIGHT-OF-REPLY RESPONSE, THE GOT STRONGLY REFUTED THESE STATEMENTS, CLAIMING THAT THE COUNCIL OF EUROPE'S COMMITTEE FOR THE PREVENTION OF TORTURE COMMENDS PROGRESS MADE BY THE GOT IN COMBATING TORTURE. THE UZBEKISTAN REPRESENTATIVE ASSERTED THAT HIS COUNTRY CANNOT BE JUDGED BY WESTERN STANDARDS OR BY INDIVIDUAL CASES. THE EUROPEAN ROMA RIGHTS CENTER (ERRC) NAMED SEVERAL CENTRAL

EUROPEAN COUNTRIES WHERE ROMA HAVE BEEN BEATEN OR TORTURED IN DETENTION. GREECE AND THE CZECH REPUBLIC BOTH USED THEIR RIGHT OF REPLY TO REFUTE THOSE CHARGES. THE CZECH REPUBLIC CHALLENGED THE ERRC TO PROVIDE SPECIFICS REGARDING THEIR ALLEGATIONS THAT CZECH ROMANI WOMEN WERE STERILIZED WITHOUT INFORMED CONSENT. THERE WILL BE A SUPPLEMENTARY HDIM ON THE PREVENTION OF TORTURE NOVEMBER 6 AND 7 IN VIENNA. WESTERN EUROPEAN DELEGATIONS CALLED ON PARTICIPATING STATES TO SIGN THE UN OPTIONAL PROTOCOL ON TORTURE.

DEATH PENALTY

14. THE OPEN SOCIETY INSTITUTE/ODIHR HUMAN RIGHTS SECTION HELD A SIDE EVENT FRIDAY ON THE DEATH PENALTY IN THE OSCE AREA. THE MEETING SERVED AS A ROLLOUT FOR THE SECTION'S 2003 BACKGROUND PAPER, WHICH PERIODICALLY REPORTS INFORMATION COLLECTED ON THE USE OF CAPITAL PUNISHMENT IN THOSE OSCE

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STATES THAT RETAIN THE DEATH PENALTY. THE FIVE OSCE STATES WHERE EXECUTIONS ARE CURRENTLY BEING CARRIED OUT ARE BELARUS, KAZAKHSTAN, TAJIKISTAN, UZBEKISTAN AND THE UNITED STATES. PRESENTATIONS BY NGO REPRESENTATIVES FOCUSED ON THE CENTRAL ASIAN COUNTRIES AND REPORTED A BROAD PATTERN OF OFFICIAL SECRECY AND LACK OF COMPLIANCE WITH MINIMUM STANDARDS OF DUE PROCESS. BOTH THE BACKGROUND PAPER AND SOME OF THE PANELISTS AT THE SIDE EVENT NOTED SOME MOVEMENT IN EACH OF THE FOUR STATES (ASIDE FROM THE U.S.) THAT RETAIN THE DEATH PENALTY

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, ATTEMPTED TO EXPLAIN WHY BELARUSIAN SOCIETY WAS NOT YET WILLING TO ABOLISH THE DEATH PENALTY.

ODIHR REPRESENTATIVES PROPOSE DEATH PENALTY TRAINING

- 15. FOLLOWING THE MEETING, A MEMBER OF THE U.S. DELEGATION MET ON THE MARGINS WITH TWO INDIVIDUALS FROM THE ODIHR'S HUMAN RIGHTS SECTION, WHO HAD EXPRESSED INTEREST IN INVOLVING THE UNITED STATES IN A DEATH PENALTY INITIATIVE.

 SPECIFICALLY, THE HUMAN RIGHTS SECTION PROPOSED THAT THE UNITED STATES PARTICIPATE IN AN OSCE DISCUSSION WITH BELARUS AND CENTRAL ASIAN COUNTRIES FOCUSED ON CARRYING OUT THE DEATH PENALTY IN A MANNER CONSISTENT WITH INTERNATIONAL AND OSCE COMMITMENTS AND THAT ENSURES TRANSPARENCY BY MAKING INFORMATION ABOUT ITS USE AVAILABLE TO THE PUBLIC.
- 16. THE DELEGATION MEMBER AGREED THAT THE ABOLITIONIST FOCUS OF MOST OSCE DIALOGUE ON THE DEATH PENALTY UNFORTUNATELY DRAWS ATTENTION AWAY FROM THE IMPORTANCE OF OBSERVING INTERNATIONAL COMMITMENTS IN ITS USE. NOTING THAT OTHER DEATH PENALTY STATES USUALLY POINT TO U.S. RETENTION OF THE DEATH PENALTY WHEN CRITICIZED ABOUT THEIR OWN PRACTICES, THE ODIHR REPS SUGGESTED THAT THE U.S. COULD PLAY A CONSTRUCTIVE ROLE IN HELPING TO ENSURE THOSE COUNTRIES WITH THE DEATH PENALTY APPLY IT IN A FAIR AND TRANSPARENT MANNER CONSISTENT WITH THE RULE OF LAW. ODIHR REPS ALSO BROACHED THE IDEA OF A SUPPLEMENTARY MEETING ON THE DEATH PENALTY, AN IDEA WHICH THE DELEGATION SOUGHT TO DISCOURAGE, GIVEN THE CURRENT, CONTINUING FOCUS OF DEBATE AT THE OSCE ON THE ISSUE OF ABOLITION.

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