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“SUPPRESSING SLAVERY IN THE 21ST CENTURY: FROM LEGISLATION TO ENFORCEMENT”

Remarks as delivered by Inspector General Joseph E. Schmitz of the Department of Defense to the Organization for Security and Cooperation in Europe (OSCE) Forum for Security Cooperation, Vienna, Austria, Wednesday, November 17, 2004.

Thank you for inviting me to this Forum for Security Cooperation to discuss how we in the United States Department of Defense address -- and how we suppress -- the buying and selling of human beings: a public challenge that, I would submit, defines who we are as nations, as peoples, and ultimately as a world community. I am aware that the Organization for Security and Cooperation in Europe (OSCE) has done a great deal of excellent work to combat trafficking in persons and, indeed, was one of the first regional organizations to focus on this defining challenge. Thank you for your courage and for your commitment to this effort.

The military Inspector General in America has traditionally served as “an independent extension of the eyes, ears, and conscience of the Commanders.”¹ My Commander is Donald Rumsfeld, and I, in addition to all my statutory duties of inspection, investigation, audit, and oversight, I too serve in that traditional role for Secretary Rumsfeld. Both my statutory duties and my traditional role as an independent extension of the eyes, ears, and conscience of Secretary Rumsfeld require me to get out, and it's especially a privilege to travel here to Vienna, Austria, so that I can better serve as Donald Rumsfeld's principal advisor on audits, inspections, investigations, and oversight activities throughout the Department of Defense, which is what keeps my staff of more than 1,200 professionals very busy.

What I would like to do today is to encourage each of you to continue working together to share “best practices” for anti-trafficking enforcement structures based upon the principle of subsidiarity²: structures that encourage OSCE member states to

¹ Joseph E. Schmitz, *The Enduring Legacy of Inspector General von Steuben*, J. PUB. INQUIRY (Fall/Winter 2002).

² According to the principle of subsidiarity, “a community of a higher order should not interfere in the internal life of a community of a lower order, depriving the latter of its functions, but rather should support it in case of need and help co-ordinate its activities with the activities of the rest of society, always with a view to the common good. . . . The principle of subsidiarity . . . sets limits for state intervention. It aims at harmonizing the relationships between individuals and societies. It tends toward the establishment of true international order.” CATECHISM OF THE CATHOLIC CHURCH ¶¶ 1883, 1885 (1994) (internal quotes and citations omitted).

promulgate clear prohibitions against trafficking in persons while respecting the authority of each member nation to suppress human trafficking as best each member state sees fit.

Over the past two and a half years, the United States Department of Defense has implemented a principle-based “zero tolerance” policy to ensure that our military forces are part of the solution and not part of the problem. My comments today draw upon two joint and global Inspector General reports,³ as well as my own observations as Inspector General of the Department of Defense in Washington D.C., in Korea, and in Europe.

Principle-based anti-trafficking structures and policies enacted by the United States Congress and promulgated by our President, who has formally identified Human Trafficking as a “special evil,”⁴ exemplify the reality that duly enacted laws in our form of representative government are the societal analog to an individual’s conscience. In the Anglo-American tradition, our national legislature prescribes the national conscience through public laws legislating what is right and what is wrong for the nation, in other words, what choices we ought and ought not to make. Of course, as with any individual conscience formation process, there is always the possibility that this societal conscience might be mis-formed, *i.e.*, inconsistent with a higher law. Also, as with the relationship between individual conscience and individual behavior, this societal conscience formation process is distinct from, yet integrally related to, both the promulgation and the enforcement processes.⁵

Both the Deputy Secretary and the Secretary of Defense have promulgated policy guidance throughout the Department of Defense that neither our Armed Forces nor the contractors who support them will be complicit in any way in the trafficking of persons.⁶ The DoD policy defines trafficking broadly, including involuntary servitude and debt bondage in addition to sex slavery. Leaders at all levels are already being held accountable for enforcing this policy throughout the Department of Defense.

³ Both reports are available through the Office of Inspector General of the Department of Defense website <<http://www.dodig.osd.mil/aim/alsd/H03L88433128PhaseI.PDF>> and <http://www.dodig.osd.mil/aim/alsd/HT-Phase_II.pdf>.

⁴ President George W. Bush, Address to the United Nations General Assembly (Sept. 23, 2002)(“an estimated 800,000 to 900,000 human beings are bought, sold or forced across the world’s borders . . . generat[ing] billions of dollars each year -- much of which is used to finance organized crime”).

⁵ Implementing the Department of Defense "Zero Tolerance" Policy With Regard to Trafficking in Humans Before the House Committee on Armed Services and the Commission on Security and Cooperation in Europe (Sept. 21, 2004)(statement of Joseph E. Schmitz, Inspector General of the Department of Defense incorporating the attached draft article, Joseph E. Schmitz, Inspecting Sex Slavery through the Fog of Moral Relativism (2004)(unpublished manuscript on file at <http://www.dodig.osd.mil/fo/JES_TIP_Testimony_092104.pdf>).

⁶ *Id.* citing Donald Rumsfeld, Memorandum for Secretaries of the Military Departments, Combating Trafficking in Persons (Sept. 16, 2004); Paul Wolfowitz, Memorandum for Secretaries of the Military Departments, Combating Trafficking in Persons in the Department of Defense (Jan. 30, 2004).

The genesis for this “zero tolerance” DoD policy was a May 2002 request by 13 Members of our Congress for a “thorough, global and extensive” investigation into publicized allegation that U. S. military leadership in Korea had been implicitly condoning sex slavery. In response to the Congressional concerns, my Office of Inspector General initiated a “joint and global” Human Trafficking Assessment Project. The first phase of the project focused on Korea; we issued our first report in July 2003. The second phase focused on Europe, specifically on Bosnia-Herzegovina and Kosovo; we issued our second report in December 2003.

The principal manifestation of the DoD “zero tolerance” policy thus far has been Commanders placing “off-limits” any business establishment that may contribute to human trafficking. Secretary Rumsfeld has charged commanders at all levels to work with host nationals to identify businesses and establishments that are involved in trafficking for sexual exploitation. “Off-limits” means that neither U.S. military personnel -- nor U.S. contractors -- may patronize any so-designated business. If they do so notwithstanding the “off limits” designation, the Secretary has charged military commanders with holding those responsible accountable for disobeying a lawful order.

We have validated in Korea that the economic impact of an “off-limits” designation can and has been used as an incentive for businesses to cease engaging in human trafficking. After one Commander formally threatened to place a number of entertainment establishments near his base “off limits,” some – but not all – of the establishment owners modified their businesses. At least one such business simply shut down. Another Commander asked club owners near his base to ban so called “bar fines,” a common revenue source to establishment owners for use of their so-called “employees.” When one club owner refused to ban “bar fines,” the Commander put that club “off-limits.”

In Korea, we found that leadership of U.S. Forces Korea (USFK) had already initiated aggressive efforts to address the challenges of human trafficking. First, the Command established a Prostitution and Human Trafficking Working Group, chaired by a General Officer. This group has overseen the promulgation of numerous changes to regulations, policies and procedures. These include designation of off-limits areas and establishments and adding to Individual Conduct and Appearance regulations a strict prohibition on the paying of bar fines or tickets for female club employees ostensibly for the purposes of marriage. This is designed to prevent military personnel from buying out an entertainer’s contract, thereby removing one source of profit for the traffickers.

The USFK Commander had also updated the orientation program for all new servicemembers coming to Korea to make them aware off-limits areas and establishments and provide training on Prostitution and Human Trafficking. Finally, the USFK Commander established and distributed Guidance for Department of Defense Civilians and Contractors with Regards to Prostitution and Human Trafficking in Korea.

During the course of the Korean phase of our assessment we noted that there were areas of the USFK human trafficking program that could be improved. These included

developing a “human trafficking indicators guide” for Military Police, as well as full engagement of military law enforcement, Inspector General, and intelligence assets. The guide assists patrols now in recognizing and reporting any indication of trafficking for follow-up investigation. We urged the U.S. military leaders in Korea to continue stressing individual responsibility to make good moral choices based on Army’s (and the other Services’) core values. General Leon LaPorte, USFK Commander, enthusiastically embraced our recommendations and acted promptly to implement them.

At the invitation of General LaPorte, I personally traveled to Korea – twice. During my first inspection visit to Korea, one of my Army MP escorts explained to me that the contracts for entertainers from foreign countries whom we were observing in one of the establishments on the so-called “Hooker Hill” in Seoul’s Itaewon District are sold weekly from one establishment to another. When I asked the young MP if he would like to do something about this blatant slave trade, he unhesitatingly responded in the affirmative, but then added that it was beyond his control. Unbeknownst to this soldier, the top of his chain of command had already started to establish programs to empower him to act. It just hadn’t made it down to his level – yet.

Upon my return a year later, I found obvious indicators of substantial improvement: the message is getting out to all levels of command. Military law enforcement assets continue to conduct undercover operations to identify those establishments that allow prostitution and human trafficking to occur.

The State Department Special Representative on Trafficking, Ambassador John Miller, recently reported that the Korean Government has worked with U.S. Forces Korea to identify brothels suspected of exploiting trafficking victims in order to bar U.S. servicemembers access to them. In January of this year, Korean policemen spoke with 777 foreign women near the U.S. bases, advising them of trafficking issues and their rights. Thanks to our cooperation with local authorities under the host nation Status of Forces Agreement, over 600 establishments in Korea remain off-limits to U.S. military and U.S. military contractors.

In Bosnia-Herzegovina and Kosovo, we found virtually no evidence that members of the U.S. Armed Forces were patronizing prostitutes or were engaging in any other activities supporting human trafficking. We did identify some opportunities to improve awareness of the Department’s zero tolerance policy. Service members and contractor personnel were not receiving training to ensure they were aware of and sensitive to the widespread problem of human trafficking. Law enforcement efforts needed to be increased to place offending entertainment establishments off limits. Our report recommended a standard anti-trafficking clause for all Defense Department contracts, which is included in the information that we are distributing to you today. This standard clause places contractors on notice.

Subsequent to our report, the Deputy Secretary of Defense issued to all of the military departments, to major commands throughout DoD, and to key Department of Defense Offices a memorandum to implement our National Security Presidential

Directive 22. This memo formalized our “zero tolerance” approach to trafficking in persons.

The broader U.S. Government “zero tolerance” policy called for in the NSPD states in part: “the United States hereby adopts a ‘zero tolerance’ policy regarding United States Government employees and contractor personnel representing the United States abroad who engage in trafficking in persons. Departments and agencies shall adopt policies and procedures to educate, as appropriate, personnel about trafficking in persons, to investigate, as appropriate, and to punish, as appropriate, those personnel who engage in Trafficking in Persons. To the extent permitted by law, punishment may include disciplinary actions for United States Government personnel, and civil remedies such as debarment and suspension procedures for United States Government contractors engaged in trafficking.”⁷

I have provided you with copies of both Deputy Secretary Wolfowitz’s memorandum as well as Secretary Rumsfeld’s more recent memorandum on the same subject.

Two of the main observations from our inspector general activities thus far are the need to educate service members on human trafficking issues, and the need for leaders at all levels to be “vigilant inspecting the conduct of all persons who are placed under their command.” This leadership standard, by the way, was first drafted by John Adams and enacted by our Continental Congress as Article I of the 1775 Navy Regulations.⁸ More recently, in the aftermath of various sexual scandals in the 1990’s, Congress reenacted this same “exemplary conduct” leadership standard for all military departments, thereby reaffirming, as explained by the Senate Armed Services Committee, “a very clear standard by which Congress and the nation can measure the officers of our military services.”⁹

We have also found that it is important to teach and train our troops about the human trafficking challenge so that they better understand that criminal elements profit from human trafficking – the same criminal elements who are likely to be involved in other illegal enterprises such as selling drugs and weapons. The U.S Department of State has recently validated the direct linkages between trafficking in persons and terrorism. Various insurgent groups around the world, designated as terrorists by the US

⁷ National Security Presidential Directive (NSPD-22)(Dec. 16, 2002). For an explanation, *see* White House Press Release, Trafficking in Persons National Security Presidential Directive, February 25, 2003 available at <<http://www.whitehouse.gov/news/releases/2003/02/20030225.html>>.

⁸ Rules for the Regulation of the Navy of the United Colonies of North-America (William and Thomas Bradford, Philadelphia 1775) *reprinted* by Naval Historical Foundation, Washington, D.C. (1944).

⁹ Introduction to The Declaration of Independence and the Constitution of the United States of America at <www.defenselink.mil/pubs/liberty.pdf> *citing* SENATE ARMED SERVICES COMMITTEE, NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1998, *attached to* S. 924.

government, are forcibly recruiting, luring, or kidnapping human beings to serve against their will as cooks, porters, child soldiers, and sex slaves.

Before I conclude my remarks, I would like to report that leaders within the Department of Defense are currently considering a draft amendment to Article 134 of our Uniform Code of Military Justice (UCMJ), which would add an offense prohibiting the patronization of prostitutes. The Secretary of Defense anticipates submitting such an amendment to Congress as part of the 2004 Annual Review of our Manual for Courts-Martial.

The U.S. Departments of Defense and Justice have also been actively consulting with each other and sharing information regarding how best to investigate and prosecute contractor misconduct associated with trafficking in persons. Standard contractor notices about the Military Extraterritorial Jurisdiction Act (MEJA) and Department of Defense policies both prohibiting trafficking in persons and subjecting contractors to penalties for failing to monitor the conduct of their employees, are currently under review to be included as standardized Defense Federal Acquisition Regulation provisions.

The U.S. does not have all of the answers by any means. We have, however, made a firm commitment and we have already achieved concrete results in combating human trafficking. The senior-most leaders of the Department of Defense have given this task a very high priority. My DoD colleagues and I look forward to working with you in the OSCE to share experiences and best practices, and to learn from each other so that we can ensure that all of our security troops, including civilians and contractors as well as members of our armed forces, do not contribute in any way to what our President has called a “special evil.”

In conclusion, Secretary Rumsfeld has called upon leaders throughout the Department of Defense “to make full use of all tools available, including DoD Inspectors General and criminal investigative organizations, to combat these prohibited activities.”¹⁰ To reiterate Secretary Rumsfeld’s direct order that, “No leader in the Department of Defense should turn a blind eye to this issue.”¹¹ I would respectfully suggest the OSCE also consider Secretary Rumsfeld’s admonition, and that “no leader [in OSCE] should turn a blind eye to this issue.”

I would be glad to answer your questions.

¹⁰ Donald Rumsfeld, Memorandum for Secretaries of the Military Departments, *supra* n.6.

¹¹ *Ibid.*