World Court Sides with Mexico on Dispute with U.S. Over Death Penalty

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The UN International Court of Justice (ICJ), also known as the World Court, handed Mexico a moral victory with a ruling questioning the US treatment of Mexican citizens, now on death row, at the time of their arrest. The ruling, announced in late March, supported Mexico's contention that the US had ignored its obligations under Article 36 of the Vienna Convention by denying 51 Mexican citizens on death row the right to legal assistance from their government at the time of their arrest.

Because of the US violations, Mexico has asked that the 51 citizens be taken off death row. "Mexico believes that the decision represents a triumph of international law," said Arturo Dager, legal counsel for the Secretaria de Relaciones Exteriores (SRE). "In Mexico's case, it establishes a path to follow for the defense of compatriots confronting the death penalty in the United States."

Mexican attorneys who presented their government's case before the ICJ, based in The Hague, Netherlands, argued that consular notification is especially important in capital cases. A defendant has a better chance of avoiding a death sentence with an experienced lawyer who speaks the same language, along with having the help of the Mexican government in investigating possible mitigating circumstances, Mexico's legal team said.

"The international court in The Hague has supported Mexico in the question of human rights," said President Vicente Fox. "They have agreed that our citizens have been given the death penalty in a process that did not respect the law."

The ICJ ruling, which is binding and not subject to appeal, directs the US to review the cases of 51 of the 52 Mexicans facing the death penalty. "The US should provide by means of its own choosing meaningful review of the conviction and sentence" of the Mexicans, said the court's presiding judge, Shi Jiuyong. The ICJ decided not to include one case in which an inmate falsely represented himself as a US citizen at the time of his arrest.

Human rights groups lauded the ICJ ruling because it offers an opportunity for death sentences to be overturned if US state governments comply. "Today's decision could make the difference between life and death for foreigners prosecuted in the United States," said Jamie Fellner, director of US-based Human Rights Watch (HRW). "Giving defendants access to consular officials means that they can get good defense lawyers the surest way to avoid the death penalty."

Mexico's legal team at The Hague sought new trials for the Mexicans on death row in the US. "We are asking the court to tell the United States to retry these nationals, but this time with the consular assistance they are entitled to," said Juan Manuel Gomez Robledo, chief legal representative for Mexico at the ICJ. Interior Secretary Santiago Creel emphasized, however, that Mexico's position is clearly in opposition to the death penalty. "We aren't saying that they're innocent...much less are we
judging the internal process through which they are punished," said Creel. "What is at issue is the
decision to impose the death penalty at the end."

**Execution scheduled for Oklahoma inmate**

Of immediate concern to Mexican authorities are the cases of Mexican nationals Osvaldo Torres
Aguilera in Oklahoma, and Cesar Fierro Reyna and Roberto Moreno Ramos in Texas. All three have
exhausted their appeals. Torres was convicted of killing two people during a burglary, while Moreno
Ramos was sentenced to death for murdering his wife and two children. Fierro Ramos was given a
death sentence for killing a taxi driver.

The ICJ intervened in the three cases almost a year ago with a ruling ordering the US to postpone
the executions (see SourceMex, 2003-02-12). That ruling applied only to the three cases, while this
year's decision involves the cases of most Mexicans on death row. The two US states ignored that
earlier ICJ ruling, with Oklahoma announcing in early March that Torres Aguilar's execution had
been scheduled for May 18. No execution dates have been set for Fierro Reyna and Moreno Ramos.

As was the case with the 2003 ruling, Texas authorities questioned the jurisdiction of the court.
"Without doubt, the governor respects the right of the international court to its opinion," said a
spokesperson for Texas Gov. Rick Perry. "Nevertheless, the tribunal has no authority or jurisdiction
in the state of Texas." Oklahoma authorities were more reserved in their reaction. "We will not
present an opinion until we have concluded a detailed analysis of the decision," said Kym Koch,
spokesperson for Oklahoma Gov. Brad Henry.

Spokespersons for Arizona, Arkansas, California, Florida, Nevada, Ohio, and Oregon which all have
Mexicans on death row had no comment on the latest ICJ decision. The death penalty has been a
subject of major disagreement between the US and Mexico. In August 2002, President Fox canceled a
visit with US President George W. Bush to protest the decision of the state of Texas to proceed with
the execution of Mexican national Javier Suarez for the murder of a police officer.

In late March, Fox said he would appeal to Bush and Govs. Perry and Henry to heed the most
recent decision of the ICJ. "It is the obligation of all countries to heed the court's decision," Fox told
reporters.

The Mexican president extracted a promise from the Bush government to "review carefully" the ICJ
decision. The two presidents discussed the matter during a brief conversation on April 13. On that
same day, Mexico's Ambassador to Washington Carlos de Icaza and legal counselors from the SRE
met with US officials to inform the Bush administration that Mexico expected the US to abide with
the ICJ ruling.

Fox administration officials said the disagreement regarding the death penalty would not affect
relations between Mexico and the US in other areas of common interest. "This situation in no way
affects the bilateral relations between our countries," said Dager. "This is strictly a disagreement
on a legal issue." Sen. Silvia Hernandez, who chairs the foreign relations committee (Comision de
Relaciones Exteriores) in the upper house, was less diplomatic. She warned of a major outcry in
Mexico if the US openly defies the decision of the ICJ. "It would generate enormous distrust toward
the American authorities, and it would send a very dangerous message that the United States only obeys favorable rulings under international law," said Hernandez, a member of the former governing Partido Revolucionario Institucional (PRI).

Other Mexican legislators have called on the Mexican government to press its case with the UN Security Council if the US states fail to comply with the court order. As the debate with the US continues over the death penalty, the Mexican government is moving to remove capital punishment from its military justice codes. The death penalty has been banned for decades in civil law, but the military allowed executions in cases of treason or murder (see SourceMex, 2003-12-13). In late March, Fox sent an initiative to Congress seeking to eliminate the death penalty from military justice codes.

The initiative was presented just days before the ICJ handed down its ruling. The president's proposal sought to replace capital punishment with a mandatory jail sentence of 60 years. Mexico's highest court (Suprema Corte de Justicia de la Nacion, SCJN) also contributed to the debate with a ruling in mid-April allowing the SRE to halt any extraditions to the US if the US government cannot guarantee that the death penalty will not be applied.

The SCJN decision is a follow-up to a ruling made by the high court in 2001, which said the government had the authority to expedite extraditions of Mexican citizens to the US without violating the Mexican Constitution (see SourceMex, 2001-01-24). In issuing the latest ruling, the SCJN justices cited Article 22 of the Mexican Constitution, which explicitly prohibits capital punishment. (Sources: Agence France-Presse, Excelsior, 03/31/04; El Independiente, Unomasuno, The Washington Post, The New York Times, Los Angeles Times, 04/01/04; The Dallas Morning News, 04/02/04; The San Diego Union-Tribune, 04/03/04; Reuters, 03/02/04, 03/22/04, 03/31/04, 04/04/04; Milenio Diario, 04/05/04; La Cronica de Hoy, 03/03/04, 03/26/04, 04/01/04, 04/05/04, 04/13/04; Associated Press, 03/31/04, 04/01/04, 04/13/04; Spanish news service EFE, 03/31/04, 04/01/04, 04/02/04, 04/04/04, 04/05/04, 04/13/04; Agencia de noticias Proceso, 03/31/04, 04/13/04; El Sol de Mexico, 03/02/04, 03/26/04, 03/31/04, 04/01/04, 04/02/04, 04/05/04, 04/14/04; Notimex, 03/10/04, 03/29-31/04, 04/01/04, 04/04/04, 04/14/04; The Herald-Mexico City, 03/31/04, 04/02/04, 04/05/04, 04/14/04; La Jornada, 03/31/04, 04/01/04, 04/02/04, 04/05/04, 04/06/04, 04/14/04; El Universal, 04/01/04, 04/02/04, 04/05/04, 04/13/04, 04/14/04; El Financiero, 04/05/04, 04/14/04)