



United States Mission to the OSCE

Response to the Statement on the Death Penalty in the United States

As delivered by Deputy Chief of Mission Carol Fuller
to the Permanent Council, Vienna
June 23, 2011

Thank you, Mr. Chairman.

We want to thank the European Union for its expression of concern regarding the death penalty in the United States.

As I have noted many times before, the use of the death penalty in the United States is a decision of democratically elected governments at the federal and individual state levels and is not prohibited by international law, nor does capital punishment violate any OSCE commitments. The people of the United States, acting through their freely elected representatives, have chosen, in many states, not to abolish the death penalty.

In terms of the specific case noted, Humberto Leal Garcia was convicted in Texas state court of raping and killing a 16-year-old girl in 1994. Article 36 of the Vienna Convention on Consular Relations (VCCR) provides that foreign nationals arrested or detained be informed, without delay, of their option to have their consulate notified of the detention. Leal, a Mexican national, was not informed that he could have his consulate notified.

Mexico sued the United States in the International Court of Justice (ICJ), claiming violations of the VCCR with respect to Leal and 50 other Mexican nationals sentenced to death. In its 2004 Avena judgment, that court held that the United States had an obligation to provide review and reconsideration to these 51 Mexican nationals to determine if the failure to undertake consular notification procedures prejudiced their conviction or sentence.

In 2008, former President Bush attempted to discharge this international legal obligation by directing state courts to provide review and reconsideration. In the Medellín case, the U.S. Supreme Court held the President's directive constitutionally insufficient, but indicated that Congress could ensure compliance with the Avena judgment by enacting legislation to implement it.

On June 14, 2011, the Consular Notification Compliance Act was introduced in the U.S. Congress. If passed, this legislation would provide Leal and similarly situated death row foreign nationals the opportunity to obtain review and reconsideration in federal court. This legislation is an important step towards ensuring U.S. compliance with its international legal obligations under the Avena judgment.

More broadly, the U.S. judicial system maintains high standards in assuring individualized determination and exhaustive procedural protections to ensure that the death penalty is appropriate in a given case and that it is not applied in an extra-judicial, summary, or arbitrary manner. The U.S. Supreme Court has repeatedly held that capital punishment itself does not violate the U.S. Constitution. However, capital punishment may only be carried out

subject to extensive due process and equal protection requirements, and after exhaustive appeals.

Mr. Chairman, the issue of the imposition of the death penalty continues to be the subject of vigorous and open discussion among the American people, as you all know very well.

Thank you, Mr. Chairman.