

Bush administration repudiates World Court jurisdiction in death penalty cases

Kate Randall
11 March 2005

The Bush administration has adopted a curious approach to issues of democratic rights and international law. If an international statute conflicts with its aims, it devises some method of defying it. In this spirit, the Bush administration has struck yet another blow in its worldwide crusade for democracy and freedom, summarily withdrawing from an international agreement that enforces the basic democratic right of foreign nationals to speak to consular officers when they are accused of a crime, including those that carry the death penalty. More than 100 inmates from 30 countries currently sit on death row in the United States.

The Optional Protocol to the Vienna Convention on Consular Rights requires signatories to give the International Court of Justice (ICJ), the United Nations judicial body also known as the World Court, jurisdiction over cases where individuals claim they have been illegally denied the right to see a diplomat when they are arrested abroad. The US proposed the protocol in 1963 and ratified it, along with the Vienna Convention, in 1969.

US Secretary of State Condoleezza Rice informed UN Secretary General Kofi Annan in a two-paragraph letter dated March 7 that the US “hereby withdraws” from the protocol. So while still remaining a signer to the Vienna Convention, the US will now refuse to submit to international law to enforce it. From this point forward the Bush administration’s response to arrested foreign nationals denied their consular rights—and who seek remedy at the ICJ—will quite simply be: “Tough luck.”

According to State Department spokesperson Darla Jordan, the Bush administration has been displeased that the World Court “has interpreted the Vienna Consular Convention in ways that we had not anticipated that involved state criminal prosecutions and the death penalty, effectively asking the court to supervise our domestic criminal system”—so they are withdrawing from

the protocol to see to it that it doesn’t happen again.

The ruling prompting Washington’s indignation was an ICJ decision last year ordering new hearings for 51 Mexicans on death row in the US who claimed they were denied their consular rights. In a ruling that came as somewhat of a shock to death penalty opponents, a February 28 memorandum from Bush to Attorney General Alberto Gonzales directed state courts to abide by the tribunal’s ruling. It has now become clear, however, that Bush’s directive had nothing to do with a change of heart on the death penalty issue, but in fact set the stage for flouting international law in the future.

In a case that had been scheduled to come before the US Supreme Court on March 28, Mexican national and Texas death row inmate Ernesto Medellín is asking the court to enforce the ICJ judgment, which Texas has refused to do. When the federal government filed a supporting brief for Texas in the case at the end of February, it attached the Bush-Gonzales memo referred to above.

The effect of this strategy was twofold. Medellín’s attorneys have asked the high court to put off hearing the case until Texas authorities respond to Bush’s request to comply, so the issue has been temporarily removed from consideration by the Supreme Court, and there is no present danger of the court setting any precedent on the consular rights issue. More importantly, the administration wiped the slate clean by complying with the ICJ decision in this case, only to turn around a week later pulling out of the optional protocol. In effect, the White House was saying, “We’ve been burned once and we won’t be burned again.”

(It is unclear at this point whether Texas will comply with Bush’s order to accept the World Court’s judgment and order new hearings for the Mexican death row inmates, or that Bush expected they would. A spokesman for Texas Attorney General Greg Abbott stated: “The State of Texas believes no international court supersedes

the laws of Texas or the laws of the United States.”)

According to the Death Penalty Information Center, as of February 15 there were 119 foreign nationals on death rows across the US, and nearly half of them are from Mexico. Three states currently incarcerate 91 of these prisoners: California (43), Texas (27) and Florida (21). The Bush administration’s pullout from the optional protocol on consular rights means that foreign prisoners not covered by the government’s recent directive can seek no recourse at the World Court.

Bush, fervently pro-death-penalty, presided over 152 executions in his five years as governor of Texas. He reportedly spent only minutes reviewing the abbreviated notes on prisoners’ appeals provided him by his staff before he sent them to their deaths. He has maintained that he never sent an innocent man or woman to the execution chamber, ignoring numerous reports such as a 2000 study by the Texas Defender Service which described the death penalty operation in Texas as “a thoroughly flawed system” marred by “racial bias, incompetent counsel, and misconduct committed by police officers and prosecutors.”

The White House was no doubt angered by the Supreme Court’s ruling earlier this month striking down the death penalty for juvenile offenders. In a narrow 5-4 vote, the court ruled that capital punishment for crimes committed by juveniles violates the Eighth Amendment prohibition against “cruel and unusual punishment” and that the ban was necessary to keep pace with “evolving standards of decency.” The majority also wrote in their opinion that “the United States now stands alone in a world that has turned its face against the juvenile death penalty.”

One of Bush’s co-thinkers on the high court, Justice Antonin Scalia, writing the dissenting opinion, took particular objection to the fact that, in the opinion of the majority, “the views of other countries and the so-called international community take center stage.” Bush’s refusal now to be bound by enforcement of the Vienna Convention on Consular Rights by the World Court is of a piece with such contempt for international law, particularly when it interferes with the US capital punishment system.

Hardly a day goes by without new revelations of torture and other criminal activity by the US military or the various police and spy agencies under the Bush administration’s control. While claiming that it is spreading “freedom” and “democracy” throughout the world—and in the Middle East in particular—it has contravened international law by launching an illegal war

of aggression against Iraq, resulting in the deaths of tens of thousands of civilians and the brutal torture of prisoners at facilities such as Abu Ghraib.

To avoid abiding by the Geneva Conventions, the Bush administration has simply asserted that entire categories of individuals it has snatched up in its international “war on terror” are not prisoners of war and the protections of the convention do not apply. In this manner, hundreds of detainees have been held indefinitely as “enemy combatants” at Guantánamo Bay and other US-run prisons without charge or access to legal counsel.

The United States is a world leader in its refusal to ratify international treaties. In 2002, the Bush administration formally rejected the treaty establishing the International Criminal Court, signaling its intention to shield top government and military officials from any future prosecution for war crimes.

The US has failed to ratify the Convention on the Rights of the Child, because it prohibits recruiting child soldiers under the age of 18 (the US military allows 17-year-old recruits). Although it signed the Convention on Economic and Social Rights, it has refused to ratify it because the treaty declares housing and food to be internationally recognized human rights.

The Bush administration dropped its support for the Kyoto environmental treaty on climate change just days before the UN vote. It has renounced the 30-year-old Anti-Ballistic Missile treaty, and is one of a handful of countries that has not signed the 1997 treaty banning landmines.

Bush’s decision to opt out of the Optional Protocol to the Vienna Convention on Consular Rights follows in this tradition: if an international treaty in any way restricts the predatory military pursuits of US imperialism—or compels the government to abide by basic democratic and humanitarian rights for Americans or citizens of other countries—it should be rejected, abandoned or openly breached.



To contact the WSWP and the
Socialist Equality Party visit:

wsws.org/contact