

US Supreme Court rejects international law, ruling against Mexicans on death row

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26 March 2008

In an extraordinary ruling that epitomizes the lawlessness and arrogance of Washington's conduct on the world stage, the US Supreme Court rejected an appeal on behalf of 51 Mexican nationals, most of them condemned to death, finding that American state courts are not bound by international law.

In its 6-3 ruling, which clears the way for dozens of executions, the Court's majority decided that the Texas state courts do not have to comply with a decision by the International Court of Justice (ICJ), and that the US president does not have the authority to order them to do so.

Mexico, which does not have a death penalty, brought the case to the international court in 2003, citing the Vienna Convention, which affirms the right of foreign nationals arrested in any country to obtain assistance from their government's consulates and requires the authorities to inform them of this right.

The case was brought on behalf of Jose Ernesto Medellin, convicted in Texas in 1994 of rape and murder when he was 18. It also covered 50 other Mexicans imprisoned in the US. Forty-four of those included in the international appeal face execution, 14 of them in Texas. One had his death sentence commuted to life in prison, because he was a minor.

The World Court ruled in favor of the condemned Mexicans, finding that the courts in the US should grant them appeal proceedings to determine if their being denied this right had deprived them of a fair trial.

President Bush responded to the decision by withdrawing the US from the optional protocol giving the World Court jurisdiction over the Vienna Convention, thereby asserting his own rejection of international law and preventing Mexico or anyone else from appealing future death penalties on the grounds of denial of the right to consular assistance.

However, Bush urged the state courts to comply with

the ruling retroactively in the cases on which the international court had ruled. He issued a memorandum to that effect in 2005.

The memo was meant to short-circuit any Supreme Court ruling on the matter and to pave the way for the US government's pulling out of the optional protocol granting the World Court jurisdiction.

The state courts in Texas and elsewhere rejected the appeals on procedural grounds—citing the fact that Medellin's attorney had not raised during his trial the denial of access to the Mexican consulate.

A Texas appeals court subsequently ruled that Bush had “exceeded his constitutional authority by intruding into the independent powers of the judiciary” in ordering the state courts to review the Medellin conviction, while the state's supreme court held that “neither the [World Court decision] nor the President's Memorandum constitutes directly enforceable federal law that pre-empts limitations on the filing of successive habeas petitions.”

The Court's majority decision, written by Chief Justice John Roberts, essentially upheld the position of the Texas courts. It went further, however, calling into question the validity of all treaties entered into by the US government.

The International Court of Justice was established under the United Nations Charter in 1945, and the United States accepted its jurisdiction in 1946. In 1985, Washington withdrew its acceptance of the court's general jurisdiction, after it was found guilty of violating international law by waging a CIA-organized war against the Sandinista government in Nicaragua. However, it continued to accept jurisdiction in relation to the Vienna Convention, governing consular matters. After the court's ruling regarding the Mexicans on death row, the Bush administration withdrew from that jurisdiction as well.

“Not all international obligations automatically constitute binding federal law enforceable in United States courts,” Chief Justice Roberts wrote in the majority

decision. He was joined by the Justices Antonin Scalia, Clarence Thomas, Anthony Kennedy and Samuel Alito.

The Court's majority, based on a specious interpretation of the language contained in the relevant treaties, found that they were "non-self-executing," meaning that, even though they had been ratified by a two-thirds vote of the Senate and signed by the president, they were not enforceable as domestic law because the Congress had not implemented their provisions in the form of separate new legislation.

The decision also revealingly suggests that the US government never intended to subordinate itself to the decisions of the ICJ in any case. Instead, the court majority said, it saw the only means of enforcement of the World Court's decisions being actions by the United Nations Security Council, where "noncompliance with an ICJ judgment through exercise of the Security Council veto [was] always regarded as an option."

Justice John Paul Stevens wrote separately concurring with the outcome of the majority decision, but not its arguments. Stevens held that, while Bush lacked the power to order the Texas courts to comply with the ICJ ruling, Texas should do so of its own volition, acting to "shoulder the primary responsibility for protecting the honor and integrity of the Nation."

Needless to say, the Republican authorities in Texas have no intention whatsoever of assuming such a responsibility. Rather, they celebrated the high court's decision as a declaration of US immunity from international law and a victory for states' rights.

Texas Solicitor General Ted Cruz, who argued the case before the Supreme Court, declared that the ruling "categorically prohibits foreign courts from undermining American sovereignty and independence."

Others tried to suggest that the right-wing court's decision represented some kind of rebuke for Bush in his continuous attempt to assume unfettered executive powers.

It was ironic that the Bush White House found itself arguing in favor of the Medellin appeal. It was a peculiar position, to say the least, for Bush, who as Texas governor had presided with apparent relish over 152 executions. Indeed, while running for president in 2000, Bush approved the execution of Mexican national Miguel Flores, 31, rejecting appeals from Mexico and international human rights organizations, which argued that he had been denied his right under the Vienna Convention to contact the Mexican consulate.

Filing amicus briefs in the case were a large number of

prominent former State Department officials as well as experts in international law. The clear fear within these circles was that the outright repudiation of the ICJ's decision would call into question US commitment to any treaty obligation that it found inconvenient, including agreements covering commercial and trade matters upon which vast profits depend.

In addition to Mexico, 12 Latin American countries and 47 member states of the European Union and Council of Europe also participated in the Supreme Court proceedings with briefs supporting the Medellin appeal.

In a dissenting opinion, Justices Stephen Breyer, Ruth Bader Ginsburg and David Souter warned that the Court's decision would "increase the likelihood ... of worsening relations with our neighbor Mexico, of precipitating actions by other nations putting at risk American citizens who have the misfortune to be arrested while traveling abroad, or of diminishing our Nation's reputation abroad as a result of our failure to follow the 'rule of law' principles that we preach."

There is no doubt that the American high court's decision will be seen worldwide in the context of Washington's more infamous acts repudiating international law in practice, ranging from the war of aggression against Iraq, to the use of "extraordinary rendition," illegal detention and torture.

In the final analysis, the Supreme Court's ruling represents not a protection of the separation of powers or independence of the judiciary, but rather the defense of the barbaric use of the death penalty and an arrogant dismissal of an increasingly horrified world public opinion.

Its immediate impact will be to tear away the last protection for scores of Mexican immigrants held on death row, hastening their state executions.



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