

How the Death Penalty Weakens U.S. International Interests



ACLU

AMERICAN CIVIL LIBERTIES UNION

FOUNDATION

CAPITAL
PUNISHMENT
PROJECT

December 2004

How the Death Penalty Weakens U.S. International Interests

Published December 2004

THE AMERICAN CIVIL LIBERTIES UNION is the nation's premier guardian of liberty, working daily in courts, legislatures and communities to defend and preserve the individual rights and freedoms guaranteed by the Constitution and the laws of the United States.

OFFICERS AND DIRECTORS

Nadine Strossen, President
Anthony Romero, Executive Director
Kenneth B. Clark, Chair,
Executive Advisory Council
Richard Zacks, Treasurer



**CAPITAL
PUNISHMENT
PROJECT**

ACLU Capital Punishment Project
915 15th Street, NW, 6th Fl.
Washington, DC 20005

ACLU National Office
125 Broad Street, 18th Fl.
New York, NY 10004-2400
(212) 549-2500
www.aclu.org

Table of Contents

- I. Introduction 1

- II. The Death Penalty in the International Arena 1
 - A. International Efforts to Abolish the Death Penalty 1
 - B. International Efforts to Limit the Death Penalty 3
 - C. Foreign Officials Raise the Issue with the U.S 6
 - D. Interventions by Foreign Governments 9
 - E. Extradition Cases Involving the Death Penalty 10
 - F. Challenges by International Tribunal Hearing 10
 - G. Human Rights Inquiries and Other Reports 12

- III. Effects on the International Image of the United States 14
 - A. International Press Coverage 14
 - B. International Cooperation in the “War on Terror” 15

- IV. Conclusion 16

- Endnotes 17

HOW THE DEATH PENALTY WEAKENS U.S. INTERNATIONAL INTERESTS

It is in all candor that we say to you that maintaining the death penalty in your country profoundly affects the friendship which we feel for you. If Americans must understand that the death penalty is intolerable, it is up to you, as responsible politicians, to help them understand that. You are the representatives of a country that certain people consider the greatest democracy in the world. But you will never be elected in a model democracy as long as the death penalty exists there.

–Letter to Members of the United States Congress
from Members of the French National Assembly, July 2000.

How the Death Penalty Weakens U.S. International Interests

I. Introduction

In the face of a clear world trend toward abolition of capital punishment, executions in the United States continue unabated. Europeans and other allies find such U.S. practices as the execution of juvenile offenders, the mentally ill, and the mentally retarded to be particularly repugnant. International human rights inquiries and other studies regularly describe problems with the United States death penalty system, including wrongful convictions of innocent people, inadequate legal representation for defendants, and racial and economic disparities in its application. Many allies consider such practices to be unfit for a great democracy seeking to assert leadership on human rights and other international policy matters.

The United States' refusal to take any significant steps in response to international concerns regarding the death penalty is harming its relations with important allies and costing the United States prestige and leadership on human rights and other issues. This is happening at a time when, as President Bush recognizes, the United States must rely on international cooperation. The costs to the United States in terms of its international interests simply are not worth whatever benefits might be had from executing 100 criminals per year rather than imprisoning them for life. It is time for the United States to reevaluate its commitment to this outdated and controversial practice.

II. The Death Penalty in the International Arena

The forfeiture of life is too absolute, too irreversible for one human being to inflict it on another, even when backed by legal process. And I believe that future generations, throughout the world, will come to agree.

— Kofi Annan, United Nations Secretary General, accepting a petition calling for a worldwide moratorium on the death penalty, Dec. 18, 2000.

The international community's efforts to abolish, or at least limit, the practice of legal executions are reflected in numerous multilateral treaties and protocols. The United States, however, generally either refuses to sign, signs with reservations, or simply ignores such treaties, and continues to apply the death penalty without regard for the concerns of other nations. As a result, foreign officials increasingly have challenged the United States on this issue.

A. International Efforts to Abolish the Death Penalty

The primary goal of most of the international community regarding the death penalty is abolition. Efforts to abolish the death penalty have been conducted through multilateral organizations, such as the United Nations, and regional

organizations, such as the European Union. These efforts have realized a great degree of success. The number of countries that have stopped imposing the death penalty has grown to an all-time high of 118 as of 2003. Eighty countries have abolished the death penalty for all crimes. Fifteen countries have abolished the death penalty for all but exceptional crimes, such as those committed during wartime. Twenty-three countries can be considered abolitionist in practice: They retain the death penalty in law but have not carried out any executions for 10 or more years, and are believed to have a policy or practice of not carrying out executions. Countries renouncing the death penalty for all crimes in recent years include Chile, Ukraine, Estonia, Azerbaijan, Canada, the United Kingdom, Poland, Lithuania, South Africa, Turkmenistan, and Bulgaria. Still others have abolished the death penalty for “ordinary crimes” and retained it for serious crimes against the state like treason or war crimes. By ignoring international efforts to abolish the death penalty while increasing its use, the United States places itself outside a growing international consensus on capital punishment.

The International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights (ICCPR)¹ is the primary international treaty on human rights. The U.S. State Department has called it “the most complete and authoritative articulation of international human rights law that has emerged in the years following World War II.” While the treaty has received almost universal endorsement, the United States ratified it only with reservations relating to the death penalty.

The Second Optional Protocol to the ICCPR² seeks the abolition of the death penalty worldwide. This Protocol was adopted by the United Nations General Assembly in 1989. It has now

been ratified by 53 states, and another nine states have signed, indicating their intention to become parties. The Second Optional Protocol notes that the ICCPR has referred to the death penalty “in terms that strongly suggest that abolition is desirable.” The Protocol further states the commitment of the parties to abolish it. This Protocol provides for its total abolition, but also allows states wishing to do so to retain the death penalty in wartime as an exception. Parties to the Protocol include such U.S. allies as the United Kingdom, Germany, Belgium, Denmark, Finland, Greece, Italy, Netherlands, Spain, Sweden, Colombia, Costa Rica, Ecuador, Panama, Uruguay, Venezuela, Monaco, Mozambique, and Namibia. The United States has not signed the Protocol.

A resolution of the U.N. Commission on Human Rights called on all parties to the ICCPR that have not signed the Second Optional Protocol to do so.³ The Commission further called upon States that still impose the death penalty to restrict the number of offenses for which it can be imposed, and to establish a moratorium on executions with a view to completely abolishing them. The resolution was passed with a roll call vote of 27 for, 18 against, and seven abstentions. Among those joining the United States in voting against the resolution were Algeria, Burundi, China, Indonesia, Libya, Malaysia, Pakistan, Qatar, Saudi Arabia, Syria, and Vietnam – unusual allies for one of the world’s leading democracies on an important human rights issue.

The Americas

In our region, the primary human rights treaty is the American Convention on Human Rights.⁴ The Organization of American States – of which the United States is a member – has adopted a Protocol to the American Convention on Human Rights to Abolish the Death Penalty.⁵ The Preamble to this Protocol

notes that the tendency among American nations is in favor of abolishing the death penalty, and seeks an international agreement to eliminate the death penalty in the Americas. The Protocol has subsequently been ratified by eight states and signed by one other. The Protocol has been ratified by Venezuela, Uruguay, Paraguay, Panama, Nicaragua, Costa Rica, Ecuador, and Brazil. The United States is not a signatory.

Europe

The Council of Europe in 1983 adopted Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) concerning the Abolition of the Death Penalty.⁶ This Protocol is an agreement to abolish the death penalty in peacetime. Every European nation except Turkey has signed the Protocol. The Protocol has been ratified by 44 states and signed by one other.

The European Convention on Human Rights has also adopted Protocol No. 13 to the European Convention for the Protection of Human Rights and Fundamental Freedoms. This Protocol calls for the total abolition of the death penalty in all circumstances. The agreement has been ratified by 26 countries and signed by 16 others.

The Council of Europe and the European Union have made abolition of the death penalty a condition of membership. This has encouraged several nations to eliminate their death penalties. Russia, for example, promised to abolish its death penalty in order to secure membership on the Council. Following its admission in 1996, then-President Boris Yeltsin imposed a moratorium on executions. In 1999, he issued a decree commuting the death sentences of all 716 convicts on Russia's Death Row, and pressured the Russian Duma to pass a law abolishing the death

penalty. Russian President Vladimir Putin also has spoken out strongly against the death penalty, avowing that there are no plans to lift the moratorium.⁷

The European Union's ban on the death penalty has also forced Turkey to promise to abandon its once harsh death-penalty system in order to gain admission. Other applicants for membership in the EU have recently abolished their death penalties, among them Ukraine, Lithuania, Estonia, Bulgaria, and Poland. This reflects the clear trend in Europe towards the elimination of capital punishment, as well as the willingness of European institutions to pressure others to abandon the death penalty.

The most significant consequence of the United States' stance on the death penalty is its potential impact on national security. Because of its strong opposition to the death penalty, the European Parliament has prohibited extraditions of terrorists to the United States for trial without a prior clear commitment from the U.S. government to waive capital punishment as a possible sentence. The United States needs the cooperation of other countries in order to continue to combat terrorism effectively, but America's insistence on capital punishment is a major obstacle. Even if a deal for a different penalty can be worked out, the delay can be lengthy and critical investigation slowed.

B. International Efforts to Limit the Death Penalty

In recognition that the death penalty is not likely to be abolished soon in certain countries, much of the international community's focus has been on limiting its most objectionable and unfair aspects. These include:

- the execution of juvenile offenders,
- the execution of those with mental deficiencies or severe mental illness,

HOW THE DEATH PENALTY WEAKENS U.S. INTERNATIONAL INTERESTS

- the execution of foreign nationals not informed of their rights under the Vienna Convention on Consular Relations,
- the problem of racial and economic bias; and
- the treatment of Death Row inmates between sentencing and execution.

Much attention has been focused on the U.S. record on these issues, because of its international prominence and its commitment in other arenas to the principles of human rights and fairness.

In 2004, a U.N. resolution calling for a worldwide moratorium on executions was co-sponsored by 76 countries. Resolution 2004/67 on the Question of the Death Penalty, adopted by the U.N. Commission on Human Rights, calls upon all states that still impose the death penalty to abolish it completely and, in the meantime, to establish a moratorium on executions. States are particularly urged not to impose the death penalty for crimes committed by juveniles or for crimes committed by those who are mentally ill. States which ratify the resolution also agree to observe other agreed U.N. safeguards and restrictions on the death penalty.

Execution of Juvenile Offenders

There is nearly universal consensus in the international community that the execution of juvenile offenders violates human rights. Article 6 of the ICCPR states, in part, “Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.” The United States has signed and ratified the Convention, but with a reservation allowing it to continue executing juvenile offenders.

Eleven countries formally protested the United States’ ICCPR reservation with respect to juvenile offenders, stating that the reservation

should not be allowed. The U.N. Human Rights Commission—the body established to oversee the ICCPR—voted that the United States’ reservation was invalid. The U.S. Senate responded to this vote by threatening to withhold funds slated for U.S. participation on the Commission.

The United States also has signed, but not ratified, the American Convention on Human Rights, which states, “capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age.” Further, the U.N. Convention on the Rights of the Child⁸ specifically prohibits the use of the death penalty for juvenile offenders. Every country in the world except the United States and Somalia has ratified this treaty. Clearly, the international opinion, which has been expressed through the International Covenant on Civil and Political Rights and in the Convention on the Rights of the Child, is almost unanimous and will probably have an impact on the ultimate decision by the Supreme Court in a pending juvenile death penalty case.

Amnesty International has documented executions of juvenile offenders in seven countries since 1990: Congo, Iran, Nigeria, Pakistan, Saudi Arabia, Yemen, and the United States.⁹ But the United States has carried out the greatest number of juvenile executions. In fact, the United States has executed more juvenile offenders over the last decade than all other nations in the world combined. This is not a positive distinction for a country seeking to assert moral leadership on international human rights issues.

However, during the 2004 term, the Supreme Court accepted the case of *Roper v. Simmons*¹⁰, revisiting its 1989 decision in *Stanford v. Kentucky*¹¹, which upheld the execution of 16-year-old offenders.

Significantly, several prisoners who were sentenced to death for crimes committed when they were 17 have now received stays of execution pending this decision, which is expected in early 2005.

Execution of the Mentally Retarded and Mentally Ill

The execution of those with mental retardation or severe mental illness has raised similar concerns to those involving juvenile offenders. In 1999, the U.N. Commission on Human Rights passed a resolution calling on nations “not to impose the death penalty on a person suffering from any form of mental disorder.”¹² The United Nations’ Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions also has called for a halt on the imposition of the death penalty on the mentally retarded.¹³ The Special Rapporteur stated that such executions were in contravention of international standards.

In 2001, the Supreme Court agreed to hear the case of *Atkins v. Virginia*¹⁴ in order to consider anew the execution of mentally retarded defendants. The court ultimately decided that standards of decency had evolved significantly enough to merit outlawing such actions. Eighteen of the 38 death penalty states had already made such executions illegal. In light of this emerging national consensus, the Supreme Court ruled that this practice constituted cruel and unusual punishment. The international community had called for such a ruling for many years. Resolutions by the United Nations Commission on Human Rights supported this reform. The Court also made reference to *amicus curiae* briefs from the European Union and from members of the U.S. diplomatic corps, supporting such a ban. Thus, international opinion has begun to have a stronger and more visible impact on the U.S. Supreme Court’s legal decisions regarding the United

States’ judicial policy on capital punishment. Many court observers believe the same impact may be brought to bear on the upcoming juvenile death penalty case.

While U.S. law prohibits the execution of the insane, this is a very high standard that rarely is met. In actuality, the United States continues to execute offenders clearly exhibiting mental illness. Because of the Supreme Court’s failure to clearly articulate a definition of mental retardation, many states continue to allow the execution of people who likely are mentally retarded. These executions are particularly repugnant to many in the international community. French President Jacques Chirac criticized the United States before the U.N. Human Rights Commission, saying, “What can be said of the execution of minors or of persons suffering from mental deficiencies? I call for a worldwide abolition of the death penalty, the first step of which would be a general moratorium.”¹⁵

Execution of Foreign Nationals

The Vienna Convention on Consular Relations¹⁶ (Vienna Convention) requires officials in the United States who place foreign nationals under arrest to inform them of their rights to confer with the consular officials of their home country. Local law enforcement officials in the United States generally either are ignorant of this duty or choose to disregard it. The United States has been systematically ignoring the provisions of the Vienna Convention by failing to inform defendants of their right to confer with their consulates. Some of these same defendants who have not been accorded their rights under the Convention have been sentenced to death. As a result, the United States has alienated many allies. As of August 2004, 117 foreign nationals were under the sentence of death in the United States. Since 1976, 21 foreign nationals

HOW THE DEATH PENALTY WEAKENS U.S. INTERNATIONAL INTERESTS

have been executed in the United States. In most cases, the prisoners received no notice of their right to consular assistance under the Vienna Convention.

Several of our close allies that oppose the death penalty, such as Mexico and the United Kingdom, intervene as a matter of policy in the early stages of death penalty cases in order to prevent the execution of their citizens. The failure by the United States to comply with its duties regarding consular notification undermines such efforts, and leads to international tension.

Racial and Economic Bias

Three key human rights treaties ratified by the United States condemn criminal punishments applied in an arbitrary or discriminatory way:

- The ICCPR forbids any arbitrary use of the death penalty;¹⁷
- The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment forbids torture and the infliction of severe pain or suffering “based on discrimination of any kind”;¹⁸ and
- The Convention on the Elimination of All Forms of Racial Discrimination (“Race Convention”) requires parties to guarantee the rights of everyone, without distinction as to race, equality before the law and all tribunals of justice.¹⁹

Numerous international human rights inquiries and academic studies have found clear racial bias in the application of the death penalty in the United States. For example, a Mission to the United States from the International Commission of Jurists concluded that “the administration of capital punishment in the United States continues to be discriminatory and unjust—and hence ‘arbitrary’” and thus not in consonance with the ICCPR and the Race Convention.

More recently, the Inter-American Commission on Human Rights found the United States to be in violation of international law for the execution of William Andrews in Utah.²⁰ Mr. Andrews’ conviction and death sentence were upheld by U.S. courts despite evidence of racial bias on the part of the jury in the form of a note reading, “Hang the Niggers.” The Commission’s Report advised the United States to pay compensation to Mr. Andrews’ next of kin; none has been provided.

Treatment of Death Row Inmates

U.S. and international courts have considered challenges to prolonged stays on Death Row on the basis that such stays constitute cruel and unusual punishment or violate international treaties. The U.S. Supreme Court has declined to hear such cases, though dissenting justices have noted their importance, given international concerns.²¹

Indeed, the United States has filed a specific reservation to the Torture Convention in order to avoid sanction under international treaties. The reservation basically states that the Convention does not prevent any punishment permitted by the U.S. Constitution.

Many U.S. states and, for the most part, the federal government, basically have ignored the treaties and other international efforts to address the most troublesome aspects of the death penalty. This determination to continue applying capital punishment without regard for the concerns of the international community has been particularly upsetting for U.S. allies who oppose the death penalty.

C. Foreign Officials Raise the Death Penalty Issue with the United States

Foreign authorities have stepped up their expressions of concern with respect to

increased United States use of the death penalty — pressing the United States to end its isolation from the growing world trend against capital punishment, and demonstrating that the United States' international prestige and moral leadership are suffering as a result.

International Petitions

In two well-publicized recent cases, international petitions have called for the abolition of the death penalty in the United States. In the first, a petition signed by 500,000 people was presented to the U.S. embassy in Paris by a group of French lawmakers and activists.²² The meeting to organize the petition drive was chaired by former French Justice Minister Robert Badinter, and featured a videotaped statement of support from European Parliament President Nicole Fontaine. At the meeting, Raymond Forni, president of the French National Assembly, called the death penalty “a stain on the largest democracy in the world.” He further stated, “The death penalty dehumanizes not just the American society, but the whole world, because it breeds an acceptance of violence.”²³

In the second case, a petition bearing 3.2 million signatures from 146 different countries was presented to the United Nations. Signatories included the Dalai Lama; Abdurrahman Wahid, the Indonesian president at that time; George Carey, the Archbishop of Canterbury; the writer Umberto Eco; the film director Roberto Benigni; and Frances Alguire, the World Methodist Council president.²⁴ Upon receiving the petition, U.N. Secretary General Kofi Annan agreed with the signatories, saying, “The forfeiture of life is too absolute, too irreversible for one human being to inflict it on another, even when backed by legal process. And I believe that future generations, throughout the world, will come to agree.”

Direct Appeals to U.S. Officials

Pleas to abolish the death penalty increasingly are being made directly to high-level U.S. officials. In July 2000, the French Presidency of the European Union sent a letter to President Clinton calling for a moratorium on federal executions in the United States. The letter, written by the French Ambassador, Francois de l'Estang, urged President Clinton not to break the de facto moratorium on federal executions and to commute the sentence of federal Death Row inmate Juan Raul Garza to life imprisonment.²⁵

Such appeals also are often made to U.S. diplomats abroad. In March 2001, European Union officials meeting for the first time with Secretary of State Colin Powell expressed their disapproval of the United States' record on the death penalty. The officials— including Chris Patten, Commissioner for External Affairs; Anna Lindh, Swedish Foreign Minister, and Javier Solana, European high representative for foreign and security policy— told Secretary Powell there was “strong sentiment” in Europe on the issue.²⁶ In a brief to the U.S. Supreme Court, a bipartisan group of respected former diplomats stated that important meetings with close allies regularly are consumed by answering diplomatic demarches regarding the death penalty.²⁷ Such situations limit the abilities of U.S. diplomats to influence other nations.

U.S. legislators hear similar pleas regarding the death penalty. A letter from more than 162 French deputies recently was sent to all members of the U.S. Congress asking for abolition of the death penalty. The French lawmakers wrote that the death penalty in the United States “profoundly affects” the friendship felt towards the United States. They further noted that while some people consider the United States to be the greatest democracy in the world, members of Congress “will never be

elected in a model democracy as long as the death penalty exists” in the United States. Subsequently, 84 French Senators and 189 deputies signed a similar letter appealing to governors of U.S. states that carry out the death penalty for its abolition.²⁸

In a letter to then-Gov. George Bush of Texas, European Union officials appealed for an end to executions in that state, warning of potential economic consequences to their continuation. After describing the strong opposition in Europe to the death penalty, the letter noted the officials’ concern that “the almost universal repugnance” felt in other countries for the continued application of the death penalty in the United States could have economic consequences.²⁹ The officials explained that Europe is the foremost investor in Texas, and that shareholders are pressuring many European companies to restrict investment to states that do not apply the death penalty. The prospect of facing economic sanctions, similar to those imposed upon South Africa during its period of racial apartheid, would seriously damage U.S. ability to be an effective world leader on any human rights issue.

In September 2004, a group of international medical experts wrote an open letter to governments around the world that are still executing child offenders. These specialists in child and adolescent mental and physical health and development felt strongly that youthful immaturity and irresponsibility can lead to impetuous actions. They argued that although children can usually tell the difference between right and wrong, they also have diminished capacities to reason logically and control their impulses. They concluded that, though children should face punishment for their actions, they should not face the death penalty. The countries to which they sent the letter were China, the Democratic Republic of Congo, Iran, Pakistan, Philippines, Sudan, and the United States.

Other Foreign Reactions

A global conference against the death penalty was held during June 2001. The parliamentary presidents of France, Germany, and Italy were among the politicians who met in Paris ahead of this conference to discuss related issues. At the conference itself, lawmakers and activists called for a worldwide ban on the death penalty, and accused the United States of setting the wrong example for developing countries that carry out capital punishment. Russell Johnston, president of the Council of Europe’s parliamentary assembly, said, “The fact that America continues to operate with the death penalty is a very big drawback and handicap to everyone else.”³⁰ During the conference, European officials directed their criticism primarily at two countries: China and the United States.

At the Congress of the League of the Rights of Man in June 2000, Raymond Forni, president of France’s National Assembly, criticized the United States’ continued use of the death penalty and called on the international community to “become America’s guilty conscience” and pressure it to abolish legal executions.” President Forni said, “The United States of America’s prestigious image bears a tarnish. It is no longer slavery, it is no longer organized racial segregation, it is the death penalty.”³¹

The United States’ record on the death penalty also has been used against it by other nations accused of human rights violations. China, for instance, never misses an opportunity to criticize the United States for executing those with mental retardation. Another example is the reaction of the Venezuelan government to a U.S. report describing illegal executions in various Latin American countries. Venezuelan Defense Minister Jose Vicente Rangel responded that the United States is no international watchdog, and said, “I can cite countless examples of human

rights violations in the United States, from the death penalty to the harassment of new immigrants.”³² A third example involved U.S. efforts to prevent Turkey from executing a Kurdish guerilla leader. Turkey’s response was to ask how the United States, a country that still uses the death penalty and actively campaigns against terrorism, could make a case against the execution.³³

Not only does the death penalty lead to embarrassing criticism from U.S. allies, it also erodes the nation’s moral authority and ability to influence other governments on human rights issues.

D. Interventions by Foreign Governments

Foreign governments regularly object to the death penalty in the context of individual cases. Letters from foreign officials to U.S. state governors and others generally state a blanket opposition to the death penalty and ask that such sentences be commuted. The letters also raise objections to many of the specific concerns discussed above, including the execution of juvenile offenders or the mentally retarded, as well as the failure to accord foreign citizens their rights under international law.

On March 26, 2001, European Union officials sent a letter to Nevada Gov. Kenny Guin asking him to commute the death sentence of Thomas Nevius. The letter stated the European Union’s opposition to the death penalty in all cases, and noted that the execution of Mr. Nevius, who had been diagnosed as being mentally retarded, would be in contradiction to the U.N. Safeguards Guaranteeing Protection of the Rights of those Facing the Death Penalty, and recent resolutions of the U.N. Commission on Human Rights.³⁴ The letter was signed by Jan Eliasson, Ambassador of Sweden; Alex Reyn, Ambassador of Belgium, and Günter

Burghardt, Head of the Delegation of the European Commission. Similar letters had been sent to governors of other states executing those with mental retardation, including George Bush when he was governor of Texas.

Gov. Bush also received letters from Portuguese and French officials objecting to the execution of Gary Graham, a juvenile offender. The Ambassador of Portugal, writing as the representative of the Presidency of the European Union, urged Bush to commute Graham’s sentence to life imprisonment, stating that the European Union would consider the execution of a person under the age of 18 at the time of his crime to be “contrary to generally accepted human rights norms.”³⁵ The Ambassador further noted that, despite the United States’ reservation to Article 6 of the ICCPR, which prohibits the execution of minor offenders, “the EU believes that Article 6 enshrines the minimum rules for the protection of the right to life and the generally accepted standards in this area.”

European Union officials also sent a letter to Illinois Gov. George Ryan asking him to prevent the execution of Gregory Madej, a Polish citizen sentenced to death without having been advised of his right to contact the Polish Consulate under the Vienna Convention.³⁶ The letter began by commending Gov. Ryan for declaring a moratorium on the death penalty in Illinois in order to study problems with its application. It then noted that Poland (an E.U. Associate Member) was unable to assist Madej in his case because they did not learn of his sentence until 16 years after it was imposed. The letter concluded by appealing to the governor to commute Madej’s sentence on the basis of this treaty violation. Significantly, in 2003, shortly before leaving office, Gov. Ryan pardoned four Death Row inmates and commuted the death sentences of every other prisoner on Death Row to life in prison.

Nearly every execution in the United States draws similar letters of protest from the European Union, and often others from E.U. Member States, other nations, and various international organizations, including the Catholic Church. These letters reflect the scope of the opposition to the death penalty in the international community, and highlight the United States' increasing isolation on the issue.

E. Extradition Cases Involving the Death Penalty

The extradition of criminal suspects to the United States for trial has provided another arena of international conflict regarding the death penalty. Countries opposing the death penalty increasingly refuse to extradite suspects who face possible execution in the United States. This often is done in order to secure an assurance from U.S. prosecutors that the death penalty will not be sought in a particular case. Such cases add complexity, cost, and delay to U.S. criminal prosecutions, and highlight the United States' isolation on this human rights issue.

The Supreme Court of Canada ruled recently that, but for "exceptional cases," no one should be extradited from Canada to the United States or other countries without assurances against execution.³⁷ The court's ruling was based on its conclusion that the death penalty is cruel and irreversible punishment. In so ruling, the court stated, "Legal systems have to live with the possibility of error. The unique feature of capital punishment is that it puts beyond recall the possibility of correction." The court noted that an extradition decision by a Canadian minister potentially could lead to the death of an innocent individual in a foreign jurisdiction. Based on this ruling, Canadian Justice Minister Anne McLellan recently required formal assurances from Washington State officials that they would not seek the death penalty before extraditing two Canadians on homicide charges.³⁸

In another significant recent development, the newly drafted European Charter of Fundamental Rights prohibits the extradition of European citizens to a country where they might face the death penalty.³⁹ Although the Charter is not yet legally binding and individual cases are left for member states to decide, the Charter has been agreed to by the European Parliament, Council, and Commission, and has been cited by the European Court as an authoritative text.

As in many countries, French law prohibits the extradition of foreigners to countries where they would face the death penalty. In two recent cases, French authorities refused to extradite criminal suspects to the United States without assurances from prosecutors that the death penalty would not be sought. One case involved James Kopp, wanted for the slaying of a New York abortion doctor and for sniper attacks on three Canadians. Mexico also frequently has conditioned extradition of criminal suspects on assurances by prosecutors that the death penalty will not be sought.⁴⁰ Other countries that have refused or delayed extradition of suspects charged with murder in the United States include the United Kingdom, Germany, Italy, South Africa, and the Dominican Republic.

F. Challenges to the U.S. Death Penalty by International Tribunal Hearings

Several foreign nations have challenged the United States in international tribunals on the death penalty. These cases generally involve the United States' failure to afford foreign citizens their rights under the Vienna Convention on Consular Relations. Since the reinstatement of the death penalty in the United States in 1972, there have been dozens of foreign nationals either executed or on Death Row who were not informed of their consular rights.

Three cases have been brought under the International Court of Justice in recent years, which ask the court to address issues related to the death penalty and international intervention. The ICJ is the principal judicial organ of the United Nations, operating under an international statute that is an integral part of the Charter of the United Nations. The United States has been involved in cases before the ICJ against Libya (regarding the bombing of the Pan Am jet over Lockerbie, Scotland), and against Iran (with respect to oil platforms). Other high-profile cases before the ICJ involve genocidal crimes committed in Bosnia, Herzegovina, and Croatia.

In March 2004, the International Court of Justice handed down a decision in the case of *Mexico v. USA*, directly addressing the legal and civil rights of Mexicans who had been detained in the United States and later sentenced to death.⁴¹ Mexico wanted to obtain consular access under the Vienna Convention for its citizens caught up in the U.S. legal system. The ICJ ruled that the United States did violate Article 36 of the Vienna Convention. This article states that authorities must notify all detained foreign nationals of their right to have their consulate informed of their detention. In this ruling, the ICJ found that the United States had violated this provision in 51 of 52 cases of Mexican nationals. The ICJ then ruled that the United States must provide effective judicial review and reconsideration of the impact of the violations on these cases where foreign nationals are directly implicated. Timely assistance from the Mexican consulate could have prevented the imposition of death in more than just one case – either by persuading the prosecutor not to seek a death sentence or by assisting the defense at trial.

In another recent case, the German government challenged the execution in Arizona of two German brothers: Karl and Walter LaGrand.

The two were sentenced to death in 1982, but German authorities did not learn of this until 10 years later. The German government therefore was unable to assist its citizens through the sentencing phase of the trial. The ICJ initially ordered that the United States should “take all measures necessary” to ensure that Walter LaGrand would not be executed pending the ICJ’s final decision.⁴² Based on this order, Germany petitioned the U.S. Supreme Court for a stay of execution for Walter LaGrand. The appeal was dismissed.

Arizona Gov. Jane Hull subsequently allowed the execution to proceed, ignoring both the ICJ’s order and the recommendation of the Arizona Board of Executive Clemency for a 60-day reprieve. In November 2000, the ICJ heard arguments on Germany’s amended application for legal sanction. The chief U.S. agent to the court admitted that Arizona authorities violated the Vienna Convention and noted that the United States and the Arizona Attorney General have apologized for the violation, but maintained that the ICJ has no jurisdiction to order further sanctions. On June 27, 2001, the ICJ ruled that the U.S. breached several international obligations to Germany and the LaGrand brothers.⁴³ Germany eventually prevailed in an ICJ ruling which held that the United States was in direct violation of the Vienna Convention treaty.

A second ICJ case involved the execution in Virginia of Paraguayan citizen Angel Breard. Like the LaGrands, Breard was not informed of his consular rights when arrested for murder. Breard refused a plea offer and instead admitted his involvement in the crime and testified that he was compelled by a satanic curse.⁴⁴ While such a defense may have won him leniency in Paraguay, in the United States it led to a death sentence. Advice from his consulate may have made a difference.

The ICJ, as in the German case, ordered the United States to “take all measures at its disposal” to ensure that Breard would not be executed pending the court’s final decision.⁴⁵ Although U.S. Secretary of State Madeline Albright asked the State of Virginia to comply with the ICJ’s Order, Virginia Gov. James Gilmore rejected the request and denied clemency.⁴⁶ The U.S. Supreme Court also rejected the ICJ Order on the basis that Breard had not raised his Vienna Convention claim in a timely manner.⁴⁷ The case was dismissed on procedural grounds. Breard was executed on April 14, 1998, amid international protest.

These international tribunal proceedings challenging United States treaty violations represent examples of direct clashes between the United States and foreign governments regarding the death penalty’s implementation. Not only do these cases weaken the United States’ ability to protect its citizens traveling abroad, they also erode the comity that other nations will be willing to show the United States on broader issues. Moreover, the United States’ refusal to comply with orders from international tribunals undermines their authority in other cases in which the United States relies upon them.

G. Human Rights Inquiries and Reports

The international community regularly challenges the United States by issuing reports, which catalog the death penalty’s problems and call for its abolition. Ironically, the United States relies on similar reports, from both the United Nations and non-governmental organizations, in seeking to advance other human rights causes. By itself appearing as a prominent subject of these reports, the United States weakens its ability to influence nations in other areas.

The United Nations

The report for 2000 from the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions⁴⁸ included several critical references to the United States. Regarding “Violations of the Rights of Women,” the Special Rapporteur noted that the United States received an urgent appeal in the Texas case of Betty Lou Beets.⁴⁹ The Special Rapporteur wrote to the Government of the United States referring to reports that in her trial, crucial mitigating evidence regarding her history of severe physical, sexual, and emotional abuse was never presented to the jury. Nevertheless, Ms. Beets’s execution proceeded.

The report also criticized the execution of juvenile offenders in the United States, noting that Pakistan has abolished the death penalty for children and that Yemen is in the process of doing so, but that the United States has no such plans. The report further mentioned the United States as the only country cited for executions of those with mental illness or disability. The Special Rapporteur urged that such executions be stopped.⁵⁰ Finally, the report discussed problems with fair trials in the United States and with executions of foreigners not accorded their rights, amid growing international consensus on the abolition of the death penalty. Such criticisms are not rare in the Special Rapporteurs’ annual reports. The reports from each recent year contain similar discussions of U.S. violations of international conventions and U.N. appeals to halt such violations.

In 1997, the Special Rapporteur reported on a Special Mission to the United States.⁵¹ The visit was made on the basis of persistent reports to the United Nations of violations of international treaties and of discriminatory and arbitrary use of the death penalty. The

Special Rapporteur visited federal, state, and local authorities, prison officials, and human rights organizations to investigate, and in his report presented a series of criticisms of the U.S. death penalty, as well as calls for reforms.

Since the Special Rapporteur's mission to the United States in 1997, only Nepal has received a similar visit. Nepal is one of the poorest countries in the world. It is a developing and still fragile democracy with a long history of struggle against totalitarian and autocratic rule. Many of the Special Rapporteur's concerns related to the Nepalese government's efforts to combat armed Maoist insurgents.⁵² The United States, of course, does not face similar problems. As the world's wealthiest democracy, the United States should not require the same form of international human rights monitoring as such a troubled nation.

Two recent developments involving U.S. participation in multinational human rights organizations further highlight the difficulties caused by the death penalty. First, the United States was voted off the U.N. Human Rights Commission – the first nation to be removed since its formation in 1997. The continued use of the death penalty clearly was one of several factors behind this development. Second, the Council of Europe's parliamentary session has passed a resolution threatening to strip the United States of its human rights observer status unless "significant progress" is made towards the elimination of the death penalty.⁵³ This loss of observer status would be an embarrassing mark against the United States international image.

Amnesty International

The U.S. State Department frequently cites Amnesty International reports on such issues as prisoners of conscience, political prisoners, tor-

ture and other cruel treatment of prisoners, extrajudicial executions and "disappearances." Amnesty International in turn regularly cites the United States in its reports criticizing the use of the death penalty as a human rights violation.

In 2003, 65 prisoners were executed in the United States. The 900th execution since the death penalty was reinstated in 1977 occurred in March 2004. More than 3,500 prisoners were under the death sentence in the United States as of January 2004.

In a recent report, Amnesty International stated the following:

*The USA is engaged in a cruel, brutalizing, unreliable, unnecessary and hugely expensive activity for no measurable gain. The fact that it is violating human rights standards in the process only adds to the shadow being cast on its international reputation by its relentless resort to this outdated punishment.*⁵⁴

Recent Amnesty International reports have addressed problems with the death penalty in Oklahoma, Nevada, Texas, and other states; executions of foreigners, child offenders and the mentally deficient; and racial bias in the implementation of the death penalty, among other issues. A perusal of the titles in Amnesty International's Death Penalty library reveals the company the United States keeps by persisting with executions: Iraq, Botswana, Afghanistan, Sri Lanka and Lebanon, in particular. The United States should be leading the world in pressuring such countries to improve their human rights records, rather than appearing alongside them on lists of human rights violators.

III. Effects on the International Image of the United States

It is important for the United States to maintain [its international image] in the eyes of Europeans, and to protect the legitimacy of our moral leadership. This moral leadership is under challenge because of two issues: the death penalty and violence in our society.

—Felix G. Rohatyn, U.S. Ambassador to France from 1997 to 2000.⁵⁵

A. International Press Coverage

While the death penalty is receiving increased attention in the United States, media coverage in Europe of U.S. executions typically is both more extensive and more critical than domestic coverage. Executions that go relatively unnoticed in the United States often make headlines in Europe, drawing criticism from conservative and liberal publications alike. U.S. executions evoke much passion in Europe, and often spark protests in front of our embassies, as well as petitions calling for an end to executions.

One important and generally conservative publication that has been particularly outspoken regarding the U.S. death penalty is the British magazine, *The Economist*. The magazine, which is read widely by business people in Europe, the United States, and around the world, is known for promoting business-friendly public policies and tax reductions, and it endorsed George W. Bush in his first presidential election. *The Economist* also, however, has made clear its opposition to the death penalty in the United States

The Economist has called the United States “the most glaring exception to the emerging international consensus on the death penalty.”⁵⁶ Noting that the United States defends the practice to its allies and continues to execute juvenile offenders and the mentally retarded, the magazine asked, “Why is the world’s richest, and arguably greatest democracy, so out of step?” Another opinion piece in *The Economist* calling for the abolition of the death penalty in the United States noted that even the United States, with its legal guarantees and complex system of appeals, is unable to ensure the fair or consistent application of the death penalty.⁵⁷ *The Economist* concluded that the inevitable execution of innocents is too high a price to pay for an unnecessary punishment.

These clear statements of *The Economist*’s opposition to the death penalty are in addition to numerous news articles criticizing the execution of the mentally retarded, flaws relating to legal representation and the appellate process in death penalty cases, and errors in the application of the death penalty. This is the image of the United States portrayed to sophisticated business people worldwide by a leading and generally conservative international publication.

Other international media outlets also provide regular and extensive coverage of U.S. death penalty issues as well as of individual executions. The coverage often is critical of the death penalty, and such criticism comes from conservative as well as liberal publications. This has been an important factor in shaping the international image of the United States. One example is the coverage by *The Sun*, one of Britain’s most conservative newspapers, of a recent elementary school shooting in Michigan. When a 6-year-old shot and killed a classmate, the *Sun* editorialized that the most likely American response would be to build a kiddie-size electric chair.⁵⁸

Because of the notoriously large number of executions in Texas, the election of former Texas governor George W. Bush as president has inspired even broader foreign coverage of the U.S. death penalty. One Swiss newspaper, for example, marked President Bush's inauguration by printing all the photographs it could find of prisoners in Texas who had been executed on his watch. *The Mirror*, a popular British newspaper, printed a six-page story on President Bush titled, "The Texas Massacre." The article stated: "Bush makes no apology for his hideous track record. And disturbingly, he has mass support from Americans, driven by their out-of-control gun culture and blood lust for retribution."

As a result of the extensive media coverage of the death penalty, Europeans' image of President Bush, as well as of the United States, is greatly affected by the death penalty. As stated by Claudia Roth, a member of the German parliament: "What we know about the new president, is just two things. He is the son of President Bush, and he has sent 150 people to their death in Texas, including the mentally ill."⁵⁹

The case of Timothy McVeigh, the first federal execution in 38 years, attracted widespread media attention, particularly following revelations that authorities failed to give thousands of relevant documents to McVeigh's lawyers before his trial. A *Time* columnist stated that development "added a baffling and embarrassing new example to the dozens of instances of judicial error, mendacious testimony, incompetent defense lawyers and sloppy lab work that have demonstrably sent innocent people to their deaths in recent years."⁶⁰

This episode, together with the viewing of the execution by two dozen live witnesses and another 300 over closed-circuit television, led

to intense public scrutiny of the case, both in the United States and abroad. Press coverage in Europe and other regions was both extensive and derogatory towards the United States. The Council of Europe labeled the execution "sad, pathetic and wrong." Amnesty International called it, "a failure of human rights leadership at the highest level of government in the United States"⁶¹

Even before the attention generated by the McVeigh case, the death penalty affected the international interests of the United States. Felix Rohatyn, former U.S. ambassador to France, wrote in the *Washington Post* about the challenge to America's moral leadership in Europe over the death penalty.⁶² He said that during his time in France, no single issue evoked as much passion and protest. Ambassador Rohatyn noted that the U.S. ambassador to Germany encountered challenges on the issue just as frequently. He concluded that, "At a time when our military, economic, and political power, our so-called 'hegemony,' is a source of concern to many of our allies, it is important that our moral leadership be sustained."

B. International Cooperation in the "War on Terror"

International opposition to the death penalty also may be hindering U.S. efforts against international terrorism. As former CIA official Michael Bearden argued in the *Wall Street Journal*, seeking the death penalty for terrorists could ultimately work against the process of international teamwork that has led to several successful convictions in this area.⁶³ Countries such as Pakistan, Kenya, and South Africa have delivered accused terrorists to U.S. courts without formal extradition processes. Bearden believes that seeking the death penalty in such cases could complicate or limit such cooperation in the future.

In May 2004, the direct impact of the United States' policy became clearly visible. Muslim cleric Abu Hamza was arrested in Great Britain on a U.S. warrant, which included allegations of 11 separate charges of terrorism and terrorist activity. However, British law forbids the Home Secretary from extraditing someone to a country where the death penalty applies for the offense charged, unless there has been a written agreement not to carry out the sentence of death should it be imposed.⁶⁴ U.S. Attorney General John Ashcroft had to come to an explicit agreement with Great Britain not to execute Abu Hamza if Ashcroft wanted Hamza extradited to face a trial in U.S. courts.

IV. Conclusion

The problems caused by the death penalty issue, and the close attention paid to it abroad, likely will not subside. While over 930 prisoners have been executed in the United States since 1976, another 3,500 are currently on death row. Meanwhile, the number of crimes for which the death penalty is available has increased since its reinstatement by the U.S. Supreme Court. As executions continue in the United States, so too will the damage to its international image and moral leadership.

The United States actually executes very few prisoners. In 2003, the total number was 64 and as of November 2004, there have been 57.⁶⁵ Given that alternative punishments are available, including life imprisonment, and that many of those executed are juvenile offenders, mentally deficient, have received inadequate legal representation or may be innocent, many would argue that there can be no benefit from such a random practice. Whatever benefit might be claimed certainly does not outweigh the damage done to the United States' international interests. The United States constantly is

criticized in international forums as a human rights violator. The world press depicts America as obsessed with a violent and outdated practice that is racially biased, tantamount to torture, and fraught with error. The United States' moral leadership, and therefore its ability to influence other nations on human rights and other issues, is eroded.

It is time for the United States to join the international community in abolishing the death penalty, so that the United States can become a more effective world leader on other matters of great consequence. If abolition cannot be accomplished, the United States must impose a moratorium on executions in order to address the most troubling aspects of the death penalty. Such a moratorium would communicate to our allies that the United States is not deaf to their concerns and, as President Bush has advocated, that we respect our allies as partners. A moratorium would prove to the world that the United States is serious in its commitment to justice and individual liberties, and that it is sincere in its positions on international human rights issues.

Endnotes

- ¹ International Convention on Civil and Political Rights, General Assembly resolution 2200A (XXI) of Dec. 16, 1966.
- ² Second Optional Protocol to the International Convention on Civil and Political Rights, Aiming at the Abolition of the Death Penalty, General Assembly resolution 44/128 of Dec. 15, 1989.
- ³ The Question of the Death Penalty, Commission on Human Rights Resolution 2001/68, April 25, 2001.
- ⁴ American Convention on Human Rights, Organization of American States Treaty Series No. 36, July 18, 1978.
- ⁵ Protocol to the American Convention on Human Rights to Abolish the Death Penalty, Organization of American States Treaty Series No. 73, June 8, 1990.
- ⁶ Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) concerning the Abolition of the Death Penalty.
- ⁷ Associated Press, “Putin Speaks Against Death Penalty,” *New York Times*, July 9, 2001.
- ⁸ Convention on the Rights of the Child, General Assembly resolution 44/25 of Dec. 12, 1989.
- ⁹ Amnesty International, “Children and the Death Penalty: Executions Worldwide Since 1990,” Dec. 14, 2000.
- ¹⁰ Case no. 03-633, cert. granted Jan. 26, 2004.
- ¹¹ 492 U.S. 361 (1989).
- ¹² Commission on Human Rights resolution 1996/91 of April 28, 1999.
- ¹³ Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions by Mr. Bacre Waly Ndiaye, E/CN.4/1998/Add.3 at ¶145.
- ¹⁴ 528 U.S. 304 (2002).
- ¹⁵ Lara Marlowe, “Chirac Attacks U.S. on Death Penalty,” *The Irish Times*, March 31, 2001, p. 12.
- ¹⁶ Vienna Convention on Consular Relations, U.N.T.S. Nos. 8638-8640, vol. 596, pp. 262-512, April 18, 1961 (ratified by the U.S. in 1969).
- ¹⁷ ICCPR Article 6(1).
- ¹⁸ Covenant Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, General Assembly resolution 39/46 (Dec. 17, 1984), Article 1(1).
- ¹⁹ Convention on the Elimination of All Forms of Racial Discrimination, General Assembly resolution 2106 A (XX) (Dec. 21, 1965), Article 5.
- ²⁰ Inter-American Commission on Human Rights, Report No. 57/96 (1998).
- ²¹ *Elledge v. Florida*, 1998 WL 440561 (U.S. xxxx) (Breyer, J., dissenting).
- ²² AP Worldstream, Jan. 24, 2001.
- ²³ “European Lawmakers and Activists Call on U.S. to Abolish Death Penalty,” AP Worldstream, October 21, 2000.
- ²⁴ Rory Carroll, “Global Petition Puts Pressure on U.S. to Abolish Death Penalty,” *The Guardian* (London), Dec. 19, 2000, p. 12.

HOW THE DEATH PENALTY WEAKENS U.S. INTERNATIONAL INTERESTS

²⁵ French Presidency of the European Union Press Release, July 27, 2000.

²⁶ Tom Harnden, "Bush Team Angry Over EU Pressure on Death Penalty," *The Daily Telegraph* (London), March 8, 2001, p. 15.

²⁷ *McCarver v. North Carolina*, No. 00-8727 (2000) (Brief of *Amici Curiae* Diplomats Morton Abramowitz, Stephen W. Bosworth, Stuart E. Eizenstat, John C. Kornblum, Phyllis E. Oakley, Thomas R. Pickering, Felix G. Rohatyn, J. Stapleton Roy, and Frank G. Wisner in Support of Petitioner).

²⁸ "European Lawmakers and Activists Call on U.S. to Abolish Death Penalty," AP Worldstream, October 21, 2000.

²⁹ Letter to George W. Bush, Governor of Texas, June 25, 1998.

³⁰ "European Lawmakers Decry U.S. Use of Death Penalty," AP Worldstream, April 9, 2001.

³¹ "French Lawmaker Denounces United States' Use of Death Penalty," AP Worldstream, June 10, 2000.

³² "Officials React to 'Meddling' U.S. Human Rights Report," The British Broadcasting Corporation, March 6, 2001.

³³ Raymond Bonner, "Veteran U.N. Envoys Seek End to Executions of Retarded," *New York Times* (June 6, 2001).

³⁴ Letter to Kenny Guin, Governor of Nevada, March 26, 2001.

³⁵ Letter to George W. Bush, Governor of Texas, May 17, 2000

³⁶ Letter to George H. Ryan, Governor of Illinois, May 1, 2001.

³⁷ *United States v. Burns*, 2001 S.C.C. 7 (2001). See also Susan Taylor Martin, "U.S. Influence on Canada Ends with Death Penalty" *St. Petersburg Times*, Feb. 25, 2001, p. 2A.

³⁸ Mark Dunn, "Canucks Face Trial Stateside; U.S. Won't Seek Death Penalty," *The Ottawa Sun*, March 10, 2001.

³⁹ Charter of Fundamental Rights of the European Union, OJ C 364/1 (Dec. 18, 2000), Article 19.

⁴⁰ See Jerry Seper, "Drug Smuggler Spared Death in '98 Killing of Border Agent; Extradition Deal with Mexico Leads to Reduced Sentence," *The Washington Times*, Nov. 24, 2000 (case of Bernardo Velarde Lopez); Richard Winton, "Suspect in Dancer's Death Extradited to Pasadena," *Los Angeles Times*, Sept. 2, 2000, p. B5. (case of Johnny Andres Ortiz); "Aiding a Fugitive; Del Toro Benefited from Flaws in Extradition Treaty with Mexico," *Sarasota Herald-Tribune*, July 8, 2000 (case of Jose Luis Del Toro Jr.).

⁴¹ On March 31, 2004, the Court issued its judgment on the merits. As a preliminary matter, the Court dismissed all the jurisdictional and admissibility challenges raised by the United States. The Court found that the jurisdictional challenges were more appropriately addressed at the merits stage. Several admissibility challenges were also dismissed for this reason. The remaining admissibility challenges were dismissed on various grounds. For example, the Court found that exhaustion of local remedies within the United States was not necessary because Mexico was requesting the Court to rule on the violation of rights that it claims to have suffered both directly and through the violation of individual rights conferred on Mexican nationals. In addition, the Court held that Mexico had not waived its right to bring the case before the ICJ, even if it had delayed

in doing so. “[O]nly a much more prolonged and consistent inaction on the part of Mexico . . . might be interpreted as implying such a waiver.” Case Concerning Avena and Other Mexican Nationals (Mexico v. U.S.), Merits, para. 44 (2004). See <http://www.icj-cij.org/icjwww/idocket/imus/imusframe.htm>.

⁴² Case Concerning the Vienna Convention on Consular Relations (Germany v. United States of America) No. 104, (International Court of Justice, March 3, 1999) (Order on Request for the Indication of Provisional Measures).

⁴³ Case Concerning the Vienna Convention on Consular Relations (Germany v. United States of America) No. 104, (International Court of Justice, June 27, 2001) (Judgment).

⁴⁴ B. Masters, “World Court Tells U.S. to Halt Va. Execution,” *Washington Post*, April 10, 1998, C1.

⁴⁵ Case Concerning the Vienna Convention on Consular Relations (Paraguay v. United States of America) No. 99, (International Court of Justice, April 9, 1998) (Order).

⁴⁶ Letter from Madeleine Albright to Victor Rodriguez, Chair of Texas Board of Pardons, November 1998.

⁴⁷ *In re Angel Francisco Breard*, 140 L.Ed. 537 (April 14, 1998).

⁴⁸ Report of the Special Rapporteur, United Nations Commission on Human Rights, E/CN.4/2001/9, January 11, 2001.

⁴⁹ *Id.* ¶ 40.

⁵⁰ *Id.* ¶ 82.

⁵¹ Report of the Special Rapporteur, United Nations Commission on Human Rights, E/CN.4/1998/68/Add.3, January 22, 1998.

⁵² Report of the Special Rapporteur, United Nations Commission on Human Rights, E/CN.4/2001/9/Add.2, August 9, 2000.

⁵³ Rick Halperin, “U.S. May Lose Council of Europe Observer Status,” Associated Press, June 26, 2001.

⁵⁴ Amnesty International, “USA: Flouting World Trends, Violating International Standards—700th Execution Imminent,” AMR 51/031/2001, March 1, 2001.

⁵⁵ Felix G. Rohatyn, “America’s Deadly Image, Editorial, *Washington Post*,” Feb. 20, 2001, p. A23.

⁵⁶ “The Cruel and Ever More Unusual Punishment,” *The Economist*, May 13, 1999.

⁵⁷ “Down with the Death Penalty,” Opinion, *The Economist*, May 13, 1999.

⁵⁸ T.R. Reid, “Many Europeans See Bush as Executioner Extraordinaire,” *Washington Post*, Dec. 17, 2000, p. A36.

⁵⁹ *Id.*

⁶⁰ Rick Halperin, “A Matter of Life or Death: The McVeigh Case Shows How Differently Europe and America View Capital Punishment,” *Time*.

⁶¹ Suzanne Daley, “The Reaction Abroad: Almost as One, Europe Condemns McVeigh Execution,” *New York Times*, June 12, 2001.

⁶² Felix G. Rohatyn, “America’s Deadly Image,” Editorial, *Washington Post*, February 20, 2001, p. A23.

⁶³ Milt Bearden, “Death Penalty Would Hinder Anti-Terrorism,” *The Wall Street Journal* (June 4, 2001). Bearden is a former CIA station chief in Pakistan and Sudan.

HOW THE DEATH PENALTY WEAKENS U.S. INTERNATIONAL INTERESTS

⁶⁴ Craig Whitlock and Susan Schmidt, “Vocal cleric arrested in London at U.S. behest,” *Washington Post*, May 28, 2004, at A1, available at: <http://www.washingtonpost.com/wp-dyn/articles/A60010-2004May27.html>.

⁶⁵ Death Penalty Information Center, available at: <http://www.deathpenaltyinfo.org/article.php?did=414&scid=8>.



ACLU

AMERICAN CIVIL LIBERTIES UNION

FOUNDATION

CAPITAL
PUNISHMENT
PROJECT