



United States Mission to the OSCE

Response to the European Union Statement on the Death Penalty

As delivered by Deputy Representative Douglas Davidson
to the Permanent Council, Vienna
May 6, 2004

Thank you very much, Mr. Chairman.

The United States takes note of the concerns expressed by the Irish Ambassador, on behalf of the European Union, and the representative of Norway, with regard to the capital cases of Messrs. Kelsley Patterson, Osbaldo Torres and Hung Thanh Le. I will not repeat today the U.S. position on the application of the death penalty, which I have had the opportunity on more than one occasion to present to this council previously.

But I will say that the United States continues to study the March 31 decision of the International Court of Justice in the *Avena* case, about which the U.S. Departments of State and Justice are consulting and together communicating, as appropriate, with the individual U.S. states concerned.

It is important to note that the court, in calling for review and reconsideration of convictions and sentences in certain circumstances, agreed with the United States that each case should be looked at individually. Review and reconsideration does not mean that the outcome must be different from that resulting from the criminal trial and sentencing proceedings with respect to any particular defendant. The court stated that the issue to be decided on review and reconsideration was whether failure to provide consular notification "caused actual prejudice to the defendant in the process of administration of criminal justice."

With respect to Mr. Osbaldo Torres, one of the Mexican nationals whose case was at issue in *Avena*, the Department of State's Legal Adviser has written to the Oklahoma Pardon and Parole Board in connection with Mr. Torres' clemency hearing, scheduled for May 7. The letter contains a request that the Board give careful consideration to the clemency application of Mr. Torres, including the failure to provide him with consular information and notification pursuant to Article 36 of the Vienna Convention on Consular Relations. The letter also requests that the Board give particular attention to the representations of the Mexican government on Mr. Torres' behalf.

The United States government is committed to fully meeting its obligation to provide consular notification and access in the case of detained foreign nationals, and it continues to work to ensure that all law enforcement agencies in the United States understand their responsibilities in this regard. The court itself noted the "considerable efforts" that the United States had already been making in this regard. The court also marked as "noteworthy" the "good faith efforts" the United States has been making to implement the consular notification obligations of the Vienna Convention.

Thank you Mr. Chairman.