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## Mexican National Doomed to Die on September 17 in Virginia

- Only the State Department or a rare act of rectitude by Governor Allen can spare him
- Virginia, with impunity, violates international covenant to which U.S. is signatory
- Washington remained almost mute until belated weak response to transgression against Convention that ignores explosive implications for Mexico

Mario Murphy, a Mexican national convicted of participating in the Virginia Beach murder-for-hire of James Radcliff, is scheduled to be executed at the Greenville Correctional Center on Wednesday, September 17. Murphy was arrested on September 3, 1991 and later sentenced to death for his part in the murder, for which he has admitted receiving \$5,000. In contention is not his innocence, but the state's five-year delay in notifying the Mexican Consul of his plight and the State Department's abdication of its responsibilities under the Vienna Convention on Consular Rights, ratified by the U.S. Senate in 1969, as well as the uniquely prejudicial treatment which was accorded the Mexican national. Consequently, Washington should not be surprised if anti-U.S. sentiments flare throughout Mexico if Murphy is executed, if neither Allen nor the State Department intervenes.

The irresponsible failure of the state of Virginia to inform Murphy of his right to consular notification, as stipulated by Article 36 of the Convention, represents a clear violation of international law, as does the Clinton Administration's failure to demand that Governor George Allen comply with the supreme law of the land. By treating this agreement with indifference, if not contempt, Washington will deny itself grounds to protest similar conduct in the future against U.S. nationals being detained abroad. It should be noted that President Clinton, during his visit to Mexico last May, had pledged, in a joint statement with President Zedillo, to uphold the Vienna Convention. If the federal government does not effectively demand the primacy of the Vienna Convention over state law and at least enter these cases as an *amicus curiae*, Clinton's pledge will be sullied.

### Pick and Choose U.S. Attitude Towards International Law

The Vienna Convention provides protection to foreign individuals by placing certain obligations on host country officials. Among the Convention's regulations, Article 36 mandates that "the competent authorities of the receiving state shall, without delay, inform the consular post of the sending state" of the detention of one of its citizens, and that "said authorities shall inform the person concerned without delay of his rights" to communicate with and receive aid from his/her consulate. Once ratified by Congress, an international treaty becomes law "equal to our Constitution," as noted by Bonnie Goldstein, who unsuccessfully represented Irineo Tristan Montoya, another Mexican national who also was denied consular notification, and who was executed in Texas last June after a widespread protest against the taking of his life in this country and Mexico had failed.

### History of Nonconformance to Convention's Terms

Robert F. Brooks, Murphy's lawyer, claimed that the accused, when detained, "was a teenager with no significant criminal record, and cooperated completely with the police from the moment of his arrest. Indeed, he was the only one of the defendants who did." A death sentence conceivably could have been avoided if Virginia did not flout the terms of Article 36 and did not prevent the Mexican consul from doing his job, including possibly helping to facilitate a plea bargain agreement that would have spared Murphy's life, as was the case with all of his American co-defendants. The state of Idaho earlier had abided by the convention, resulting in effective lobbying by the Mexican Embassy to stay the execution of one of its nationals.

Murphy, as well as other foreign nationals, such as Montoya and Canadian national Patrick Jeffries, were denied procedural due process because of Washington's lackadaisical approach to notifying state officials of their obligation under Article 36, particularly the State Department's Office of the Legal Advisor. By executing Murphy, hard-hearted Governor Allen of Virginia, who like Governor Bush of Texas, will be violating international law with impunity, with the Clinton Administration barely taking note of this transgression. Until the White House fully commits itself to ordering the State Department and the Attorney General to follow the rules of the international treaties that it signs, it cannot demand that other countries take them seriously.

During the 1970's the State Department issued a statement to the government of Syria emphasizing that country's failure to comply with Article 36 in the case of two U.S. citizens imprisoned there. In that instance, it insisted that consular access was the "standard of international practice of civilized nations, whether or not they are parties to the convention." The Convention also provided the basis for U.S. protest over the Singapore detention of Michael Fay, who had been sentenced to a caning for a minor crime. It is as if Washington demands that international law be followed everywhere else but on U.S. soil, as demonstrated in the Montoya and Murphy cases. This philosophy of ignoring international guarantees could be a decisive factor in placing U.S. citizens, some of whom currently are imprisoned in such countries as Turkey, Syria, and Peru, in extreme jeopardy at the hands of corrupt local judicial systems.

Although the U.S. would like to appear as the champion of human rights throughout the world, its relative inaction in the Murphy case indicates that it promotes these conditions abroad but ignores them at home. President Clinton, Attorney General Janet Reno and Secretary of State Madeleine Albright, have been alerted to the violations of Article 36 and until only recently, the State Department's only response was its flaccid rhetoric. By not demanding that Governor Allen commute or at least postpone carrying out Murphy's sentence, Washington will be further contributing to setting a dangerous precedent that could place Americans living abroad at grave risk.

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