

The Department of State acknowledges the Embassy of Mexico's notes numbers 409 of 1996 and 667, DAN-01657, 877 and 896 of 1997, regarding the death penalty case of Mr. Irineo Tristan Montoya, a Mexican national. The Embassy's notes stated that, at the time of his 1983 arrest in Texas, local police authorities did not inform Mr. Tristan Montoya of his right to have Mexican consular officials informed of his detention and that there had been a violation of Article 36 of the Vienna Convention on Consular Relations and Article VI of the bilateral Consular Convention between our countries. The Embassy's notes numbers 409, 667 and DAN-01657 asked that the Department make the Government of Mexico's views known to the courts and civil authorities of the state of Texas, and note number 896 expressed the concern of the Government of Mexico that the United States did not take this action. Note number 877 asked the Department to intercede before an appropriate judicial body to seek the suspension of Mr. Tristan Montoya's execution and, if justified by an investigation into the consequences of the lack of consular notification, to seek a new trial for Mr. Tristan Montoya.

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The United States places the highest value on ensuring respect for the consular notification obligation set forth in the Vienna Convention. The Department notes that Assistant Secretary of State Davidow emphasized to Under Secretary Rebolledo the commitment of the United States to the consular notification obligation of the Vienna Convention during the meeting of the Border Cooperation Subgroup of the United States-Mexico Binational Commission on June 18, 1997, and that issues of consular notification and access have been matters of regular dialogue between the United States and Mexico in recent years. The Department looks forward to the continuation of this dialogue.

With respect to the case of Mr. Tristan Montoya, the Department of State has taken the matters raised in the Embassy's notes with the utmost seriousness, and made extensive inquiries into the circumstances of Mr. Tristan Montoya's case. The Department sought information from a number of sources, and made a formal request on June 12, 1997, to the Governor of the State of Texas to provide information about Mr. Tristan Montoya's case. A copy of this request is enclosed for the Embassy's information. The Department received prompt and thorough cooperation from Texas state authorities, resulting in extensive exchanges of information via telephone between June 13 and 17. The Office of the Governor of Texas reduced these exchanges

to writing, sending the Department an interim acknowledgement on June 16, 1997, and a formal written response to our request on June 18, 1997, by facsimile that afternoon and then by mail. Copies of these responses are also enclosed, for the Embassy's information.

The Office of the Governor was unable to find any evidence that Mr. Tristan Montoya was informed before his conviction of his right to consular notification under Article 36(1)(b) of the Vienna Convention. The Department of State extends, on behalf of the United States, its most profound apology for the apparent failure of the competent authorities to inform Mr. Tristan Montoya that he could have a Mexican consular officer notified of his detention.

As the Governor of Texas considered the clemency petition then before him, the Department believed it appropriate to request that he take into account the U.S. obligation to provide consular notification and the fact that Mr. Tristan Montoya apparently was not informed that he could have a consular official notified of his detention. The Department so advised the Governor's office on June 17. The Department was assured that the Governor would consider this factor carefully, and this assurance was formalized in the enclosed June 18 letter from the Governor's office. The Department formally acknowledged this assurance

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later that day in a letter that is also enclosed for the Embassy's information. Nonetheless, the Governor declined to grant the petition for clemency, and Irineo Tristan Montoya was executed by lethal injection later that evening.

With respect to the specific requests in notes numbers 409, 667 and DAN-01657 and the concerns expressed in note number 896 concerning communications with judicial and civil authorities in the United States, the Department advises that as a general matter the Government of Mexico may make appropriate direct communications in any specific legal proceeding in which one of its nationals is a party. The Department has previously issued circular diplomatic notes (see, e.g., the circular diplomatic note of August 17, 1978, to all Chiefs of Mission at Washington, D.C.) clarifying that when foreign governments wish to make their views known to courts in the United States, they should do so directly under relevant court rules, which normally permit filing briefs as *amici curiae*. A copy of an article from the *Digest of United States Practice in International Law*, 1976, concerning this practice is enclosed for the Embassy's information. In the occasional instance when U.S. courts have expressed reluctance to receive such views, the Department has encouraged them to do so (see, e.g., *Westinghouse* .

Uranium Antitrust Litigation (1980)). The Department remains willing to assist in this way.

The Department further notes that, in the case of Mr. Tristan Montoya, information provided to the Department suggests that Mexican consular officials provided affidavits and statements to be attached to petitions submitted on behalf of Mr. Tristan Montoya to the Texas Board of Pardons and to the Texas Court of Criminal Appeals, and that the views of Mexican federal and state officials were communicated directly to the Governor of Texas. In addition, as noted above, the Department communicated to the Governor of Texas the concerns of the United States regarding the apparent failure to inform Mr. Tristan Montoya of his right to consular notification.

The Department welcomes the process of consultation and exchange of views with the Embassy that has begun on the subject of consular notification, and looks forward to deepening this important bilateral dialogue.

Enclosures: As Stated.

Department of State,

Washington, JUL -9 1997

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