

International Court of Justice (ICJ)

Research Report



Forum: International Court of Justice

Issue: Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning Avena and Other Mexican Nationals (United Mexican States v. United States of America)

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Introduction

On 5 June 2008, before the International Court of Justice (ICJ), the United Mexican States (henceforth referred to as “Mexico”) commenced legal action against the United States of America (henceforth referred to as the United States or U.S). They requested an interpretation of the ICJ’s ruling in the earlier 31 March 2004 case regarding Avena and Other Mexican Nationals. The case in mention dealt with the violation of Article 36 of the Vienna Convention on Consular Relations (VCCR) by the United States, in particular concerning the nation’s failure to inform the 51 Mexican nationals on death row of their consular rights after arrest.

Consequently to the United States’ failure to implement the ICJ’s 2004 decision, Mexico requested the Court to interpret its original ruling. Specifically, Mexico sought clarification on whether the original judgment by the ICJ required judicial review, and whether the United States had a duty to ensure that the executions would not take place until proper review, reconsideration, and consular access had been given. This request was filed promptly as the scheduled execution of Mexican national José Ernesto Medellín in Texas would take place on 5 August 2008, prodding Mexico to request further provisional measures to halt pending executions.

Definition of Key Terms

Vienna Convention on Consular Relations (VCCR)

An international treaty adopted in 1963 and recognized by both nations in the case. It outlines the duties, obligations, and rights of consular officers as well as the country acting as a host to foreign nationals. The article relevant to this case, Article 36, provides foreign nationals the right to be informed of their right to consular assistance when imprisoned or detained by a host country.

Consular Notification

The obligation of the arresting authorities to notify a foreign national of their right to consultation and to inform the consulate upon request. Failure to do so is a violation of Article 36 of the VCCR.

Provisional Measures

Temporary and immediate orders issued by the ICJ to preserve the rights of either party while waiting for the final decision. They are binding under international law.

Interpretation of Judgment

When there is a dispute regarding the meaning or scope of any prior ICJ judgment, this type of legal proceeding is allowed under Article 60 of the ICJ Statute.

Procedural Default

A legal doctrine in U.S. law that prevents the accused or defendant from raising a legal argument in court if it was not raised preceding that. This doctrine frequently prevented foreigners from bringing attention to possible violations of the VCCR in U.S. courts.

Major Countries and Organizations Involved

United Mexican States (Mexico)

The nation was the applicant in both the original 2003 Avena case and the request for interpretation in 2008. Mexico aimed to protect the rights of its citizens under international law while hoping for provisional measures by the ICJ to delay the execution of its nationals without justified review of the VCCR violations.

United States of America (USA)

The U.S. was the defendant and respondent in both the original 2003 Avena case and the 2008 request for interpretation. Despite losing the 2004 case, U.S. federal and state authorities failed to heed the judgment while asserting that ICJ rulings, such as the 2008 U.S. Supreme Court ruling (*Medellín v. Texas*), were not directly enforceable by federal law.

Timeline of Events

Date	Description of Event
1963	The Vienna Convention on Consular Relations (VCCR) is adopted.
9 January 2003	<i>Avena and Other Mexican Nationals (Mexico v. United States)</i> is brought in front of the ICJ by Mexico.
31 March 2004	The ICJ declares its Avena judgment – they asserted that the United States violated Article 36 of the VCCR and ordered the nation to provide “review and reconsideration” of the cases of the 51 Mexican nationals.
28 March 2005	President Bush issues a memorandum ordering various state courts to give effect to the ICJ’s ruling.
12 May 2005	The U.S Supreme Court dismisses <i>Medellín v. Dretke</i>
25 March 2008	The U.S Supreme Court rules in <i>Medellín v. Texas</i> that the Avena judgment by the ICJ is directly enforceable as federal law. Furthermore, the Supreme Court declares that the President lacks constitutional authority to order state courts to comply with ICJ rulings.

5 June 2008

Mexico files a Request for Interpretation of the original 2004 Avena Judgment.

Relevant UN Treaties and Events

Vienna Convention on Consular Relations (VCCR)

The Vienna Convention is the primary legal basis for the case. Article 36 of the VCCR bestows the right upon detained foreign nationals to communicate with their consulate. In the original 2004 Avena judgment, the ICJ found that the United States had breached their duty in the cases of the 51 Mexican nationals on death row who had not been informed of their consular rights.

Statute of the International Court of Justice (Article 60)

Mexico's 2008 application for the Interpretation of the 2004 Avena judgment was permitted under Article 60 of the Statute of the ICJ. This article allows a nation (either applicant or respondent) to request to interpret a previous judgment if there is a doubt about its meaning or extent. Mexico argued that such a dispute existed with respect to paragraph 153 of the original Avena ruling, stating that the U.S. must review the cases of 51 Mexicans to see if denying consular help affected their trials.

2004 Avena ICJ Judgment

In its final decision on 31 March 2004, the ICJ ruled in favor of Mexico, finding that the United States had violated the Vienna Convention (specifically Article 36) by not informing 51 Mexican nationals of their right to consular assistance after being detained. The ICJ instructed the United States to review and reconsider the convictions, and sentences of the affected individuals in case the violation of their consular rights impacted the outcome of their cases.

Previous Attempts to Solve the Issue

Avena Judgment (2004)

The ICJ's original judgment on 31 March 2004 ruled that the United States had violated the VCCR by failing to inform the 51 Mexican nationals on death row of their right to consular assistance. The Court ordered the United States to review and reconsider its convictions and sentences. They aimed to mitigate any uncertainty of the violations affecting the outcome of the trials.

U.S. Presidential Memorandum (2005)

In an attempt to adhere to and carry out the ICJ ruling, President George W. Bush enforced a memorandum in 2005 instructing state courts in the United States to heed the Avena judgment. The memorandum ordered states holding the Mexican nations to provide the required review and reconsideration in their cases. However, this order from the President was quickly questioned in the U.S. Supreme Court, where it was later declared that the President did not have the constitutional authority to force individual states to follow the ICJ's ruling.

Request for Interpretation (2008)

Following the execution of Medellín and the failure to act in accordance with the Avena judgment, Mexico returned to the ICJ to request an interpretation of the ruling. Mexico argued that the United States had not met its obligations and asked the Court to clarify the meaning of paragraph 153(9), which required review and reconsideration. This prompted the Court to issue provisional measures. and a new ICJ judgment in 2009 reaffirming the obligatory status of its original decision.

Possible Solutions

A possible solution to Mexico's dispute with the United States over the rights of these nationals is for the United States Congress to pass legislation that ensures state courts are obligated to comply with decisions of the International Court of Justice in cases involving international treaty violations. This would address the issue faced in the case of Medellín v. Texas ruling, where the U.S. Supreme Court held that ICJ judgments are not automatically enforceable as domestic law

without Congressional action. By enforcing this legislation, the United States would be aligning its domestic legal system with international obligations to prevent similar disputes in the future.

Additionally, Mexico could continue to raise the issue in worldwide forums such as the United Nations General Assembly, where it can advocate for greater international support for the enforcement of ICJ judgments and the protection of consular rights, which can provide diplomatic pressure and raise global awareness about the importance of complying with international legal decisions. These legal, procedural, and diplomatic approaches offer different pathways toward strengthening the rule of law and preventing future violations of the Vienna Convention.

Another possible solution is for the United States and Mexico to hold regular meetings focused on improving the protection of consular rights for their citizens abroad. These discussions could lead to practical agreements on procedures and cooperation, but their success would depend on both countries' willingness to engage consistently and overcome legal and political differences, especially at the state level within the U.S.

Useful Links

International Court of Justice – [Avena and Other Mexican Nationals Case Documents](#)

United Nations Treaty Collection – [Vienna Convention on Consular Relations](#)

Human Rights Watch – [Capital Punishment and International Obligations](#)

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