

IN THE INTERNATIONAL COURT OF JUSTICE

MEXICO,)

APPLICANT)

V.)

THE UNITED STATES OF AMERICA,)

RESPONDENT)

MEMORIAL OF THE UNITED MEXICAN STATES

COMES NOW the United Mexican States and for their Memorial to the Court
states the following:

STATEMENT OF LAW

1. As detailed in Article 5(a) of the Vienna Convention on Consular Relations, international law recognizes the right of nationals detained in foreign countries to prompt access to consular assistance from the sending State.

2. Mexico and the United States of America are both parties to the Vienna Convention on Consular Relations, the former since 16 June 1965, and the latter since 24 November 1969. Both States have been members of the Optional Protocol of the Vienna Convention, Mexico since 15 March 2002, and the United States of America since 24 November 1969. The Vienna Convention, in part, provides for the rights of foreign nationals to consular assistance from the sending State in the case of detention by the receiving State.

3. Article 36 (1) (b) of the Vienna Convention states that any State detaining a foreign national must provide for and inform the detained of their rights to contact the

consulate of their sending State, to have messages for their consulate transmitted without delay, and to converse and correspond with their consulate. The United States, by violating the aforementioned rights for 54 detained Mexican nationals, has created a breach of the Convention.

4. In the *LaGrand* case, this Court found that apologies do not consist of a proper remedy to a violation of Article 36 (1) (b) of the Vienna Convention. Despite attempts from Mexico to vindicate its rights and those of its nationals under Article 36 (1) (b), the only effort made by the United States to remedy the breach of the Convention has been to offer repeated apologies.

5. In its Order on provisional measures in the *Paraguay* case, this Court found that a dispute concerning the remedy for violations of Articles 5 and 36 of the Vienna Convention constituted a dispute arising out of the application of the Convention within the meaning of Article I of the Optional Protocol.

6. In *LaGrand*, this Court found that a dispute regarding the appropriate remedies for the violation of the Convention &is a dispute that arises out of the interpretation or application of the Convention and thus is within the Court s jurisdiction. Mexico has a legal right to insist that the appropriate remedy to the violations of the Convention is to re-establish the situation that existed at the time of the detention and before the convictions and sentences of Mexico s nationals.

STATEMENT OF FACT

The United States of America and Mexico both signed the Vienna Convention on Consular Relations in order to promote friendly relations between nations and in order to

contribute to that goal, established a system of consular relations, privileges, and immunities (Vienna Convention, preamble). Article 36 of the Convention provided for the right of a detained foreign national to prompt contact with and consular assistance from the sending State. There have been two recent cases protesting the violation of those rights by the United States: *Vienna Convention* (Paraguay v. U.S.), in 1998, and *LaGrand*, in 1999. In the ensuing years, however, Mexican nationals have been arrested and sentenced to death in the United States in violation of Article 36 of the Vienna Convention. In the last six years, four Mexican nationals have been executed in such a manner, and in all four cases, the violation of Article 36 was uncontested. Mexico filed *amicus* briefs in support of its nationals, pleaded for clemency with state authorities, and presented diplomatic Notes of protest with the Department of State. In each case, Mexico's efforts were for naught. Though informed of its post-*LaGrand* obligations to review and reconsider cases in which a foreign national is sentenced to death, the United States continues to execute such prisoners in spite of the protests of the sending States. The United States has either applied the doctrine of municipal default to avoid reconsideration of the uncontested Article 36 violations, despite this Court's determination in *LaGrand* that such actions are to be prohibited, or simply left it to state authorities to determine whether to grant hearings, commutations, or reprieves of execution.

STATEMENT OF JURISDICTION

The Court has jurisdiction to hear this case because of the substance of Article I of the Optional Protocol to the Vienna Convention on Consular Relations. Article I of the

Optional Protocol provides that disputes arising out of the interpretation or application of the [Vienna Convention on Consular Relations] shall lie within the compulsory jurisdiction of the International Court of Justice and may accordingly be brought before the Court by an application made by any party to the dispute being a party to the present Protocol . In Vienna Protocol and LaGrand both, the Court ruled on this provision, confirming its prima facie jurisdiction for the cases. Article I requires that the Applicant be a party to the Optional Protocol, and that there be a dispute arising out of the interpretation or application of the Vienna Convention on Consular Relations. The Application was filed on 9 January 2003, when both Mexico and the United States of America were parties to the Vienna Convention and to the Optional Protocol. Despite its best efforts, Mexico has been unable to vindicate the rights of it and its nationals under article 36 of the Convention. Mexico and the United States of America clearly have fundamental disagreements about the remedy to which the sending State and its nationals are entitled in the event of a breach of the Convention in a proceeding that leads to the death penalty.

ARGUMENTS

I. The United States of America violated its international legal obligations to Mexico.

Despite protest from the Mexican government, the United States has repeatedly violated the rights of 54 Mexican nationals on death row under Articles 5 and 36 of the Vienna Convention by failing to adequately enforce said rights or by failing to inform the

detainees of said rights. In many cases, Mexico did not learn of the arrest, trial processes, conviction, or sentencing of its nationals until long after the fact. Furthermore, the United States has used the principle of procedural default, despite the prohibition in international law, to avoid reviewing the cases of Mexican nationals on death row in accordance with the *LaGrand* findings.

II. Future international legal obligations of the United States.

The United States of America must be in conformity with its international legal obligations in the process of any future detention or criminal proceedings of any of the 54 death row Mexican nationals or any other Mexican national in its territory. In order to conform to those international legal obligations, the United States of America must not apply the doctrine of procedural default, or any other municipal doctrine, to preclude the exercise of the rights afforded by Article 36 of the Vienna Convention. In addition, the United States must take actions sufficient to ensure that provisions of municipal law do not preclude the full effect of the rights afforded by Article I of the Vienna Convention, of which it is a member and whose provisions the United States agreed to comply with. These measures ensure that the United States fulfils the obligations that it agreed to in the future.

III. Meaningful Remedy.

The United States, despite repeated violations of the Article 36 rights of the Mexican nationals, has yet to provide a meaningful remedy of the breach of the Convention. It has provided Mexico with naught but apologies, which this Court ruled in *LaGrand* was insufficient as a remedy for the violations. Therefore, the United States of America must take steps sufficient to provide meaningful remedy at law for violations of the rights afforded to Mexico and its nationals by Article 36 of the Vienna Convention. This must include barring the imposition, as a matter of municipal law, of any procedural penalty for the failure timely to raise a claim or defense based on the Vienna Convention where competent authorities of the United States have breached their obligation to advise the national of his or her rights under the Convention.

IV. Restitution for the 54 Mexican Nationals on death row.

The United States, having violated international law and its obligations under Article 36 of the Vienna Convention, must provide restitution for the 54 Mexican death row inmates whose rights were violated. Given the repeated and, post-*LaGrand*, knowledgeable and willful violation of international law, in order to provide adequate restitution the United States must restore the *status quo ante*. The United States can re-establish the situation that existed before the detention of, proceedings against, and convictions and sentences of, Mexico's nationals in violation of the United States international legal obligations.

V. Guarantees on non-repetition.

Given the repeated violations of the rights afforded under Article I of the Vienna Convention even after this Court's ruling in *LaGrand*, the United States of America must provide Mexico with a full guarantee on non-repetition of the illegal acts.

VI. Declaration of the right to consular notification as a human right.

The Court should declare that the right to consular notification under the Vienna Convention is a human right. Such an act would highlight the need for greater protection of the right, while simultaneously indicating the importance of the right to consular notification by placing it amongst the other human rights. It is clear even from just the cases of the 54 Mexican nationals placed on death row that the right to consular notification is essential and of utmost importance.

SUMMARY AND PRAYER FOR RELIEF

The United States has repeatedly violated the rights of Mexican nationals currently on death row to consular notification as provided in Article 36 of the Vienna Convention. Wherefore, Mexico prays the Court will find that in order to fix the situation, the United States of America must conform to international legal obligations and cease using prohibited measures to bypass the ruling in *LaGrand*. The United States must also comply with international legal obligations in providing adequate remedies for violations of Article I in the future. It must also provide restitution for the Mexican nationals on death row by re-establishing the situation that existed before their legal and

judicial processing. Lastly, the United States must guarantee non-repetition of the illegal acts. Given its importance and imperiled standing, the Court should also declare the Vienna Convention right to consular notification a human right.