

The International Court of Justice
Of the
American Model United Nations

(23 November 2003)

Dispute over the Conviction and Sentencing to Death of
Mexican Nationals in the United States

Mexico v. The United States of America

PRESENT: *President* Alonzo; *Vice-President* Vogl; *Justices* Bulson, Burton, Dresen, Franklin, Honda, Hypnar, Klemesrud, Laiu, Scherbakoff, Stapleton, and Verschage

The Court,
Composed as above,
Delivers the following Judgment

1. Jurisdiction is the primary issue which must be addressed by this Court. Mexico maintains that the Court does possess jurisdiction to hear the current matter in that Article I of the Optional Protocol to the Vienna Convention on Consular Relations states that Disputes arising out of the interpretation or application of the Convention shall lie within the compulsory jurisdiction of the International Court of Justice in that the dispute that Mexico has with the United States is regarding the interpretation and application of Article 36 of the Vienna Convention. The United States maintains that since it acknowledges the violation of the consular notification component of Article 36 of the Vienna Convention that no dispute is present and therefore the Court has no jurisdiction over the matter.
2. Both the United States and Mexico agree that the United States has violated its international legal obligations to Mexico by its failure to inform the fifty-four Mexican nationals of their right to contact their consular representation within the United States for the purposes of obtaining consular assistance.
3. Mexico contends that the United States, by making use of its domestic policy of procedural default, has provided a situation in which Mexican nationals are denied the ability to obtain conviction relief through the appeals process in that each of the nationals neglected to address the failure of the competent authorities of the United States to inform them, upon their detention and arrest, of their right to obtain consular assistance. The United States maintains that the use of procedural default is allowed within the scope of the application of the terms of the Vienna

Convention in that Article 36 Paragraph 2 holds that the terms of the Convention shall be exercised in conformity with the laws and regulations of the receiving State.

4. Mexico contends that the United States, under the ruling of this Court in *Germany v. United States*, has failed to adjust their domestic legal practices so as to provide a meaningful remedy for the continued failure of the United States to inform foreign nationals who are taken into custody of their right to obtain consular assistance. The Mexican government objects to the apology that has been provided by the United States in that it is an insufficient rectification for the violation that has been committed. The United States points out that since the *Germany v. United States* decision, it has made use of the process of giving review and reconsideration of cases involving this failure to inform foreign nationals of their right to seek consular assistance. Mexico counters that such review and reconsideration, as it is currently being applied, is not significant enough to truly rectify the gravity of the situation. Mexico argues that since only three of the fifty-four cases under discussion have been granted some form of post conviction relief it is clear that the United States has not taken the significant steps necessary to truly rectify the situation nor the potential for the situation to be repeated in the case of future Mexican or foreign nationals.

One such remedy that the Mexican government would like to see implemented would be a guarantee that notification of the right to consular assistance be made by the competent authorities which would include the detaining officer at the governmental level most closely associated with the detainment.

An additional remedy that the Mexican government would like to see implemented, especially in the present situation in which the fifty-four nationals have already been denied the right to contact their consular representatives, is for a return to the *status quo ante* in which the current convictions would be set aside and a new trial be held in which the Mexican nationals could make use of consular assistance for the duration of the new trial.

5. Mexico further maintains that the right to contact consular representatives in the event that a foreign national is detained is a right of significant caliber to merit the signification and status of a human right which all people would possess. Such a signification, from the Mexican government's perspective, would highlight the need for greater protection of the right.

6. The United States maintains that the primary objective of the Mexican government in bringing the present case before the Court is due to the objection of the Mexican government of the general use of Capital Punishment. The United States makes note that the Mexican government has only made its position known with regard to the required notification of consular assistance in that the Mexican government has only highlighted the cases of the fifty-four individuals who were sentenced to death following the failure of the United States to duly inform said individuals of their right to consular assistance. The United States holds that if Mexico was truly interested in this notification failure that the Mexican government would challenge the punishments which have been applied to any and all Mexican nationals which have been denied such notification.

For these reasons,

The Court,
Unanimously

Finds that we do possess the jurisdiction to hear the present case in that the discussion surrounding the nature of the United States application and interpretation of the Article 36 of the Vienna Convention is contested by Mexico. In that there is present a dispute of the Convention's interpretation and application, this Court holds that we do possess the necessary jurisdiction.

The Court
Unanimously

Recognizing that the United States prevented Mexican nationals, under the doctrine of procedural default, from the ability to challenge a conviction and sentence under the auspices of the failure of the competent authorities to provide the required information that such nationals possessed the right under the Vienna Convention to obtain consular assistance, we the Court request that those United States government personnel who possess the responsibility of reviewing and/or reconsidering requests for post-conviction relief give additional consideration for such potential relief due to the gravity of the violation of Article 36 of the Vienna Convention.

Finds that the United States should be recommended to insure that any process of review and reconsideration for post conviction relief of foreign nationals, as encouraged within the *Germany v. United States* case, should remain consistent and on par with such review and reconsideration as applied for the post conviction relief for citizens of the United States. Article 26 of the International Covenant on Civil and Political Rights, which entered into force on 23 March 1976, holds that:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The Court,
Unanimously

Finds that the United States should be recommended that a return to the *status quo ante* be used if the merits of each individual case, upon its post conviction review and/or reconsideration, possesses a significant reason for setting aside the conviction in order to hold another trial in which the Mexican national would have the ability to make use of the assistance of its consular representatives.

The Court,
Unanimously

Finds that the United States be directed to provide a formal guarantee to Mexico that such violations of the terms of Article 36 of the Vienna Convention will no longer occur.

The Court,

By eleven votes to two

Finds that although the right to receive consular assistance is a significant right as afforded by Article 36 of the Vienna Convention, it is not of significant nature to be deemed as a human right but rather a political right granted to the nationals of the signatory states.

IN FAVOR: *President* Alonzo; *Vice-President* Vogl; *Justices* Bulson, Burton, Dresen, Franklin, Honda, Klemesrud, Scherbakoff, Stapleton, and Verschage

AGAINST: *Justices* Hypnar and Laiu

Justice Laiu appends a separate opinion

Separate Opinion of Justice Laiu

The question before this court is whether the United States of America violated article 5 and 36 of the Vienna Convention on Consular Relations. With regards to the 54 Mexican nationals who were arrested and sentenced to death, the United States of America does not object to Mexico's assertion that The United States failed to provide consular assistance to the Mexican Nationals without delay.

No further questions must be asked.

The advocates for the United States contend this matter is an issue of jurisdiction and sovereignty however, violations of the Vienna Convention is clearly a matter of consideration for this court. Whether Mexico is using this case to object to the United States' right to determine the morality of the death penalty, or the actual practice of Mexican judicial system is contradictory to their position, are not matters of concern to the International Court of Justice.

The rule of law must hold in cases involving failure to follow set process. This court does not need to tell countries to retry cases or treat all individuals fairly; the countries are obligated to do so by the treaties that they have signed. Orders to retry Mexican nationals or to treat foreign citizens with due process is not the task of the ICJ. The International Court of Justice is not a nanny who acts to remind or dictate to any nation what is naturally required in order to fulfill their promise to the international community.