

IN THE INTERNATIONAL COURT OF JUSTICE

MEXICO,)
APPLICANT)
V.)
UNITED STATES OF AMERICA)
RESPONDENT)

COUNTER-MEMORIAL OF THE UNITED STATES OF AMERICA

COMES NOW the United States of America and for their Counter-Memorial to the Court states the following:

STATEMENT OF LAW

1. The United States of America (hereinafter referred to as the United States) and the United Mexican States (hereinafter referred to as Mexico) are Member States Party to the Vienna Convention. Articles 5 and 36 of the Vienna Convention deal directly with a national's right of consular notification without delay.

2. By signing the Vienna Convention, Member States agree to abide by the standards set forth within the boundaries of the Vienna Convention.

3. In the LaGrand case, Germany v. United States of America, the court ruled that it would be incumbent upon the United States to allow the review and reconsideration of the conviction and sentence by taking account of the violation of the rights set forth in the Convention. This obligation can be carried out in various ways. The choice of means must be left to the United States.

4. The Court cannot act as a court of criminal appeal and cannot be petitioned for writs of *habeas corpus*. The Court does not have jurisdiction to decide matters relating to capital punishment and its execution, and should not intervene in such matters. (*LaGrand (Germany v. United States of America), Provisional Measures, Order of 3 March 1999, I.C.J. Reports 1999 (I)*, declaration of Judge Oda, p. 18).

5. The International Court of Justice, as well as international law, both respect and adhere to the idea and application of the sovereignty of the State, as set forth under Article 2 of the United Nations Charter which states "The Organization is based on the principle of the sovereign equality of all its Members."

STATEMENT OF FACT

The case results from the failure of competent authorities of the United States to inform 54 Mexican nationals without delay of their right to have a Mexican consular post notified of their arrest and detention following their arrests. The competent authorities of a State Party are required to so inform arrested nationals of another State Party by the last sentence of Article 36(1)(b) of the Vienna Convention on Consular Relations. Accordingly, the failure to promptly inform the 54 Mexican nationals of their right of consular notification as required by Article 36(1)(b) of the Vienna Convention was in breach of the United States legal obligations to Mexico.

The convictions of the 54 Mexican nationals were rendered by competent authorities within the United States judicial system, and were within the sovereign rights of the United States to arrest, try, detain, and convict the criminals who committed their crimes within the sovereign borders of the United States. The United States has instituted measures providing for review and reconsideration of such cases, and so far these measures have proved effective. In addition, most of the Mexican nationals were given consular assistance within the judicial processes that followed their initial sentencing.

STATEMENT OF JURISDICTION

The Court does not have the jurisdiction to hear this case because, as stated in Article I of the Vienna Convention's Optional Protocol concerning the Compulsory Settlement of Disputes, Disputes arising out of the interpretation or application of the Convention shall lie within the compulsory jurisdiction of the International Court of Justice & This case does not concern a dispute over the interpretation or application of the Vienna Convention because the United States admits that it was in violation. While it might be necessary to discuss the appropriate remedy for the violation, that is a matter of international law, not of the interpretation or application of the Convention.

The Court also does not have the jurisdiction to deal with matters of domestic legal proceedings because that lies within the sovereign discretion of the United States. Seeing as international law rests on the sovereign rights of the State, the Court cannot pass judgment upon the internal affairs of a sovereign state's judicial system. If the International Court of Justice interferes in a State's criminal law system (encompassing trial and appellate proceedings and clemency procedures), it fails to respect the sovereignty of the State.

ARGUMENTS

I. The issues brought forth by Mexico are beyond the scope of the Court's jurisdiction.

The United States has admitted that there was a breach of the Vienna Convention. In doing so, it realizes that different actions should be taken. These actions are not to be determined by the International Court of Justice who previously stated that the United States can determine the means in which to review and reconsider such breaches to the Vienna Convention. The International Court of Justice is not in a position to undermine the sovereignty of a State and intervene in their domestic criminal proceedings. Mexico seeks a profound intrusion into United States sovereignty to preserve supposed rights that

have no basis under international law. As Judge Oda stated, The Court cannot act as a court of criminal appeal and cannot be petitioned for writs of *habeas corpus*.

It is up to Mexico to show that the Court has jurisdiction to rule on this case. Mexico has not shown and can not show this because, while there was a breach of the Vienna Convention, it is not within the scope of the International Court of Justice to determine what actions should be taken next. Mexico must respect the Court s decisions in *LaGrand (Germany v. United States of America)* in which the Court clearly states that review and reconsideration is an appropriate course of action.

II. Mexico has brought this issue forth to protest America s use of capital punishment.

The internal processes of the United States cannot be interrupted by a decision of the International Court of Justice. The request to have the court review the judicial process regarding the Mexican nationals is an obvious attempt on Mexico s part to save the lives of its nationals who have been sentenced to death by courts of the United States. Since the International Court of Justice cannot act as an international court of appeal, this case cannot be used to fight the United States use of capital punishment. The discussion should be held within the boundaries of the interpretation and application of the Vienna Convention. Henceforth, if this case is to be judged strictly upon adherence to the Convention, there is very little discussion to be had.

III. The United States failed to provide consular assistance to the Mexican Nationals without delay.

The United States does acknowledge its failure to provide consular assistance; however, Mexico s case before the Court calls into question the proper workings of the United States criminal justice system. Through our means of review and reconsideration, each national has the chance to employ measures which would allow for any of the aforementioned violations to be reviewed. The precedence of the Court has allowed the

United States to employ means of its own choosing in order to allow review and reconsideration in any such cases.

Mexico claims that there is extreme gravity and immediacy of the threat that authorities in the United States will execute a Mexican citizen. Since the issue has been brought before the court, three of the 54 Mexican nationals' sentences have been commuted. The United States can assure the court that it will continue to employ measures which have proved effective in such cases and which there is no basis to believe will not be effective in future cases.

Those who commit crimes in the United States are given due process of law. As a sovereign state, we will continue to provide fair and effective means in which to arrest, try, detain, and convict any person who has committed a violation of our national law. In the wake of *LaGrand*, we have succeeded in providing a more effective means to reconsider cases where consular notification has not occurred.

SUMMARY AND PRAYER FOR RELIEF

The United States asks the Court to recognize the fact that Mexico is asking this Court to go beyond its scope of jurisdiction. The United States has instituted effective means in which to reconsider any infractions of the Vienna Convention. Wherefore, the United States prays that the Court will find that, according to past precedence, the United States can and will address such issues as right to consular notification within its own justice system. We sincerely apologize to Mexico for past indiscretion; however, according to international law and the Vienna Convention, the court should see no need to make a ruling outside of its jurisdiction.