



STATEMENT OF JURISDICTION:

As a member of the Vienna Convention, the Federal Republic of Germany acknowledges the jurisdiction of the International Court of Justice in the case of LaGrand under Article I of the Optional Protocol of the Compulsory Settlement of Disputes, which states: “Disputes arising out of the interpretation or application of the Convention 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.”

Furthermore, Article 36, Paragraph I of the Statute of the Court states that “The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force.”

STATEMENT OF LAW:

1. Article 5 of the Vienna Convention on the Law of Treaties states that, “The present Convention applies to any treaty which is the constituent instrument of an international organization and to any treaty adopted within an international organization without prejudice to any relevant rules of the organization.
2. Article 27 of the Vienna Convention on the Law of Treaties states that, “A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 46.”
3. Article 46, clauses 1 and 2, of the Vienna Convention on the Law of Treaties state that:
 - 1) A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance.
 - 2) A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith.
4. Article 75 of the Vienna Convention on the Law of Treaties states that, “The provisions of the present Convention are without prejudice to any obligation in relation to a treaty which may arise for an aggressor State in consequence of measures taken in conformity with the Charter of the United Nations with reference to that State's aggression.

5. Article 41, clause 1, of the Statute of the Court states that, “The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party.”

6. Article 36, subparagraph *b* of the Vienna Convention states that, “if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this subparagraph;

STATEMENT OF FACT:

On January 7th, 1982, Karl and Walter LaGrand, two German nationals, attempted a bank robbery in Arizona and killed the bank manager in the incident. Arizona arrested them and tried them two years later accordingly, subjecting them to the death penalty. Germany learned of the arrest and the subsequent conviction in 1992, ten years later. For this reason on March 2nd, 1999, the Federal Republic of Germany applied to the International Court of Justice against the United States of America for violating the Vienna Convention on Consular Relations (Vienna Convention) signed by both parties in 1963. Germany found the United States guilty of violating the laws of the Convention by arresting two German nationals and failing to notify them of;

1. The right of a prisoner to contact and be represented by counsel of his or her country, and
2. Per request of the prisoner, the authority must notify the consular post of the national’s country of origin

Germany petitioned the International Court of Justice in March of 1999 to delay the execution of Walter LaGrand until the Court could reach a decision on the merits of the sentence. The Justice’s of the Court granted the Germany’s request, who then sought to enforce the measures in the United States Supreme Court, which denied the request and Arizona Governor Jane Hull allowed the execution to proceed on March 3rd.

Although the United States acknowledges failing to comply with the requirements of the Vienna Convention, it believes that the complaints levied by Germany that the brothers would have had a better trial with German counsel representation is retrospective speculation harmful to Arizona’s criminal justice system. Its domestic policy of procedural default, preventing parties to a trial from raising new information for defense on appeal if they didn’t appear at the initial trial, is the primary issue in the case, since Germany wasn’t allowed to raise Vienna Convention violation issue in later court proceedings with the United States. The case has since been adjusted as determining the jurisdiction of the ICJ in interpreting the Vienna Convention as one that confers rights on individuals enforceable in domestic and international courts, or only enforceable rights to

State Parties only.

ARGUMENTS

In the case of Karl and Walter LaGrand, Germany finds that the United States failed to comply with the Vienna Convention, leading to the wrongful deaths of the two brothers. The United States acknowledges failing to comply with the notification terms of the Vienna Convention, Article 36 subparagraph b, a decision of willful ignorance. Under terms of this article, it is the responsibility for members of the Treaty to inform consulars of States if nationals of their country have been arrested or are on trial. The United States failed to inform Germany of the arrest, trial, and subsequently harsh sentence of death penalty of the LaGrand brothers.

The United States claims under its own policy of procedural default that it was not in wrongful violation of the law, yet Article 27 dismisses these claims, stating, “A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 46.” Clearly the United States did not have the right to proceed with the trial and sentencing, at least without notification and cooperation with German representatives.

The Vienna Convention exists to mediate disputes and provide counsel between States and individuals of those states, providing fundamental protections normally given nationals in their country of origin. Without the open communication between members and representatives of their State that the Vienna Convention provides its members, the Convention is rendered ineffective and incapable of resolving disputes in a just manner. Furthermore, under Article 36 of the Convention, individuals are to be informed of their rights and request that an authority notify immediately their consular post within the country of their imprisonment. Although the individual may not represent themselves in front of the court, they may be represented by an attorney of his own nationality.

The United States not only ignored the rightful signage of the treaty, but disregarded its application to national citizens of member states. This willful violation of the treaty distresses the leaders of Germany for the contempt shown to international law. This contempt has also been demonstrated by the United States’ failure to accept the provisional measures in violation of the provisional measures instated by Article 41 of the Statute of the Court to stay the execution of Walter LaGrand. Due to its signing of the Optional Protocol of the Convention, for the United States to ignore provisional measures authorized by the ICJ in such circumstances is negligence of the jurisdiction of the court that it accepted at that time.

SUMMARY AND REQUESTS:

The Federal Republic of Germany requests that the International Court of Justice declare that the United States of America is guilty of violating the Vienna Convention, as

well neglecting to uphold its binding to the Optional Clause by ignoring the provisional measures provided by the ICJ. Germany requests reparations be made by the United States on behalf of the LaGrand brothers, as well as establish additional legal protocols that would prevent these mistakes and unnecessary deaths in the future.