

IN THE INTERNATIONAL COURT OF JUSTICE

**THE FEDERAL REPUBLIC OF GERMANY,
APPLICANT**

V.

**THE UNITED STATES OF AMERICA,
RESPONDENT**

MEMORIAL OF THE FEDERAL REPUBLIC OF GERMANY

COMES NOW the Federal Republic of Germany and for their memorial to the Court states the following:

STATEMENTS OF LAW:

1. Under the 1963 Vienna Convention on Consular Relations, members of the United Nations signed this treatise to promote friendly relations and establish standards for the interaction of members along consular lines, including both the Federal Republic of Germany (henceforth called Germany) and the United States of America (henceforth the United States). The overarching goal of the convention was not to “benefit individuals” but to “ensure the efficient performance of functions by consular posts on behalf of their respective States”, regardless of “differing constitutional and social systems”.
2. Article 36, paragraph 1, subparagraph *(b)* of the Convention on Consular Relations states that nationals who find themselves arrested or committed to prison or to custody pending trial or detained in any other manner must be told of their rights of free communication with their consulate to arrange legal representation.
3. Under the Statute of the International Court of Justice, Article 41, paragraph 1, “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.” Orders authored by the court are legally binding to all parties in order to ensure the rights of all parties.

STATEMENT OF FACT:

On 7 January 1982, Karl and Walter LaGrand were arrested by Arizona law enforcement authorities on suspicion of several crimes, including murder. Reports demonstrate the knowledge on the part of the Arizona authorities of the German citizenship of both Walter and Karl LaGrand. Nevertheless, the Arizona authorities did not inform the brothers about their rights under the Vienna Convention on Consular Relations, nor did they notify the German Consulate of their arrest and detention. Neither were the brothers themselves aware of these rights. The brothers were detained and put on trial before a jury, where on 17 February 1984, the brothers were convicted of murder in the first degree, attempted murder in the first degree, attempted armed robbery, and two counts of kidnapping. The brothers could not afford legal counsel of their own choice and were forced to rely on court-appointed counsel. On 14 December 1984, both brothers were sentenced to death. 30 January 1987, the Supreme Court of Arizona rejected both Walter and Karl LaGrand's appeals by a 3 to 2 vote. Still, despite 5 years since their initial arrest, the German consulate was not notified of their detainment, and the brothers were still not notified of their rights under the Convention of Vienna.

It was only in June 1992, after all legal avenues at the state level had been exhausted, that German consular officers were made aware of the case by the LaGrand brothers, only after the brothers themselves were made aware by fellow inmates and not Arizona authorities. On 24 January and 16 February 1995, the Federal U.S. District Court for the District of Arizona rejected further appeals under the doctrine of procedural default. On 16 January 1998, the (federal) Court of Appeals of the 9th Circuit rejected the brothers' appeals, confirming the perceived Convention violations were defaulted, and could no longer be sought as an argument.

Germany decided to pursue several avenues in order to prevent the execution of the

brothers: First, German authorities raised the issue in direct diplomatic communications to the United States and Arizona; second, Germany supported arguments seeking domestic clemency. On 23 February 1999, the authorities of the State of Arizona revealed they had known of the brothers' German nationality since their initial arrest. On 4 February 1999, Karl LaGrand was executed. On 2 March 1999, Germany brought an Application before the International Court of Justice and requested Provisional Measures against the execution of Walter LaGrand.

On 3 March 1999, the International Court of Justice granted the request and ordered that:

1. The United States of America should take all measures at its disposal to ensure that Walter LaGrand is not executed pending the final decision in these proceedings, and should inform the Court of all the measures which it has taken in implementation of this Order;
2. The Government of the United States of America should transmit this Order to the Governor of the State of Arizona.

The U.S. Supreme Court denied the motion of Walter LaGrand, reversed a stay of execution ordered by the 9th Circuit Court, and further denied the motion brought by Germany and declined to exercise its original jurisdiction in the case. On 3 March 1999, Walter LaGrand was executed after the Arizona Governor's office refused recommendations by the state's clemency board and the directives of the ICJ.

STATE OF JURISDICTION:

1. Applications are derived under Article 36, Paragraph 1 of the Statute of the court: "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".
2. Additionally, Article 1 of the Optional Protocol of the Convention on Consular Relations finds that "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".
3. A dispute arising from the interpretation of the doctrine of procedural default, as well as the Orders on Provisional Measures, is present. Germany finds both occurrences as violations of international law, while the United States finds that procedural default did, in fact, take place as correctly stated through law, and that the Order of Provisional Measures provided by the court does not hold a legally binding status superior to domestic law.

ARGUMENTS:

1. The United States and the authorities of Arizona were in full breach of Article 36(1)(b) of the Convention on Consular Relations by failing to communicate to the German consulate the nationality of the LaGrand brothers, nor to communicate the rights of the brothers to them. As admitted to by state authorities, the United States and the State of Arizona were fully informed of the LaGrands' German nationality upon arrest and withheld communication for ten years.
2. In failing to communicate their rights to them, the United States further breached Article 36(1)(c), depriving the brothers of proper legal counsel and resources critical to a sufficient legal defense and presentation at court, resulting in both conviction and death penalty sentencing. Without the assistance of the German Consulate, the LaGrands' attorneys were unable to present their complete social and medical histories at sentencing.
3. Through the use of the doctrine of procedural default, the United States violated Article 36(2) of the Convention on Consular Relations, finding explicitly that "laws and regulations ... enable full effect to be given to the purposes for which the rights accorded under this article are intended". By upholding domestic law at the expense of the proper exercise of the article, the United States fails to meet its obligations, as under the doctrine, in the context of criminal proceedings, U.S. law grants the Vienna Convention no effect at all after the sentencing phase of the original trial.
4. In executing Walter LaGrand, the United States acted contrary to this Court and failed its obligations under Article 41 (1) of the Statute of the International Court of Justice. Once a jurisdictional link is established, an applicant is entitled to a binding Judgment. The respondent has no possibility to withdraw its consent to pending proceedings. The

applicant's right to a final, binding decision on the merits must receive adequate protection by equally binding Provisional Measures.

SUMMARY AND REQUESTS

The Federal Republic of Germany respectfully requests the Court to adjudge and declare that the United States violated Article 36(1)(b), and declare the United States shall provide Germany a guarantee that it will not repeat its illegal acts and ensure that United States domestic law and practice will not constitute a bar to the effective exercise of the rights under Article 36 of the Vienna Convention on Consular Relations in potential future cases. We find that satisfaction in the form of a pronouncement of the wrongfulness of the actions and omissions of the United States described above, and assurances and guarantees of non-repetition to prevent further violations of its rights and those of its nationals would be sufficient. These measures will be intended to leave the United States' dignity intact, and these reparations will only serve to preserve the legitimate authority of this court in enforcing international law.