



INTERNATIONAL COURT OF JUSTICE

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Press Release

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Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning Avena and Other Mexican Nationals (Mexico v. United States of America) (Mexico v. United States of America)

Provisional Measures

The Court indicates that the United States of America shall take “all measures necessary” to ensure that five Mexican nationals are not executed pending its final judgment

THE HAGUE, 16 July 2008. The International Court of Justice (ICJ), principal judicial organ of the United Nations, today gave its decision on the request for the indication of provisional measures submitted by Mexico in the case concerning the Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning Avena and Other Mexican Nationals (Mexico v. United States of America) (Mexico v. United States of America).

In its Order, the Court

“I. By seven votes to five,

Finds that the submission by the United States of America seeking the dismissal of the Application filed by the United Mexican States can not be upheld;

II. Indicates the following provisional measures:

(a) By seven votes to five,

The United States of America shall take all measures necessary to ensure that Messrs. José Ernesto Medellín Rojas, César Roberto Fierro Reyna, Rubén Ramírez Cárdenas, Humberto Leal García, and Roberto Moreno Ramos are not executed pending judgment on the Request for interpretation submitted by the United Mexican States, unless and until these five Mexican nationals receive review and reconsideration consistent with paragraphs 138 to 141 of the Court’s Judgment delivered on 31 March 2004 in the case concerning Avena and Other Mexican Nationals (Mexico v. United States of America);

(b) By eleven votes to one,

The Government of the United States of America shall inform the Court of the measures taken in implementation of this Order;

III. By eleven votes to one,

Decides that, until the Court has rendered its judgment on the Request for interpretation, it shall remain seized of the matters which form the subject of this Order.”

History of the proceedings

On 5 June 2008 Mexico filed a Request for interpretation of the Judgment delivered by the Court on 31 March 2004 in the case concerning Avena and Other Mexican Nationals (Mexico v. United States of America). In its Request Mexico recalled that, in the Avena Judgment, the Court inter alia found “that the United States had breached Article 36 of the Vienna Convention on Consular Relations in the cases of 51 Mexican nationals [who had been arrested, tried and sentenced to death in the United States] by failing to inform them . . . of their rights to consular access and assistance”. Mexico added that the Court determined, in paragraph 153 (9) of the Judgment, the remedial obligations incumbent upon the United States, namely “to provide, by means of its own choosing, review and reconsideration of the convictions and sentences” of the said Mexican nationals. In its request Mexico contended that “a fundamental dispute” had arisen “between the parties as to the scope and meaning” of paragraph 153 (9) and that the Court needed “to provide guidance to the parties”. As basis for the jurisdiction of the Court, Mexico invoked Article 60 of the Statute of the Court, which provides that: “In the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party.”

On the same day, Mexico filed a request for the indication of provisional measures, asserting that, since the Court had rendered the Avena Judgment, “requests by the Mexican nationals for the review and reconsideration mandated in their cases . . . ha[d] repeatedly been denied” and that the State of Texas had set the execution date for one of the nationals named in the Avena Judgment, Mr. Medellín, on 5 August 2008, while four other Mexican nationals could shortly receive an execution date. Mexico therefore asked the Court to order a stay of those executions pending a final decision of the Court on its Request for interpretation (see Press Release No. 2008/15 of 5 June 2008).

Public hearings, in which both Parties participated, were held on 19 and 20 June 2008.

Reasoning of the Court

— Article 60 of the Statute of the Court

The Court begins by noting that its jurisdiction on the basis of Article 60 of the Statute is not preconditioned by the existence of any other basis of jurisdiction as between the parties to the original case and that accordingly, even if the basis of jurisdiction in the original case lapses, it may nevertheless deal with a request for interpretation. It further states that, when a request for the indication of provisional measures is made in the context of a request for interpretation of a Court’s judgment under Article 60, it has first to consider whether the conditions to examine such a request appear to be satisfied. To this effect, Article 60 of its Statute requires that there be a “dispute as to the meaning or scope” of the said judgment.

The Court observes that the Parties disagree on whether there is a dispute amongst them about the meaning or scope of paragraph 153 (9) of the Avena Judgment. Mexico understands the Judgment as establishing an obligation of result on the United States, “including all its component organs at all levels”, to provide the requisite review and reconsideration “irrespective of any domestic law impediment” and states that, “by its actions thus far”, the United States understands the Judgment “to constitute merely an obligation of means, not . . . of result”. On its part, the United States explains that, while the implementation of the Avena Judgment has met with considerable “domestic law constraints” due to the federal structure of the country, it has “clearly accepted that the obligation to provide review and reconsideration is an obligation of result” and

that it has “sought to achieve that result”. Accordingly, in the United States view, there exists no dispute with respect to the meaning and scope of paragraph 153 (9) between itself and Mexico, and the Court lacks jurisdiction *ratione materiae* to entertain Mexico’s Application, which constitutes “an abuse of process”, being directed to the implementation of the Avena Judgment. The United States further argues that the Court lacks jurisdiction *prima facie* to indicate provisional measures.

The Court examines the wording of Article 60 of the Statute and notes that the French and English versions are not in total harmony because the French uses the word “contestation” while the English refers to a “dispute”. The Court notes that Article 60 of its Statute is identical to that of its predecessor, the Permanent Court of International Justice, and goes on to explain that the drafters of the Statute of the Permanent Court chose to use the term “contestation” (rather than “différend”) in Article 60. It observes that the term “contestation” is wider in scope, does not require the same degree of opposition and that its underlying concept is more flexible in its application to a particular situation. The Court then looks at the way the Permanent Court and itself addressed the question of the meaning of the term “dispute” (“contestation”) in their jurisprudence. It states that “the manifestation of the existence of the dispute in a specific manner, as for instance by diplomatic negotiations, is not required” for the purposes of Article 60, nor is it required that “the dispute should have manifested itself in a formal way”. It adds that recourse could be had to the Permanent Court as soon as the interested States had in fact shown themselves as holding opposing views in regard to the meaning or scope of a judgment of the Court, and that this reading was confirmed by the ICJ in a 1985 Judgment in the case concerning Application for Revision and Interpretation of the Judgment of 24 February 1982 in the Case concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya) (Tunisia v. Libyan Arab Jamahiriya).

The Court then considers whether there appears to be a dispute between the Parties within the meaning of Article 60 of the Statute. Having reviewed their arguments, the Court finds that, while it seems that both Parties regard paragraph 153 (9) of the Avena Judgment “as an international obligation of result”, they nonetheless “apparently hold different views as to the meaning and scope of that obligation of result, namely, whether that understanding is shared by all United States federal and state authorities and whether that obligation falls upon all those authorities”. The Court notes that there “appears to be a difference of opinion” between the Parties as to the meaning and scope of the Court’s finding in paragraph 153 (9) of the Avena Judgment and that recourse could thus be had to the Court under Article 60 of the Statute. Having found that it may deal with Mexico’s Request for interpretation under Article 60 of the Statute, the Court states that it follows that the submission of the United States, that the Application of Mexico be dismissed in limine “on grounds of manifest lack of jurisdiction”, cannot be upheld, and also that it may address Mexico’s Request for indication of provisional measures.

— Link between the alleged rights to be protected and the Request for interpretation

The Court recalls that, to indicate the requested provisional measures, it must be convinced that there exists a link between the alleged rights the protection of which is sought and the subject of Mexico’s Request for interpretation. It points out that in its Request, Mexico seeks clarification of the meaning and scope of paragraph 153 (9) of the Avena Judgment, whereby the Court found that the United States is under an obligation to provide, by means of its own choosing, review and reconsideration of the convictions and sentences of the Mexican nationals, taking into account both the violation of the rights set forth in Article 36 of the Vienna Convention and paragraphs 138 to 141 of the Judgment. It observes that it is the interpretation of the meaning and scope of that obligation, and hence of the rights which Mexico and its nationals have on the basis of paragraph 153 (9), that constitutes the subject of the proceedings before the Court on the Request for interpretation, and that Mexico filed a request for the indication of provisional measures in order to protect these rights pending the Court’s final decision. The Court thus concludes that the rights which Mexico seeks to protect have a sufficient connection with the Request for interpretation.

— Risk of irreparable harm and urgency

Finally, the Court must assess the existence of the required urgency, “in the sense that action prejudicial to the rights of either party is likely to be taken before [it] has given its final decision”. The Court observes that the execution of a national, the meaning and scope of whose rights are in question, before the Court delivers its judgment on the Request for interpretation “would render it impossible for the Court to order the relief that [his national State] seeks and thus cause irreparable harm to the rights it claims”. Having reviewed the information before it, the Court finds that “there undoubtedly is urgency” and that the circumstances require that it indicate provisional measures to preserve the rights of Mexico, as Article 41 of its Statute provides.

— Miscellaneous

The Court goes on to say that it is fully aware that the federal Government of the United States has been taking many diverse and insistent measures in order to fulfil the international obligations of the United States under the Avena Judgment. It notes that the United States has recognized that, were any of the Mexican nationals named in the request for the indication of provisional measures to be executed without the necessary review and reconsideration required under the Avena Judgment, that would constitute a violation of the United States obligations under international law.

The Court concludes by saying that it is “in the interest of both Parties that any difference of opinion as to the interpretation of the meaning and scope of their rights and obligations under paragraph 153 (9) of the Avena Judgment be resolved as early as possible”, and that it is therefore appropriate that the Court ensure that a final judgment be reached “with all possible expedition”. The Court recalls that the decision given on the request for the indication of provisional measures “in no way prejudices any question that [it] may have to deal with relating to the Request for interpretation”.

Composition of the Court

The Court was composed as follows: President Higgins; Vice-President Al-Khasawneh; Judges Ranjeva, Koroma, Buergenthal, Owada, Tomka, Abraham, Keith, Sepúlveda-Amor, Bennouna, Skotnikov; Registrar Couvreur.

Judge Buergenthal appends a dissenting opinion to the Order; Judges Owada, Tomka and Keith append a joint dissenting opinion to the Order; Judge Skotnikov appends a dissenting opinion to the Order.

A summary of the Order appears in the document “Summary No. 2008/3”, to which summaries of the opinions are annexed. In addition, the present press release, the summary of the Order and the full text of the Order can be found on the Court’s website (www.icj-cij.org).

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