



# INTERNATIONAL COURT OF JUSTICE

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## Press Release

Unofficial

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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)**

**Court to deliver its Judgment on Monday 19 January 2009 at 3 p.m.**

THE HAGUE, 8 January 2009. On Monday 19 January 2009, the International Court of Justice (ICJ), the principal judicial organ of the United Nations, will deliver its Judgment 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).

A public sitting will take place at 3 p.m. at the Peace Palace in The Hague, during which the President of the Court, Judge Rosalyn Higgins, will read the Court's Judgment.

### History of the proceedings

On 5 June 2008, Mexico filed a Request for interpretation of the Judgment delivered on 31 March 2004 by the Court in the case concerning Avena and Other Mexican Nationals (Mexico v. United States of America). In its Request, 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." A request for interpretation opens a new case. Mexico noted that the Court had ruled in previous cases that its jurisdiction to provide an interpretation of one of its own judgments "[was] a special jurisdiction deriving directly from Article 60 of the Statute". Mexico recalled that, in the Avena Judgment, the Court, *inter alia*, had found "that the United States had breached Article 36 of the Vienna Convention [on Consular Relations] in the cases of 51 of the Mexican nationals by failing to inform them . . . of their rights to consular access and assistance" and further recalled that the Court had determined, in paragraph 153 (9) of the Judgment, the remedial obligations incumbent upon the United States. 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". It therefore sought the interpretation of that paragraph, which reads as follows:

"153. For these reasons,

The Court . . .

(9) By fourteen votes to one,

Finds that the appropriate reparation in this case consists in the obligation of the United States of America to provide, by means of its own choosing, review and reconsideration of the convictions and sentences of the Mexican nationals referred to in subparagraphs (4), (5), (6) and (7) above, by taking account both of the violation of the rights set forth in Article 36 of the [Vienna] Convention [on Consular Relations] and of paragraphs 138 to 141 of [the present] Judgment.”

In its Request for interpretation, Mexico stated that it “understands the operative language . . . of the Avena Judgment to establish an obligation of result incumbent upon the United States”, while “it is clear that the United States understands the Judgment to constitute merely an obligation of means”. Mexico argued that “while the United States may use ‘means of its own choosing’ under paragraph 153 (9) [of the Court’s Judgment], the obligation to provide review and reconsideration is not contingent on the success of any one means. As a result, the United States cannot rest on a single means chosen; it must provide the requisite review and reconsideration and prevent the execution of any Mexican national named in the Judgment unless and until that review and reconsideration is completed and it is determined that no prejudice resulted from the violation.”

Mexico went on to explain that Texas had scheduled the execution of Mr. José Ernesto Medellín Rojas, one of the Mexican nationals mentioned in the Avena Judgment, for 5 August 2008. It stressed the fact that “[t]he actions of Texas, a political subdivision of the United States, engage the international responsibility of the United States” and that “the United States cannot invoke its municipal law as justification for failure to perform its international legal obligation under the Avena Judgment”. It also observed that “at least four more Mexican nationals are also in imminent danger of having execution dates set by the State of Texas”.

Accordingly, at the end of its Request, Mexico asked the Court:

“to adjudge and declare that the obligation incumbent upon the United States under paragraph 153 (9) of the Avena Judgment constitutes an obligation of result as it is clearly stated in the Judgment by the indication that the United States must provide ‘review and reconsideration of the convictions and sentences’ but leaving it the ‘means of its own choosing’;

and that, pursuant to the foregoing obligation of result,

- (1) the United States must take any and all steps necessary to provide the reparation of review and reconsideration mandated by the Avena Judgment; and
- (2) the United States must take any and all steps necessary to ensure that no Mexican national entitled to review and reconsideration under the Avena Judgment is executed unless and until that review and reconsideration is completed and it is determined that no prejudice resulted from the violation.”

Mexico’s Request was accompanied by a request for the indication of provisional measures in order to preserve its rights pending the outcome of the proceedings on the merits, in particular “Mexico’s paramount interest in the life of its nationals” (see Press Release No. 2008/15 of 5 June 2008). Public hearings were held on 19 and 20 June 2008 to hear the oral arguments of the Parties on the request for the indication of provisional measures. In its Order of 16 July 2008, the Court declared, inter alia, that the United States of America should take “all measures necessary” to ensure that five Mexican nationals, including Mr. Medellín, were not executed pending its final Judgment (see Press Release No. 2008/20 of 16 July 2008). On the same day, after consulting the Parties, the Court, pursuant to Article 98, paragraph 3, of the Rules of Court, fixed 29 August 2008 as the time-limit for the submission by the United States of its written observations on the Request for interpretation filed by Mexico.

On 5 August 2008, Mr. Medellín was executed in Texas, United States of America.

In its written observations submitted on 29 August 2008, the United States indicated in particular that it “agrees with Mexico’s requested interpretation [and] agrees that the Avena Judgment imposes an ‘obligation of result’”, before concluding that “[t]here is thus nothing for the Court to adjudicate, and Mexico’s application must be dismissed”.

By letters of 2 September 2008, the Registrar informed the Parties that the Court had decided to afford each of them the opportunity of furnishing further written explanations, which they did within the fixed time-limits. In its further written explanations, the Government of Mexico reiterated the claims contained in its Request, and asked the Court to adjudge and declare “that the United States breached the Court’s Order of 16 July 2008 and the Avena Judgment by executing José Ernesto Medellín Rojas without having provided him review and reconsideration consistent with the terms of the Avena Judgment”.

The Government of the United States, in its further explanations, repeated its contention that it shared the interpretation of the Avena Judgment put forward by Mexico, and requested the Court to dismiss Mexico’s claims as set out in the latter’s further written explanations.

Following the filing of these further explanations, the Court did not deem it necessary to hold hearings in the case, thus abiding by its previous practice.

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#### **NOTE TO THE PRESS AND PUBLIC**

1. The public sitting will be held in the Great Hall of Justice of the Peace Palace in The Hague, Netherlands. Mobile telephones and beepers are permitted in the courtroom provided they are switched off. Any offending device will be temporarily retained.

2. **Media representatives** are subject to an **accreditation procedure**, the details of which can be found in the Media Advisory No. 2009/a attached to this Press Release.

3. **Individual visitors** (with the exception of members of the Diplomatic Corps) and **groups** are subject to an admission procedure. They are kindly requested to **give advance notification of their attendance** by filling out the relevant form on the Court’s website (to the right of the screen under Calendar, click on “Attending a Hearing”, then under “Admission for individuals” or “Admission for groups”, click on “Online Application Form”).

4. At the end of the sitting, a Press Release, a summary of the Judgment and the full text of the Judgment will be distributed. All of these documents will be made available at the same time on the Court’s website.

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