



INTERNATIONAL COURT OF JUSTICE

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Press Release

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Mexico brings a case against the United States of America and requests the indication of provisional measures

THE HAGUE, 10 January 2003. In the late afternoon of 9 January 2003, Mexico brought a case against the United States of America to the International Court of Justice (ICJ) in a dispute concerning alleged violations of Articles 5 and 36 of the Vienna Convention on Consular Relations of 24 April 1963 with respect to 54 Mexican nationals who have been sentenced to death in the States of California, Texas, Illinois, Arizona, Arkansas, Florida, Nevada, Ohio, Oklahoma and Oregon.

Article 5 of the Vienna Convention provides a general list of all consular functions. Article 36 reads as follows:

“Communication and contact with nationals of the sending State

1. With a view to facilitating the exercise of consular functions relating to nationals of the sending State:

- (a) consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State;
- (b) 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 sub-paragraph;
- (c) consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgement. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action.

2. The rights referred to in paragraph 1 of this article shall be exercised in conformity with the laws and regulations of the receiving State, subject to the proviso,

however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under this article are intended.”

In its Application, Mexico maintains that the 54 cases illustrate the systemic nature of the United States violation of its obligation under Article 36 of the Vienna Convention to inform nationals of Mexico of their right to consular assistance and to provide relief adequate to redress such violation. Mexico claims that, in at least 49 of these cases, it has found no evidence that the competent United States authorities attempted to comply with Article 36 before Mexico’s nationals were tried, convicted, and sentenced to death. It further notes that in four cases some attempt apparently was made to comply with Article 36, but that the authorities still failed to provide the required notification “without delay”; and that in one case the detained national was informed of his rights to consular notification and access in connection with immigration proceedings, but not in connection with pending capital charges. In the Application each case, catalogued by state, is then briefly described.

Accordingly, Mexico asks the Court to adjudge and declare:

- “(1) that the United States, in arresting, detaining, trying, convicting, and sentencing the 54 Mexican nationals on death row described in this Application, violated its international legal obligations to Mexico, in its own right and in the exercise of its right of consular protection of its nationals, as provided by Articles 5 and 36, respectively of the Vienna Convention;
- (2) that Mexico is therefore entitled to restitutio in integrum;
- (3) that the United States is under an international legal obligation not to apply the doctrine of procedural default, or any other doctrine of its municipal law, to preclude the exercise of the rights afforded by Article 36 of the Vienna Convention;
- (4) that the United States is under an international legal obligation to carry out in conformity with the foregoing international legal obligations any future detention of or criminal proceedings against the 54 Mexican nationals on death row or any other Mexican national in its territory, whether by a constituent, legislative, executive, judicial or other power, whether that power holds a superior or a subordinate position in the organization of the United States, and whether that power’s functions are international or internal in character;
- (5) that the right to consular notification under the Vienna Convention is a human right;

and that, pursuant to the foregoing international legal obligations,

- (1) the United States must restore the status quo ante, that is, re-establish the situation that existed before the detention of, proceedings against, and convictions and sentences of, Mexico’s nationals in violation of the United States international legal obligations;
- (2) the United States must take the steps necessary and sufficient to ensure that the provisions of its municipal law enable full effect to be given to the purposes for which the rights afforded by Article 36 are intended;
- (3) the United States must take the steps necessary and sufficient to establish a meaningful remedy at law for violations of the rights afforded to Mexico and its nationals by Article 36 of the Vienna Convention, including by barring the

imposition, as a matter of municipal law, of any procedural penalty for the failure timely to raise a claim or defence based on the Vienna Convention where competent authorities of the United States have breached their obligation to advise the national of his or her rights under the Convention; and

- (4) the United States, in light of the pattern and practice of violations set forth in this Application, must provide Mexico a full guarantee of the non-repetition of the illegal acts.”

In its Application Mexico invokes as a basis for the Court’s jurisdiction Article I of the Vienna Convention’s Optional Protocol concerning the Compulsory Settlement of Disputes, which provides that “disputes arising out of the interpretation or application of the Convention shall lie within the compulsory jurisdiction of the International Court of Justice”.

“In view of the extreme gravity and immediacy of the threat that authorities in the United States will execute a Mexican citizen in violation of obligations the United States owes to [it]”, Mexico also filed an urgent request for the indication of provisional measures, asking that, pending final judgment in the case, the Court indicate that the United States take all measures necessary to ensure that no Mexican national be executed and that no execution dates be set for any Mexican national; that the United States report to the Court the actions it has taken in that respect; and that it ensure that no action is taken that might prejudice the rights of the United Mexican States or its nationals with respect to any decision this Court may render on the merits of the case.

The full text of Mexico’s Application and its request for the indication of provisional measures will soon be available on the Court’s website (<http://www.icj-cij.org>).

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