



# INTERNATIONAL COURT OF JUSTICE

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Press Release

Unofficial

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**Case concerning Avena and Other Mexican Nationals**  
**(Mexico v. United States of America)**

**Provisional Measures**

**The Court indicates to the United States of America that it must take**  
**“all measures necessary” to prevent the execution of three Mexican nationals,**  
**pending its final judgment**

THE HAGUE, 5 February 2003. The International Court of Justice (ICJ), principal judicial organ of the United Nations, today indicated to the United States of America that it must “take all measures necessary” to ensure that Mr. César Roberto Fierro Reyna, Mr. Roberto Moreno Ramos and Mr. Osvaldo Torres Aguilera, of Mexican nationality, are not executed pending a final judgment of the Court in the case concerning Avena and other Mexican nationals (Mexico v. United States of America).

In its Order indicating provisional measures, which was adopted unanimously, the Court also stated that the Government of the United States of America shall inform it of all measures taken in implementation of that Order. It further decided to remain seised of the matters which form the subject of the Order until it has rendered its final judgment.

History of the proceedings

Mexico filed its request for the indication of provisional measures on 9 January 2003, the same day that it initiated proceedings against the United States 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 certain states of the United States. Mexico further asked of the Court that, pending final judgment in the case, the United States should 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. At the hearings held on 21 January 2003, Mexico confirmed its request for the indication of provisional measures, while the United States asked the Court to reject that request and not to indicate any such measures.

### Reasoning of the Court

The Court begins by considering whether it has jurisdiction *prima facie* (at first sight) to hear the case, a prerequisite for the indication of provisional measures. It notes that Mexico and the United States are both parties to the 1963 Vienna Convention on Consular Relations and to its Optional Protocol concerning the Compulsory Settlement of Disputes, Article I of 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”. The Court accordingly finds that it has jurisdiction *prima facie* under this Article to hear the case.

The Court then turns to the Parties’ arguments and finds that a dispute exists between them regarding the remedies to be provided in cases of breaches by the United States of its obligations under Article 36, paragraph 1, of the Vienna Convention. The Court accordingly concludes that it must address the issue of whether, by indicating provisional measures, it should preserve any rights which may subsequently be adjudged by it to belong to the Applicant or to the Respondent, without being obliged at this stage of the proceedings to rule on those rights. It adds that the issues brought before it “do not concern the entitlement of the federal states within the United States to resort to the death penalty for the most heinous crimes”; that “the function of th[e] Court is to resolve international legal disputes between States, *inter alia* when they arise out of the interpretation or application of international conventions; and not to act as a court of criminal appeal”; and that it “may indicate provisional measures without infringing these principles”. It accordingly rejects the United States argument that, *inter alia*, the measures sought by Mexico would amount to “a sweeping prohibition on capital punishment for Mexican nationals in the United States, regardless of United States law”, which “would drastically interfere with United States sovereign rights and implicate important federalism interests” and transform the Court into a “general criminal court of appeal”.

The Court goes on to recall that provisional measures are only justified if there is urgency, “in the sense that action prejudicial to the rights of either party is likely to be taken before a final decision is given”.

The Court adds that its jurisdiction is limited in the present case to the dispute between the Parties concerning the interpretation and application of the Vienna Convention with regard to the individuals which Mexico has identified as being victims of a violation of the Convention, and that no provisional measure can be adopted in respect of other individuals.

The Court then stresses that the fact that no execution dates have been fixed in any of the cases before it “is not *per se* a circumstance that should preclude [it] from indicating provisional measures”. It states that it is apparent from the information before it in the case that three Mexican nationals, Messrs. César Roberto Fierro Reyna, Roberto Moreno Ramos and Osvaldo Torres Aguilera, are at risk of execution in the coming months, or possibly even weeks, and that “their execution would cause irreparable prejudice to any rights that may subsequently be adjudged by the Court to belong to Mexico”; the Court accordingly concludes that “the circumstances require that it indicate provisional measures to preserve those rights”.

As to the other individuals listed in Mexico’s Application, the Court observes that “although currently on death row, [they] are not in the same position as the three persons identified” earlier and that it may, “if appropriate, indicate provisional measures . . . in respect of those individuals before it renders final judgment” in the case.

In conclusion, the Court states that it is “clearly in the interest of both Parties that their respective rights and obligations be determined definitively as early as possible”, and that “it is therefore appropriate that the Court, with the co-operation of the Parties, ensure that a final judgment be reached with all possible expedition”. The President has immediately undertaken consultations with the Parties for this purpose.

Composition of the Court

The Court was composed as follows: President Guillaume; Vice-President Shi; Judges Oda, Ranjeva, Herczegh, Fleischhauer, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal, Elaraby; Registrar Couvreur.

Judge Oda appends a declaration to the Order.

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A summary of the Order is given in Press Release No. 2003/9bjs, to which a summary of the declaration is annexed. The full text of the Judgment and declaration is available on the Court's website ([www.icj-cij.org](http://www.icj-cij.org)).

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