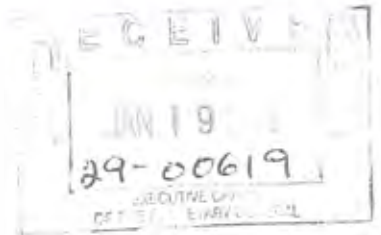


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ICJ

Note to the Secretary-General

Through: Mr. Vijay Nambiar



Today's ICJ Judgment requesting interpretation of the Court's earlier decision in the Case concerning Avena and Other Mexican Nationals (Mexico v. United States)

1. Earlier today, the International Court of Justice (ICJ) rendered 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 (the "Avena Judgment") brought to the Court by Mexico on 5 June 2008.
2. In the Avena Judgment, the Court *inter alia* held that the United States had breached the Vienna Convention on Consular Relations by failing to inform the Mexican nationals of their rights to consular access and assistance during trial. The Court determined that to remedy this breach, the United States was obligated "to provide, by means of its own choosing, review and reconsideration of the convictions and sentences of the Mexican nationals". It was in response to this Judgment that Mexico submitted its Request for Interpretation.
3. On 16 July 2008, the ICJ rendered an Order on provisional measures, requesting the United States to take all measures necessary to ensure that the Mexican nationals concerned were not executed pending final judgment of Mexico's Request for Interpretation. Despite the Order, the State of Texas executed one of the Mexican nationals, Mr. José Ernesto Medellín Rojas on 5 August 2008. In its further written explanations, Mexico 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".
4. In today's Judgment the Court found (by eleven votes to one) that Mexico did not sufficiently establish the existence of any dispute between itself and the United States that requires the Court's interpretation of the 2004 Avena Judgment. However, the Court held that domestic criminal legal system does not relieve the Federal Government of the United States from its obligation to implement the 2004 Avena Judgment.
5. In addition, the Court unanimously held that the United States breached the obligation incumbent upon it under the Court's Order for provisional measures by executing Mr. Medellín.
6. The Court's Judgment is final and binding upon the Parties.

Patricia O'Brien  
19 January 2009



# INTERNATIONAL COURT OF JUSTICE

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## Press Release

Unofficial

No. 2009/4

19 January 2009

**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)**

**The Court finds that the matters raised by Mexico cannot give rise to an interpretation of the Judgment and that the United States of America has breached the Order indicating provisional measures of 16 July 2008 in the case of Mr. José Ernesto Medellín Rojas, executed on 5 August 2008**

THE HAGUE, 19 January 2009. The International Court of Justice (ICJ), the principal judicial organ of the United Nations, today rendered 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).

In its Application of 5 June 2008, Mexico asked the Court to interpret paragraph 153 (9) of the Avena Judgment. That paragraph 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 the Judgment rendered today, which is final, binding and without appeal, the Court,

“(1) By eleven votes to one,

Finds that the matters claimed by the United Mexican States to be in issue between the Parties, requiring an interpretation under Article 60 of the Statute, are not matters which have been decided by the Court in its Judgment of 31 March 2004 in the case concerning Avena and Other Mexican Nationals (Mexico v. United States of America), including paragraph 153 (9), and thus cannot give rise to the interpretation requested by the United Mexican States;

(2) Unanimously,

Finds that the United States of America has breached the obligation incumbent upon it under the Order indicating provisional measures of 16 July 2008, in the case of Mr. José Ernesto Medellín Rojas;

(3) By eleven votes to one,

Reaffirms the continuing binding character of the obligations of the United States of America under paragraph 153 (9) of the Avena Judgment and takes note of the undertakings given by the United States of America in these proceedings;

(4) By eleven votes to one,

Declines, in these circumstances, the request of the United Mexican States for the Court to order the United States of America to provide guarantees of non-repetition;

(5) By eleven votes to one,

Rejects all further submissions of the United Mexican States.”

#### Reasoning of the Court

##### 1. Request for interpretation of the Avena Judgment

— Question of the existence of a dispute as to the meaning and scope of the Avena Judgment

The Court recalls that Mexico’s Request for interpretation of paragraph 153 (9) of the Avena Judgment was made by reference to Article 60 of the Statute. That Article provides that “[t]he judgment is final and without appeal. 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.” The Court therefore examines whether the conditions indicated in Article 60 are satisfied and whether such a dispute exists between the Parties in the present case, as is claimed by Mexico.

The Court notes first that there is no dispute between the Parties as to whether paragraph 153 (9) lays down an obligation of result.

The Court then seeks to establish whether a dispute between the Parties might exist as to those upon whom that obligation of result specifically falls. It observes that the question of whether such a dispute exists within the meaning of Article 60 of its Statute can be perceived in two ways.

On the one hand, it indicates that a variety of factors suggest that there is a difference of perception between the Parties as to those upon whom the obligation falls. It recalls that, according to Mexico, the interpretation given by the United States Supreme Court in the Medellín v. Texas case (Supreme Court Reporter, Vol. 128, 2008, p. 1346) — namely that the judgments of the International Court of Justice are not, as such, directly applicable within the domestic legal order of the United States — “is inconsistent with the interpretation of the Avena Judgment as imposing an obligation of result incumbent on all constituent organs of the United States, including the judiciary”.

On the other hand, the Court points to factors that suggest, on the contrary, that there is no dispute between the Parties as to those upon whom the Avena Judgment specifically falls. The Court emphasizes that, under Article 98 (2) of the Rules of Court, any request for interpretation submitted to it must indicate “the precise point or points in dispute”. It notes that Mexico

“nonetheless remain[s] very non-specific as to what the claimed dispute precisely is” and consequently observes that, “[w]hether in terms of meeting the requirements of Article 98 (2) of the Rules, or more generally, it could be argued that in the end Mexico has not established the existence of any dispute between itself and the United States”, and that “Mexico did not specify that the obligation of the United States under the Avena Judgment was directly binding upon its organs, subdivisions or officials, although this might be inferred from the arguments it presented”.

— Question of the direct effect of the obligation established in paragraph 153 (9) of the Avena Judgment

In the view of the Court, the Parties’ different stated perspectives reveal “different contentions as to whether paragraph 153 (9) . . . envisages that a direct effect is to be given to the obligation contained therein”. Be that as it may, the Court considers that “there would be a further obstacle to granting the request of Mexico even if a dispute in the present case were ultimately found to exist within the meaning of Article 60 of the Statute”. It notes that “the Avena Judgment nowhere lays down or implies that the courts in the United States are required to give direct effect to paragraph 153 (9)”; and it observes that, according to its settled jurisprudence, a question which was not decided in an initial Judgment “cannot be submitted to it for interpretation” in the present Judgment. The Court concludes from this that it “cannot accede to Mexico’s Request for interpretation” of the Avena Judgment.

The Court nonetheless adds that “considerations of domestic law which have so far hindered the implementation of the obligation incumbent upon the United States, cannot relieve it of its obligation”. It points out that “[a] choice of means was allowed to the United States in the implementation of its obligation and, failing success within a reasonable period of time through the means chosen, it must rapidly turn to alternative and effective means of attaining that result”.

2. Additional claims made by Mexico

The Court then turns to the three additional claims presented by Mexico, which takes the view that by executing Mr. José Ernesto Medellín Rojas on 5 August 2008 without having provided him with the review and reconsideration required under the Avena Judgment, the United States has (1) breached the Order indicating provisional measures of 16 July 2008; (2) breached the Avena Judgment itself; and (3) must provide guarantees of non-repetition.

On the first point, the Court “finds that the United States did not discharge its obligation under the Court’s Order of 16 July 2008, in the case of Mr. José Ernesto Medellín Rojas”. The Court dismisses Mexico’s second additional claim, noting that “the only basis of jurisdiction relied upon for this claim in the present proceedings is Article 60 of the Statute, and . . . that Article does not allow it to consider possible violations of the Judgment which it is called upon to interpret”. Lastly, the Court reiterates that “its Avena Judgment remains binding and that the United States continues to be under an obligation fully to implement it”; taking note of the undertakings given by the United States of America in these proceedings, it dismisses the third of the additional claims.

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.

Judges Koroma and Abraham append declarations to the Judgment of the Court; Judge Sepúlveda-Amor appends a dissenting opinion to the Judgment of the Court.

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A summary of the Judgment appears in the document “Summary No. 2009/1”, to which summaries of the declarations and the dissenting opinion are annexed. In addition, this press release, the summary and the full text of the Judgment can be found on the Court’s website ([www.icj-cij.org](http://www.icj-cij.org)) under “Cases”.

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