

International Court of Justice

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



Forum	International Court of Justice
Issue:	Avena and Other Mexican Nationals (Mexico v. United States of America)
Student Officer:	Adham Mahgoub
Position:	Co-Chair

Introduction

The Avena Case was brought to the ICJ on 9 March 2003, by Mexico against the United States of America (USA). This was in regards to alleged violations made by the USA of the Vienna Convention (Articles 5 and 37). This happened following the arrest of fifty-four Mexican Nationals who were sentenced to death in the USA, after committing crimes in the country. Mexico claimed that the prisoners were not informed of their rights to communicate with their consulate, and did not inform the Mexican consulate of their arrest, which would be regarded as a breach of the Vienna Convention. Mexico also requested provisional measures, to ensure that no actions would be taken by the USA that could prejudice the rights of Mexican nationals.

Definition of Key Terms

Consul

An official appointed by a state to live in a different place, to protect the rights of the citizens there.

Consulate

The office of the consul

Provisional measures

A temporary solution granted under special circumstances

Admissibility

Accepted or valid. Within the context of a court of law, this could mean a statement, for example, is satisfactory to the court.



Municipal law

Law specific to a particular country, legally known as municipality. This can concern a range of issues, from police power to laws on education

General Overview

On the 9th of January 2003 Mexico approached the court with an alleged accusation of the United States of them breaching articles 5 and 36 of the Vienna Convention on Consular Relations of 24 March 1963. This is because the United States did not inform 54 Mexican nationals of the right to contact their consulate. This is when the ICJ intervened and after a public hearing on the 24th of January of the same year the ICJ issued an order on the 5th of February 2003 the ICJ that the United States should take all measures necessary to make sure that Mr. Cesar Roberto Fierro Reyna, Mr. Roberto Moreno Ramos and Mr. Osvaldo Torres Aguilera (three Mexican nationals) are not executed, and the ICJ and the State of Mexico should be notified of all their precautions.

As in this case, there were 54 different cases that were taken up with the ICJ but the most important were Mr. Cesar Roberto Fierro Reyna, Mr. Roberto Moreno Ramos and Mr. Osvaldo Torres Aguilera, as stated before, their execution dates were just a few months ahead.

Firstly, Mr. Cesar Roberto Fierro Reyna (the oldest of the 54 nationals) was sentenced to death for the murder of a cab driver which he allegedly committed in 1980. Throughout 30 years of his incarceration Mr. Cesar has been insisting that he is innocent, and believed that the ICJ would prove his innocence through its decisions.

Secondly, Mr. Roberto Moreno Ramos was convicted in March of 1993 for the murder of his wife and two children with a miniature sledgehammer, and their illegal burial under the bathroom floor of their Progreso home in February of 1992. Again Mr. Roberto was not notified of his right to contact the Mexican consulate to request governmental representation.

Lastly, Mr. Osvaldo Torres Aguilera who was brought before a jury in 1996 for a double first-degree murder committed 1993. In Mr. Osvaldo's case, the court denied him four motions to bring in new evidence which could prove his innocence, in addition to not informing him of his governmental representation rights as a foreign national.



As to why the United States did not inform the nationals of their rights, there is no specific reason. However, the United States Incarceration process has a history in this matter.

This is when the jurisdiction of the court was invoked to find whether or not the United States handled these situations correctly.

This wasn't the first time the ICJ had to intervene with the United States regarding arresting foreign nationals without being informed of their right to consular assistance. Nearly two decades before the *Avenda* case in 1987, two German nationals were captured and prosecuted without being given the right to contact their consulate. After a 14-year trial the ICJ ruled in favour of the Germans.

In the United States Counter-Memorial, the defence included points such as “The Facts of the Fifty-Four Cases Are Unique, Complex, and Inconsistent with Mexico's Description of Them”, “All of the Fifty-Four Persons Have Been Tried in a Legal System that Guarantees Due Process to All Defendants Regardless of Nationality” and more which are included in the Counter-Memorial, available in the Bibliography.

Mexico has a strong stance with support from the Vienna Convention of 1964 and the previous ICJ ruling on the *LeGrande* case as stated above. Mexico also had other secondary allegations that the United States provided the nationals with incompetent representation in the first trial before the ICJ intervention.

Major Parties Involved

Mexico

Mexico is the applicant of this case as it raised the case to the ICJ, on the grounds of a violations made by the USA of the 1969 Vienna Convention. Mexico also requested provisional measures, which were granted. This states that “United States of America should take all measures necessary to ensure that Mr. Cesar Roberto Fierro Reyna, Mr. Roberto Moreno Ramos and Mr. Osvaldo Torres Aguilera [three Mexican nationals] were not executed pending final judgement in these proceedings.” Reyna, Ramos and Aguilera are the cases singled out in this request as these are the prisoners in most imminent danger of death. Mexico argues that the convicted persons were not officially informed of their rights to communicate with their consulate upon arrest, and their right to consulate assistance. In their memorial, Mexico states that in fifty-one of the cases, the USA made no attempt to comply with Article 36(1) of the Vienna Convention, although the arresting officers had



reason to know of the Mexican nationality of the detainee. In three cases, the authorities did make an attempt to provide the detainees with the correct information, however, this information was supposedly not conveyed or communicated fully. It was also stated that the USA invoked municipal law to prevent the detainees from challenging their sentences

The United States of America

The USA is the respondent of the case, and was ordered by the court to review and reconsider the cases of the fifty-four Mexican nationals who had been sentenced to death. The means by which this would be done was left to the state. In their memorial the USA states that in most of the cases, the individuals seemed to definitely or probably be citizens of the USA. It is said that many of the detainees firmly represented themselves as US citizens to the authorities, and other detainees gave no specific indication of nationality, and presented strong indications that they were of American nationality. Five of the cases offered confessions of statements prior to being detained, meaning the requirements of Article 36(1)(b) of The Vienna Convention would not be triggered. The USA also claimed that in multiple cases, Mexican consular officers were aware of the detention of the Mexican citizens prior to the trial, and were able to offer assistance before and during trial.

Timeline of Key Events

Date	Description of event
January 9 th 2003	Mexico raises the case concerning the detention and sentencing of fifty-four Mexican nationals before the International Court of Justice.
January 21 st 2003	A public hearing is held for the two parties regarding provisional measures.
February 5 th 2003	The court decided that “The United States of America should take all measures necessary to ensure that Mr. Cesar Roberto Fierro Reyna, Mr. Roberto Moreno Ramos and Mr. Osvaldo Torres Aguilera [three Mexican nationals] were not executed pending final judgement in these proceedings”, and that the “United States of America should inform the Court of all measures taken in implementation of that Order”.
June 20 th 2003	An order was given, making 6 June 2003 the time-limit for the filing of the Memorial by Mexico, and 6 October 2003 as the time-limit for the filing of the Counter-Memorial by the USA (Both time limits were eventually extended).
November 3 rd 2003	The memorial of Mexico is submitted to the court.
December 2004	The memorial of the USA is submitted to the court.
March 31 st 2004	Another public hearing is held. The court ruled.



UN involvement, Relevant Resolutions, Treaties and Events

As soon as the allegations came in, the ICJ issued an order on the 5th of February 2003 that the United States would take all necessary measures to make sure the nationals are not executed, and that the State of Mexico and the ICJ shall have all updates on the precautions. This urgency was because in 3 months, some of the nationals would have already faced execution unless the courts issued provisional measures.

Previous Attempts to solve the Issue

After the intervention of the court, the United States postponed the time for the executions to give the court some time to investigate and find an optimum equal solution. However, after a public sitting held on the 21 of January 2003, both states approached the topic with an aggressive point of view and the court was forced to continue with its investigation.

Possible Solutions

After the intervention of the court, the United States postponed the time for the executions to give the court some time to investigate and find an optimum equal solution. However, after a public sitting held on the 21 of January 2003, both states approached the topic with an aggressive point of view and the court was forced to continue with its investigation.

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