

MEXICO NON-PAPER

JUDGMENT OF THE INTERNATIONAL COURT OF JUSTICE OF 31 MARCH 2004 CONCERNING AVENA AND OTHER MEXICAN NATIONALS: NEED FOR IMMEDIATE COMPLIANCE.

1. Background

On 9 January 2003, Mexico brought a case against the United States of America 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 had been sentenced to death in certain states of the United States.

On 31 March, 2004, the International Court of Justice rendered its Judgment in the “*Case concerning Avena and other Mexican nationals*”¹ whereby it found that the United States had breached the obligation to provide consular information without delay, the obligation to provide the required consular information, and the obligation to enable Mexican consular officers to communicate with, have access to and visit their nationals and to arrange for their legal representation.

The Court thereby considered 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 in the judgment.

To this date, almost 15 years after the judgement of the Court was rendered, the United States has failed to comply with its obligations incumbent upon it. Additionally, during this period six Mexican nationals contained in the decision have been executed without their convictions and sentences having been reviewed or reconsidered, in clear violation of the Court’s decision, constituting new breaches of the international obligations incumbent upon the United States of America and causing additional harm to Mexico: José Ernesto Medellín (2008), Humberto Leal García (2011), Edgar Tamayo Arias (2014), Ramiro Hernández Llanas (2014), Rubén Cárdenas Ramírez, (2017), and Roberto Ramos Moreno (2018).

2. Role of the International Court of Justice and binding nature of its decisions

The International Court of Justice is the principal judicial organ of the United Nations, in accordance with Article 92 of the UN Charter. It serves the purposes and principles of the United Nations through the peaceful settlement of disputes, contributing to the maintenance of international peace and security.

According to Article 60 of the Statute of the Court, its judgements are final and without appeal. Moreover, Article 94(1) of the Charter establishes the obligation of each Member of the United Nations “to comply with the decision of the International Court of Justice in any case to which it is a party.

3. Actions taken by Mexico

Mexico has continuously protested and condemned the non-compliance by the United States of America of the Court’s judgment. Mexico’s actions have included bilateral discussions and multilateral actions, which include a request for provisional measures, and a request for interpretation of the Judgment of 31 March 2004, the decision of which was

¹ Case concerning Avena and other Mexican nationals (Mexico v. United States of America), Merits, Judgment, I.C.J. Reports 2004, p. 12. <https://www.icj-cij.org/files/case-related/128/128-20040331-JUD-01-00-EN.pdf>

rendered on 19 January 2009 and established that the United States of America had breached its obligation under the Order indicating provisional measures of 16 July 2008 in executing Mr. Medellín. Furthermore, Mexico has presented formal letters both to the Security Council, in accordance with Article 94(2) of the UN Charter, and the International Court of Justice to urge the United States to comply with the judgment to no avail.

Mexico is fully aware of Article 94(2) of the UN Charter which establishes that “if any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment.” However, given the fact that the United States is a permanent member of the Security Council and that it can exercise a veto, it does not seem feasible to bring this issue of non-compliance to the attention of the Council to seek recommendations or measures to give effect to the judgement, hampering Mexico’s right under the aforementioned provision of the Charter.

4. Adoption of a resolution by the General Assembly

Without prejudice to the authority of the Security Council to make recommendations or decide upon measures to be taken to give effect to a judgment of the Court,² according to Article 10 of the UN Charter the General Assembly may discuss any questions or any matters within the scope of the Charter or relating to the powers and functions of any organs provided for in the Charter.³ It is important to recall that the Statute of the International Court of Justice also forms an integral part of the UN Charter⁴.

Moreover, there is already precedent of action taken by the General Assembly in this regard. Mexico recalls that in 1986, the General Assembly adopted resolution A/RES/41/31⁵, in which it “urgently called for full and immediate compliance with the Judgment of the International Court of Justice of 27 June 1986 in the case of *“Military and Paramilitary Activities in and Against Nicaragua”* in conformity with the relevant provisions of the Charter of the United Nations”.

Accordingly, Mexico has decided to present a draft resolution to the attention of the General Assembly under agenda item 125 (a) “Strengthening of the United Nations system”, taking into consideration that:

- i) The judgment of the ICJ in the “*Case concerning Avena and other Mexican nationals*” of 31 March 2004 has not yet been complied with;
- ii) There have been six executions creating additional breaches to the obligations imposed by said judgment, the last one taking place this month;
- iii) Access to the Security Council to seek compliance is practically unfeasible, and;
- iv) That the General Assembly is competent to address this matter and it has precedents in this regard.

² Article 94(2) Charter of the United Nations

³ Article 10 Charter of the United Nations

⁴ Article 92, Charter of the United Nations.

⁵ UN. Doc. A/RES/41/31