19 JANUARY 2009

JUDGMENT

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)

DEMANDE EN INTERPRÉTATION DE L'ARRÊT DU 31 MARS 2004 EN L'AFFAIRE *AVENA ET AUTRES RESSORTISSANTS MEXICAINS (MEXIQUE c. ETATS-UNIS D'AMÉRIQUE)*

(MEXIQUE c. ETATS-UNIS D'AMÉRIQUE)

19 JANVIER 2009

ARRÊT

INTERNATIONAL COURT OF JUSTICE

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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)

Article 60 of the Statute of the Court — Independent basis of jurisdiction.

Conditions on the exercise of jurisdiction to entertain a request for interpretation — Question of the existence of a dispute as to the meaning or scope of paragraph 153 (9) of the Judgment of 31 March 2004 — For the Court to determine whether a dispute exists — No dispute as to whether paragraph 153 (9) lays down an obligation of result.

Question of the existence of a dispute as to those upon whom the obligation of result specifically falls — Two possible approaches based on the Parties' positions — Possible existence of a dispute as to those upon whom the obligation specifically falls — Possible absence of a dispute on this point failing a sufficiently precise indication.

Question of the direct effect of the obligation established in paragraph 153 (9) — No decision in the Judgment of 31 March 2004 as to the direct effect of the obligation — Question of direct effect therefore cannot be the subject of a request for interpretation — Reiteration of the principle that considerations of domestic law cannot in any event relieve the parties of obligations deriving from judgments of the Court.

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Question of breach by the United States of its legal obligation to comply with the Order indicating provisional measures of 16 July 2008 — Court's jurisdiction to rule on this question in proceedings on a request for interpretation — Question of possible violation by the United States of the Judgment of 31 March 2004 — Lack of jurisdiction of the Court to consider this question in proceedings for interpretation.

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Mexico's request for the Court to order the United States to provide guarantees of non-repetition — Binding character of the Judgment of 31 March 2004 — Undertakings already given by the United States.

JUDGMENT

Present: *President* HIGGINS; *Vice-President* AL-KHASAWNEH; *Judges* RANJEVA, KOROMA, BUERGENTHAL, OWADA, TOMKA, ABRAHAM, KEITH, SEPÚLVEDA-AMOR, BENNOUNA, SKOTNIKOV; *Registrar* COUVREUR.

In the case concerning the Request for interpretation of the Judgment of 31 March 2004,

between

the United Mexican States,

represented by

H.E. Mr. Juan Manuel Gómez-Robledo, Ambassador, Under-Secretary for Multilateral Affairs and Human Rights, Ministry of Foreign Affairs of Mexico,

H.E. Mr. Joel Antonio Hernández García, Ambassador, Legal Adviser, Ministry of Foreign Affairs of Mexico,

H.E. Mr. Jorge Lomónaco Tonda, Ambassador of Mexico to the Kingdom of the Netherlands,

as Agents,

and

the United States of America,

represented by

Mr. John B. Bellinger, III, Legal Adviser, United States Department of State,

as Agent;

Mr. James H. Thessin, Deputy Legal Adviser, United States Department of State,

as Co-Agent,

THE COURT,

composed as above,

after deliberation,

delivers the following Judgment:

1. On 5 June 2008, the United Mexican States (hereinafter "Mexico") filed in the Registry of the Court an Application instituting proceedings against the United States of America (hereinafter "the United States"), whereby, referring to Article 60 of the Statute and Articles 98 and 100 of the Rules of Court, it requests the Court to interpret paragraph 153 (9) of the Judgment delivered by the Court on 31 March 2004 in the case concerning *Avena and Other Mexican Nationals (Mexico* v. *United States of America)* (*I.C.J. Reports 2004*, p. 12) (hereinafter "the *Avena* Judgment").

2. Pursuant to Article 40, paragraph 2, of the Statute, the Application was immediately transmitted to the Government of the United States by the Registrar; and, pursuant to Article 40, paragraph 3, all States entitled to appear before the Court were notified of the Application.

3. On 5 June 2008, after filing its Application, Mexico, referring to Article 41 of the Statute and Articles 73, 74 and 75 of the Rules of Court, filed in the Registry of the Court a request for the indication of provisional measures in order "to preserve the rights of Mexico and its nationals" pending the Court's judgment in the proceedings on the interpretation of the *Avena* Judgment.

By an Order of 16 July 2008, the Court, having rejected the submission by the United States seeking the dismissal of the Application filed by Mexico (paragraph 80 (I)) and its removal from the Court's General List, indicated the following provisional measures (paragraph 80 (II)):

"*(a)* The United States of America shall take all measures necessary to ensure that Messrs. José Ernesto Medellín Rojas, César Roberto Fierro Reyna, Rubén Ramírez Cárdenas, Humberto Leal García, and Roberto Moreno Ramos are not

executed pending judgment on the Request for interpretation submitted by the United Mexican States, unless and until these five Mexican nationals receive review and reconsideration consistent with paragraphs 138 to 141 of the Court's Judgment delivered on 31 March 2004 in the case concerning *Avena and Other Mexican Nationals (Mexico* v. *United States of America)*;

(b) The Government of the United States of America shall inform the Court of the measures taken in implementation of this Order."

It also decided that, "until the Court has rendered its judgment on the Request for interpretation, it shall remain seised of the matters" which form the subject of the Order (paragraph 80 (III)).

4. By letters dated 16 July 2008, the Registrar informed the Parties that the Court, pursuant to Article 98, paragraph 3, of the Rules of Court, had fixed 29 August 2008 as the time-limit for the filing of written observations by the United States on Mexico's Request for interpretation.

5. By a letter dated 1 August 2008 and received in the Registry the same day, the Agent of the United States, referring to paragraph 80 (II) *(b)* of the Order of 16 July 2008, informed the Court of the measures which the United States "ha[d] taken and continue[d] to take" to implement that Order.

6. By a letter dated 28 August 2008 and received in the Registry the same day, the Agent of Mexico, informing the Court of the execution on 5 August 2008 of Mr. José Ernesto Medellín Rojas in the State of Texas, United States of America, and referring to Article 98, paragraph 4 of the Rules of Court, requested the Court to afford Mexico the opportunity of furnishing further written explanations for the purpose, on the one hand, of elaborating on the merits of the Request for interpretation in the light of the written observations which the United States was due to file and, on the other, of "amending its pleading to state a claim based on the violation of the Order of 16 July 2008".

7. On 29 August 2008, within the time-limit fixed, the United States filed its Written Observations on Mexico's Request for interpretation.

8. By letters dated 2 September 2008, the Registrar informed the Parties that the Court had decided to afford each of them the opportunity of furnishing further written explanations, pursuant to Article 98, paragraph 4, of the Rules of Court, and had fixed 17 September and 6 October 2008 as the time-limits for the filing by Mexico and the United States respectively of such further explanations. These were filed by each Party within the time-limits thus fixed.

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9. In the Application, the following requests were made by Mexico:

> "The Government of Mexico asks the Court to adjudge and declare that the obligation incumbent upon the United States under paragraph 153 (9) of the *Avena* Judgment constitutes an obligation of result as it is clearly stated in the Judgment by the indication that the United States must provide 'review and reconsideration of the convictions and sentences' but leaving it the 'means of its own choosing';
>
> and that, pursuant to the foregoing obligation of result,
>
> 1. the United States must take any and all steps necessary to provide the reparation of review and reconsideration mandated by the *Avena* Judgment; and
>
> 2. the United States must take any and all steps necessary to ensure that no Mexican national entitled to review and reconsideration under the *Avena* Judgment is executed unless and until that review and reconsideration is completed and it is determined that no prejudice resulted from the violation."

10. In the course of the proceedings, the following submissions were presented by the Parties:

On behalf of Mexico,

in the further written explanations submitted to the Court on 17 September 2008:

> "Based on the foregoing, the Government of Mexico asks the Court to adjudge and declare as follows:
>
> *(a)* That the correct interpretation of the obligation incumbent upon the United States under paragraph 153 (9) of the *Avena* Judgment is that it is an obligation of result as it is clearly stated in the Judgment by the indication that the United States must provide 'review and reconsideration of the convictions and sentences';
>
> and that, pursuant to the interpretation of the foregoing obligation of result,
>
> (1) the United States, acting through all of its competent organs and all its constituent subdivisions, including all branches of government and any official, state or federal, exercising government authority, must take all measures necessary to provide the reparation of review and reconsideration mandated by the *Avena* Judgment in paragraph 153 (9); and
>
> (2) the United States, acting through all its competent organs and all its constituent subdivisions, including all branches of government and any official, state or federal, exercising government authority, must take all measures necessary to ensure that no Mexican national entitled to review and

reconsideration under the *Avena* Judgment is executed unless and until that review and reconsideration is completed and it is determined that no prejudice resulted from the violation;

(b) That the United States breached the Court's Order of 16 July 2008 and the *Avena* Judgment by executing José Ernesto Medellín Rojas without having provided him review and reconsideration consistent with the terms of the *Avena* Judgment; and

(c) That the United States is required to guarantee that no other Mexican national entitled to review and reconsideration under the *Avena* Judgment is executed unless and until that review and reconsideration is completed and it is determined that no prejudice resulted from the violation."

On behalf of the United States,

in its Written Observations submitted on 29 August 2008:

"On the basis of the facts and arguments set out above, the Government of the United States of America requests that the Court adjudge and declare that the application of the United Mexican States is dismissed, but if the Court shall decline to dismiss the application, that the Court adjudge and declare an interpretation of the *Avena* Judgment in accordance with paragraph 62 above." (Para. 63.)

Paragraph 60 of the Written Observations of the United States includes the following:

"And the United States *agrees* with Mexico's requested interpretation; it agrees that the *Avena* Judgment imposes an 'obligation of result'. There is thus nothing for the Court to adjudicate, and Mexico's application must be dismissed."

Paragraph 62 of the Written Observations of the United States includes the following:

"the United States requests that the Court interpret the Judgment as Mexico has requested — that is, as follows:

> [T]he obligation incumbent upon the United States under paragraph 153 (9) of the *Avena* Judgment constitutes an obligation of result as it is clearly stated in the Judgment by the indication that the United States must provide 'review and reconsideration of the convictions and sentences' but leaving it the 'means of its own choosing'";

in the further written explanations submitted to the Court on 6 October 2008:

"On the basis of the facts and arguments set out above and in the United States' initial Written Observations on the Application for Interpretation, the Government of the United States of America requests that the Court adjudge and declare that the application of the United Mexican States for interpretation of the *Avena* Judgment is dismissed. In the alternative and as subsidiary submissions in the event that the Court should decline to dismiss the application in its entirety, the United States requests that the Court adjudge and declare:

(a) that the following supplemental requests by Mexico are dismissed:

(1) that the Court declare that the United States breached the Court's July 16 Order;

(2) that the Court declare that the United States breached the *Avena* Judgment; and

(3) that the Court order the United States to issue a guarantee of non-repetition;

(b) an interpretation of the *Avena* Judgment in accordance with paragraph 86 *(a)* of Mexico's Response to the Written Observations of the United States."

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* *

11. The Court recalls that in paragraph 153 (9) of the *Avena* Judgment the Court had found 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 this Judgment".

12. Mexico asked for an interpretation as to whether paragraph 153 (9) expresses an obligation of result and requested that the Court should so state, as well as issue certain orders to the United States "pursuant to the foregoing obligation of result" (see paragraph 9 above).

13. Mexico's Request for interpretation of paragraph 153 (9) of the Court's Judgment of 31 March 2004 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 ['contestation' in the French version] as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party."

14. The United States informed the Court that it agreed that the obligation in paragraph 153 (9) was an obligation of result and, there being no dispute between the Parties as to the meaning or scope of the words of which Mexico requested an interpretation, Article 60 of the Statute did not confer jurisdiction on the Court to make the interpretation (see para. 41 of the Order of 16 July 2008). In its written observations of 29 August 2008, the United States also contended that the absence of a dispute about the meaning or scope of paragraph 153 (9) rendered Mexico's Application inadmissible.

15. The Court notes that its Order of 16 July 2008 on provisional measures was not made on the basis of prima facie jurisdiction. Rather, the Court stated that "the Court's jurisdiction on the basis of Article 60 of the Statute is not preconditioned by the existence of any other basis of jurisdiction as between the parties to the original case" (Order, para. 44).

The Court also affirmed that the withdrawal by the United States from the Optional Protocol to the Vienna Convention on Consular Relations Concerning the Compulsory Settlement of Disputes since the rendering of the *Avena* Judgment had no bearing on the Court's jurisdiction under Article 60 of the Statute (*ibid.*, para. 44).

16. In its Order of 16 July 2008, the Court had addressed whether the conditions laid down in Article 60 "for the Court to entertain a request for interpretation appeared to be satisfied" (*ibid.*, para. 45), observing that "the Court may entertain a request for interpretation of any judgment rendered by it provided that there is a 'dispute as to the meaning or scope of [the said] judgment'" (*ibid.*, para. 46).

17. In the same Order, the Court pointed out that "the French and English versions of Article 60 of the Statute are not in total harmony" and that the existence of a dispute/"contestation" under Article 60 was not subject to satisfaction of the same criteria as that of a dispute ("différend" in the French text) as referred to in Article 36, paragraph 2, of the Statute (Order, para. 53). The Court nonetheless observed that "it seems both Parties regard paragraph 153 (9) of the *Avena* Judgment as an international obligation of result" (*ibid.*, para. 55).

18. However, the Court also observed that

> "the Parties nonetheless apparently hold different views as to the meaning and scope of that obligation of result, namely, whether that understanding is shared by all United States federal and state authorities and whether that obligation falls upon those authorities" (*ibid.*, para. 55).

19. The Court stated that the decision rendered on the request for the indication of provisional measures "in no way prejudges any question that the Court may have to deal with relating to the Request for interpretation" (*ibid.*, para. 79).

20. Accordingly, in the present procedure it is appropriate for the Court to review again whether there does exist a dispute over whether the obligation in paragraph 153 (9) of the *Avena* Judgment is an obligation of result. The Court will also at this juncture need to consider whether there is indeed a difference of opinion between the Parties as to whether the obligation in paragraph 153 (9) of the *Avena* Judgment falls upon all United States federal and state authorities.

21. As is clear from the settled jurisprudence of the Court, a dispute must exist for a request for interpretation to be admissible (*Request for Interpretation of the Judgment of 20 November 1950 in the Asylum Case (Colombia* v. *Peru), Judgment, I.C.J. Reports 1950*, p. 402;

Application for Revision and Interpretation of the Judgment of 24 February 1982 in the Case concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya) *(Tunisia* v. *Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1985*, pp. 216-217, para. 44; see also *Request for Interpretation of the Judgment of 11 June 1998 in the Case concerning the* Land and Maritime Boundary between Cameroon and Nigeria (Cameroon *v.* Nigeria), Preliminary Objections *(Nigeria* v. *Cameroon), Judgment, I.C.J. Reports 1999 (I)*, p. 36, para. 12).

22. As recalled above in paragraphs 4 and 8, by letters dated 16 July 2008 and 2 September 2008, the Registrar informed the Parties that the Court had afforded the United States and Mexico the opportunity of furnishing written observations and further written explanations pursuant to Article 98, paragraphs 3 and 4, of the Rules of Court.

23. The Court has duly considered the observations and further written explanations of the Parties regarding the existence of any dispute requiring interpretation as to whether the obligation to provide judicial review and reconsideration of the convictions and sentences of the Mexican nationals referred to in the *Avena* Judgment is an obligation of result.

24. Mexico referred in particular to the actions of the United States federal Executive, claiming that certain actions reflected the United States disagreement with Mexico over the meaning or scope of the *Avena* Judgment. According to Mexico, this difference of views manifested itself in the position taken by the United States Government in the Supreme Court: that the *Avena* Judgment was not directly enforceable under domestic law and was not binding on domestic courts without action by the President of the United States; and further that the obligation under Article 94 of the United Nations Charter to comply with judgments of the Court fell solely upon the political branches of the States parties to the Charter. In Mexico's view, "the operative language [of the *Avena* Judgment] establishes an obligation of result reaching all organs of the United States, including the federal and state judiciaries, that must be discharged irrespective of domestic law impediments". Mexico maintains that the United States Government's narrow reading of the means for implementing the Judgment led to its failure to take all the steps necessary to bring about compliance by all authorities concerned with the obligation borne by the United States. In particular, Mexico noted that the United States Government had not sought to intervene in support of Mr. Medellín's petition for a stay of execution before the United States Supreme Court. This course of conduct is alleged to reflect a fundamental disagreement between the Parties concerning the obligation of the United States to bring about a specific result by any necessary means. Mexico further argues that the existence of a dispute is also shown by the fact that the competent executive, legislative and judicial organs at the federal and Texas state levels have taken positions in conflict with Mexico's as to the meaning or scope of paragraph 153 (9) of the *Avena* Judgment.

25. The United States has, in its written observations of 29 August 2008 and its further written explanations of 6 October 2008, insisted that each of the matters brought to the attention of the Court by Mexico concerns not a dispute regarding whether the Parties perceive the obligations of paragraph 153 (9) as an obligation of result, but Mexico's dissatisfaction with the implementation to date of that obligation by the United States. The United States claims that it has

consistently agreed with Mexico's interpretation of paragraph 153 (9) of the *Avena* Judgment. Specifically, it concurs that subparagraph 9 requires it to take all necessary steps to ensure that no Mexican national named in the Judgment is executed without having received the prescribed review and reconsideration and without a determination having been made that he has suffered no prejudice from the violation of the Convention. In particular, the United States contends that, in accordance with the discretion left to the United States by the Court as to the choice of means of compliance with the Judgment, the President elected to comply by, *inter alia*, determining that the state courts were to give effect to the Judgment, as set out in a Memorandum of 28 February 2005 to the Attorney General of the United States. The executive branch thus argued in the case *Medellín* v. *Texas* in the Supreme Court that the President's determination was lawful and binding on the state courts. According to the United States, no finding as to the existence of a difference of views between the Parties can be inferred from the controversy before the Supreme Court as to whether or not the Court's judgments are self-executing, because that is strictly a matter of United States domestic law. The Supreme Court found that the *Avena* Judgment created an international obligation incumbent upon the United States. Further, the United States argues that positions taken by other governmental officials in the United States cannot provide any basis for a finding of a divergence of views between the Parties in respect of the interpretation of the *Avena* Judgment; it points out that Mexico's argument in this regard is founded on positions taken by organs without the authority to express the State's official position on the international plane. The fact that Texas, or any other constituent part of the United States, may hold a different interpretation of the Court's Judgment is therefore irrelevant to the question before the Court.

26. The United States on several occasions reiterated that the relevant obligation was one of result, and that while the *Avena* Judgment allowed it a choice of means, it was certain that the obligation had to be complied with.

27. In its Order of 16 July 2008 the Court observed that "it seems both Parties regard paragraph 153 (9) as an international obligation of result" (Order, para. 55). Its observations on the matter being provisional, the Court has reviewed the contentions of the Parties in the written observations of 29 August 2008 and the further written explanations of 17 September and 6 October 2008 as to whether they both accept that the obligation in paragraph 153 (9) is one of result — that is to say, an obligation which requires a specific outcome. This means, in the particular case, the obligation upon the United States to provide review and reconsideration consistent with paragraphs 138 to 141 of the *Avena* Judgment to those Mexican nationals named in the *Avena* Judgment who remain on death row without having had the benefit of such review and reconsideration. In addition, Messrs. José Ernesto Medellín Rojas, César Roberto Fierro Reyna, Rubén Ramírez Cárdenas, Humberto Leal García, and Roberto Moreno Ramos were the subject of the Order on provisional measures relating to that obligation issued by the Court on 16 July 2008. The Court observes that this obligation of result is one which must be met within a reasonable period of time. Even serious efforts of the United States, should they fall short of providing review and reconsideration consistent with paragraphs 138 to 141 of the *Avena* Judgment, would not be regarded as fulfilling this obligation of result.

28. The United States has insisted that it fully accepts that paragraph 153 (9) of the *Avena* Judgment constitutes an obligation of result. It therefore continues to assert that there is no dispute over whether paragraph 153 (9) expresses an obligation of result, and thus no dispute within the

meaning of the condition in Article 60 of the Statute. Mexico contends, making reference to certain omissions of the federal government to act and of certain actions and statements of organs of government or other public authorities, that in reality the United States does not accept that it is under an obligation of result; and that therefore there is indeed a dispute under Article 60.

29. It is for the Court itself to decide whether a dispute within the meaning of Article 60 of the Statute does indeed exist (see *Interpretation of Judgments Nos. 7 and 8 (Factory at Chorzów), Judgment No. 11, 1927, P.C.I.J., Series A, No. 13*, p. 12).

To this end, the Court has in particular examined the written observations and further written explanations of the Parties to ascertain their views in the light of the comments of the Court in paragraph 55 of the Order that they

> "apparently hold different views as to the meaning and scope of that obligation of result, namely, whether that understanding is shared by all United States federal and state authorities and whether that obligation falls upon those authorities".

30. The Court observes that whether, by reference to the elements described above, there is a dispute under Article 60 of the Statute, the resolution of which requires an interpretation of the provisions of paragraph 153 (9) of the *Avena* Judgment, can be perceived in two ways.

31. On the one hand, it could be said that a variety of factors suggest that there is a difference of perception that would constitute a dispute under Article 60 of the Statute.

Mexico observes that, in *Medellín* v. *Texas* (*Supreme Court Reporter*, Vol. 128, 2008, p. 1346), "the Federal Executive argued [in the United States Supreme Court] that Article 94 (1) [of the United Nations Charter] was directed only to the political branches of States Party . . . rather than to the State Party as a whole", and adds that "[t]here is no support for that reading of Article 94 (1) in either its text, its object and purpose, or principles of general international law". Mexico maintains that it was on the basis of this "erroneous interpretation" that "the [Supreme] Court found that the expression of the obligation to comply in Article 94 (1) . . . precluded the judicial branch — the authority best suited to implement the obligation imposed by *Avena* — from taking steps to comply", the Supreme Court being of the view that the Charter provision referred to "a commitment on the part of U.N. Members to take future action through their political branches to comply with an ICJ decision" (*ibid.*, p. 1358). In Mexico's contention, it thus follows that the highest judicial authority in the United States has understood the Judgment in *Avena* as not laying down an obligation of result binding on all constituent organs of the United States, including the federal and state judicial authorities. From this perspective, not only is the obligation in paragraph 153 (9) not really regarded as an obligation of result, but, argues Mexico, such an interpretation puts to one side the finding in the *Avena* Judgment that:

> "in cases where the breach of the individual rights of Mexican nationals under Article 36, paragraph 1 *(b)*, of the [Vienna Convention on Consular Relations] has resulted, in the sequence of judicial proceedings that has followed, in the individuals concerned being subjected to prolonged detention or convicted and sentenced to severe penalties, the legal consequences of this breach have to be examined and taken into account in the course of review and reconsideration. The Court considers that it is the judicial process that is suited to this task." (*Avena and Other Mexican Nationals (Mexico* v. *United States of America), Judgment, I.C.J. Reports 2004*, pp. 65-66, para. 140.)

Further, Mexico contends that this understanding by the Supreme Court 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.

32. From this viewpoint, the wording in Mexico's concluding submissions — wording introduced in its further written explanations of 17 September 2008 — was directed to affirming that the obligation in paragraph 153 (9) of the *Avena* Judgment is incumbent on all the constituent organs to be seen as comprising the United States (see paragraph 10 above).

Mexico moreover rejects the argument of the State of Texas that Mr. Medellín had, prior to his execution, received the review and reconsideration required by paragraph 153 (9) of the *Avena* Judgment from state and federal courts.

33. According to Mexico, the United States, by word and deed, has contradicted its avowed acceptance of review and reconsideration as an obligation of result. Reference is made to the choice of the United States Government not to appear at the Supreme Court hearings on Mr. Medellín's petition for a stay of execution. Mexico also points to the very tardy attempts to engage Congress in ensuring that all constituent elements do indeed act upon this obligation.

34. Further, Mexico contends that the Supreme Court found that the obligation within paragraph 153 (9) could not be directly enforced by the judiciary on the basis of a Presidential memorandum nor otherwise without intervention of the legislature. In Mexico's view, this necessarily means that the obligation is not really regarded as one of result — a viewpoint not shared by the United States.

35. The Court observes that these elements could suggest a dispute between the Parties within the sense of Article 60 of the Statute.

36. On the other hand, there are factors that suggest, on the contrary, that there is no dispute between the Parties. The Court notes — without necessarily agreeing with certain points made by the Supreme Court in its reasoning regarding international law — that the Supreme Court has stated that the *Avena* Judgment creates an obligation that is binding on the United States. This is so notwithstanding that it has said that the obligation has no direct effect in domestic law, and that it cannot be given effect by a Presidential Memorandum.

37. Referring to the Court's statement in its Order of 16 July 2008 that there seemed to be a dispute as to the scope of the obligation in paragraph 153 (9), and upon whom precisely it fell, the United States reiterated in its written observations of 29 August 2008 that the federal government both "spoke for" and had responsibility for all organs and constituent elements of governmental authority. While that statement seems to be directed at matters different from what the Court perceived as the possible dispute in paragraph 55 of its Order of 16 July 2008, it could be said that Mexico addressed this question only somewhat indirectly in its further written explanations of 17 September 2008.

38. The Court notes that Article 98 (2) of the Rules of Court stipulates that when a party makes a request for interpretation of a judgment, "the precise point or points in dispute as to the meaning or scope of the judgment shall be indicated".

Mexico has had the opportunity to indicate the precise points in dispute as to the meaning or scope of the *Avena* Judgment, first in its Application of 5 June 2008 and then in the submissions made at the conclusion of its further written explanations of 17 September 2008.

The Application made reference to a dispute about whether the obligation in paragraph 153 (9) of the *Avena* Judgment was one of result; the United States rapidly signalled its agreement that the obligation incumbent upon it was an obligation of result. The matters emphasized by Mexico seemed particularly directed to the question of implementation by the United States of the obligations incumbent upon it as a consequence of the *Avena* Judgment. The various passages in the further written explanations of Mexico of 17 September 2008, while referring to certain actions and statements of the constituent organs of the United States and perceived failures to act in certain regards by the federal government, nonetheless remain very non-specific as to what the claimed dispute precisely is. Further, it is difficult to discern, save by inference, Mexico's position regarding the existence of a dispute as to whether the obligation of result falls upon all state and federal authorities and as to whether they share an understanding that it does so fall.

39. The Court observes that, in its Application of 5 June 2008, Mexico simply asked that the Court affirm that the obligation incumbent upon the United States paragraph 153 (9) constitutes an obligation of result.

When Mexico formulated its submissions in the oral hearings on the request for the indication of provisional measures, it submitted:

"*(a)* that the United States, acting through all its competent organs and all its constituent subdivisions, including all branches of government and any official, state or federal, exercising government authority, take all measures necessary to ensure that José Ernesto Medellín, César Roberto Fierro Reyna, Rubén Ramírez Cárdenas, Humberto Leal García, and Roberto Moreno Ramos are not executed pending the conclusion of the proceedings instituted by Mexico on 5 June 2008, unless and until the five Mexican nationals have received review and reconsideration consistent with paragraphs 138 through 141 of this Court's *Avena* Judgment;"

40. Mexico had a further opportunity to indicate the precise points it regarded as in dispute when it reformulated its concluding submissions in paragraphs 86 *(a)* (1) and (2) of its further written explanations of 17 September 2008 (see paragraph 32 above).

41. The Court observes it could be argued that the claim in paragraph 86 *(a)* (1) that the United States "acting through all its competent organs . . . must take all measures necessary to provide the reparation of review and reconsideration" does not say that there is an obligation of result falling upon the various competent organs, constituent subdivisions and public authorities, but only that the United States will act through these in itself fulfilling the obligations incumbent on it under paragraph 153 (9).

The same wording of "the United States, acting through all its competent organs and all its constituent subdivisions" appears in paragraph 86 *(a)* (2) of Mexico's concluding submissions. Whether 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. Moreover, the United States has made clear that it can agree with the first concluding submission (point *(a)*) of Mexico, requesting in its own concluding submissions, as a subsidiary submission, that the Court adjudge and declare "*(b)* an interpretation of the *Avena* Judgment in accordance with paragraph 86 *(a)* of Mexico's Response to the Written Observations of the United States".

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, in particular in its further written explanations.

* *

42. The Court notes that, having regard to all these elements, two views may be discerned as to whether or not there is a dispute within the meaning of Article 60 of the Statute.

* *

43. 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. The Parties' different stated perspectives on the existence of a dispute reveal also different contentions as to whether paragraph 153 (9) of the *Avena* Judgment envisages that a direct effect is to be given to the obligation contained therein.

44. 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). The obligation laid down in that paragraph is indeed an obligation of result which clearly must be performed unconditionally; non-performance of it constitutes internationally wrongful conduct. However, the Judgment leaves

it to the United States to choose the means of implementation, not excluding the introduction within a reasonable time of appropriate legislation, if deemed necessary under domestic constitutional law. Nor moreover does the *Avena* Judgment prevent direct enforceability of the obligation in question, if such an effect is permitted by domestic law. In short, the question is not decided in the Court's original Judgment and thus cannot be submitted to it for interpretation under Article 60 of the Statute (*Request for Interpretation of the Judgment of 20 November 1950 in the Asylum Case (Colombia* v. *Peru), Judgment, I.C.J. Reports 1950*, p. 402).

45. Mexico's argument, as described in paragraph 31 above, concerns the general question of the effects of a judgment of the Court in the domestic legal order of the States parties to the case in which the judgment was delivered, not the "meaning or scope" of the *Avena* Judgment, as Article 60 of the Court's Statute requires. By virtue of its general nature, the question underlying Mexico's Request for interpretation is outside the jurisdiction specifically conferred upon the Court by Article 60. Whether or not there is a dispute, it does not bear on the interpretation of the *Avena* Judgment, in particular of paragraph 153 (9).

46. For these reasons, the Court cannot accede to Mexico's Request for interpretation.

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47. Before proceeding to the additional requests of Mexico, the Court observes 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. 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.

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48. In the context of the proceedings instituted by the Application requesting interpretation, Mexico has presented three additional claims to the Court. First, Mexico asks the Court to adjudge and declare that the United States breached the Order indicating provisional measures of 16 July 2008 by executing Mr. Medellín on 5 August 2008 without having provided him with the review and reconsideration required under the *Avena* Judgment. Second, Mexico also regards that execution as having constituted a breach of the *Avena* Judgment itself. Third, Mexico requests the Court to order the United States to provide guarantees of non-repetition.

49. The United States argues that the Court lacks jurisdiction to entertain the supplemental requests made by Mexico. As regards Mexico's claim concerning the alleged breach of the Order of 16 July 2008, the United States is of the opinion, first, that the lack of a basis of jurisdiction for

the Court to adjudicate Mexico's Request for interpretation extends to this ancillary claim. Second, and in the alternative, the United States suggests that such a claim, in any event, goes beyond the jurisdiction of the Court under Article 60 of the Statute. Similarly, the United States submits that there is no basis of jurisdiction for the Court to entertain Mexico's claim relating to an alleged violation of the *Avena* Judgment. Finally, the United States disputes the Court's jurisdiction to order guarantees of non-repetition.

* *

50. Concerning Mexico's claim that the United States breached the Court's Order indicating provisional measures of 16 July 2008 by executing Mr. Medellín, the Court observes that in that Order it found that "it appears that the Court may, under Article 60 of the Statute, deal with the Request for interpretation" (Order, para. 57). The Court then indicated in its Order that:

> "The United States of America shall take all measures necessary to ensure that Messrs. José Ernesto Medellín Rojas, César Roberto Fierro Reyna, Rubén Ramírez Cárdenas, Humberto Leal García, and Roberto Moreno Ramos are not executed pending judgment on the Request for interpretation submitted by the United Mexican States, unless and until these five Mexican nationals receive review and reconsideration consistent with paragraphs 138 to 141 of the Court's Judgment delivered on 31 March 2004 in the case concerning *Avena and Other Mexican Nationals (Mexico* v. *United States of America).*" (*Ibid.*, para. 80 (II) *(a)*.)

51. There is no reason for the Court to seek any further basis of jurisdiction than Article 60 of the Statute to deal with this alleged breach of its Order indicating provisional measures issued in the same proceedings. The Court's competence under Article 60 necessarily entails its incidental jurisdiction to make findings about alleged breaches of the Order indicating provisional measures. That is still so even when the Court decides, upon examination of the Request for interpretation, as it has done in the present case, not to exercise its jurisdiction to proceed under Article 60.

52. Mr. Medellín was executed in the State of Texas on 5 August 2008 after having unsuccessfully filed an application for a writ of *habeas corpus* and applications for stay of execution and after having been refused a stay of execution through the clemency process. Mr. Medellín was executed without being afforded the review and reconsideration provided for by paragraphs 138 to 141 of the *Avena* Judgment, contrary to what was directed by the Court in its Order indicating provisional measures of 16 July 2008.

53. The Court thus 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.

54. The Court further notes that the Order of 16 July 2008 stipulated that five named persons were to be protected from execution until they received review and reconsideration or until the Court had rendered its Judgment upon Mexico's Request for interpretation. The Court recalls that

the obligation upon the United States not to execute Messrs. César Roberto Fierro Reyna, Rubén Ramírez Cárdenas, Humberto Leal García, and Roberto Moreno Ramos pending review and reconsideration being afforded to them is fully intact by virtue of subparagraphs (4), (5), (6), (7) and (9) of paragraph 153 of the *Avena* Judgment itself. The Court further notes that the other persons named in the *Avena* Judgment are also to be afforded review and reconsideration in the terms there specified.

55. The Court finally recalls that, as the United States has itself acknowledged, until all of the Mexican nationals referred to in subparagraphs (4), (5), (6) and (7) of paragraph 153 of the *Avena* Judgment have had their convictions and sentences reviewed and reconsidered, by taking account of Article 36 of the Vienna Convention on Consular Relations and paragraphs 138 to 141 of the *Avena* Judgment, the United States has not complied with the obligation incumbent upon it.

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56. As regards the additional claim by Mexico asking the Court to declare that the United States breached the *Avena* Judgment by executing José Ernesto Medellín Rojas without having provided him review and reconsideration consistent with the terms of that Judgment, the Court notes that the only basis of jurisdiction relied upon for this claim in the present proceedings is Article 60 of the Statute, and that that Article does not allow it to consider possible violations of the Judgment which it is called upon to interpret.

57. In view of the above, the Court finds that the additional claim by Mexico concerning alleged violations of the *Avena* Judgment must be dismissed.

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58. Lastly, Mexico requests the Court to order the United States to provide guarantees of non-repetition (point (2) *(c)* of Mexico's submissions) so that none of the Mexican nationals mentioned in the *Avena* Judgment is executed without having benefited from the review and reconsideration provided for by the operative part of that Judgment.

59. The United States disputes the jurisdiction of the Court to order it to furnish guarantees of non-repetition, principally inasmuch as the Court lacks jurisdiction under Article 60 of the Statute to entertain Mexico's Request for interpretation or, in the alternative, since the Court cannot, in any event, order the provision of such guarantees within the context of interpretation proceedings.

60. The Court finds it sufficient to reiterate that its *Avena* Judgment remains binding and that the United States continues to be under an obligation fully to implement it.

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61. For these reasons,

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;

IN FAVOUR: *President* Higgins; *Vice-President* Al-Khasawneh; *Judges* Ranjeva, Koroma, Buergenthal, Owada, Tomka, Abraham, Keith, Bennouna, Skotnikov;

AGAINST: *Judge* Sepúlveda-Amor;

(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;

IN FAVOUR: *President* Higgins; *Vice-President* Al-Khasawneh; *Judges* Ranjeva, Koroma, Buergenthal, Owada, Tomka, Keith, Sepúlveda-Amor, Bennouna, Skotnikov;

AGAINST: *Judge* Abraham;

(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;

IN FAVOUR: *President* Higgins; *Vice-President* Al-Khasawneh; *Judges* Ranjeva, Koroma, Buergenthal, Owada, Tomka, Abraham, Keith, Bennouna, Skotnikov;

AGAINST: *Judge* Sepúlveda-Amor;

(5) By eleven votes to one,

Rejects all further submissions of the United Mexican States.

IN FAVOUR: *President* Higgins; *Vice-President* Al-Khasawneh; *Judges* Ranjeva, Koroma, Buergenthal, Owada, Tomka, Abraham, Keith, Bennouna, Skotnikov;

AGAINST: *Judge* Sepúlveda-Amor.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this nineteenth day of January, two thousand and nine, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the United Mexican States and the Government of the United States of America, respectively.

(Signed) Rosalyn HIGGINS,
President.

(Signed) Philippe COUVREUR,
Registrar.

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.

(Initialled) R. H.

(Initialled) Ph. C.

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