

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

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Table of Contents

[A. Introduction](#)

[B. Factual Background](#)

[C. Procedure before the Court](#)

[D. Implementation of the Avena Judgment in Domestic Courts and Tribunals of the US](#)

[1. Torres v Oklahoma](#)

[2. Sanchez-Llamas v Oregon](#)

[3. Medellin v Texas](#)

[4. Assessment of the Situation in 2008](#)

[E. The Case concerning Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning Avena and Other Mexican Nationals \(Mexico v United States of America\) \(Mexico v United States of America\)](#)

[F. Assessment](#)

[Select Bibliography](#)

[Select Documents](#)

A. Introduction

- 1 At first sight *Avena and Other Mexican Nationals (Mexico v United States of America)* (hereafter 'Avena Case') presents similarities with another case before the → *International Court of Justice (ICJ)* known as the → *LaGrand Case (Germany v United States of America)*. Both cases were filed against the US for alleged violations of the → *Vienna Convention on Consular Relations (1963)* ('VCCR'). On 9 January 2003 one and a half years after the judgment in the *LaGrand Case* had been issued, Mexico instituted proceedings before the ICJ against the US for violations of the VCCR in, initially, 54 cases, including three cases in which the national proceedings had reached the final stage. Simultaneously, Mexico filed a request for the indication of provisional measures asking, inter alia, that the Court request the US to take 'all measures necessary to ensure that no Mexican national be executed'.
- 2 The wording of the order of 5 February 2003 (*[Avena and Other Mexican Nationals (Mexico v United States of America) [Order]*) differs slightly from the order in the *LaGrand Case*. Instead of stating that the US 'should' take measures, the Court indicated that the US 'shall' take necessary measures to ensure that three of the 54 Mexican nationals, namely those whose execution was imminent, were not executed pending final judgment in these proceedings.

B. Factual Background

- 3 Previous to the introduction before the ICJ, Mexico had tried to intervene and represent their nationals at US criminal proceedings; indeed Mexico and the US have had a long history of negotiations before coming to the Court.
- 4 The *Avena Case* is notably marked by the fact that the Mexican nationals were still alive. Mexico's claims were therefore different from Germany's, whose nationals had been executed at the time of the proceedings before the Court. Germany was principally seeking reparation, such as a judicial declaration of the violation and guarantees of non-repetition while Mexico insisted on → *restitution*, ie the establishment of the situation as it would have existed without the alleged illegal conduct of US authorities.
- 5 The factual background in each of the 52 cases concerning Mexican nationals is similar. All of the 52 nationals (two of the Mexican nationals were withdrawn from the list before opening of the proceedings) had been arrested, detained, tried, convicted, and sentenced to the death penalty allegedly without having been informed without delay after their arrest of their rights under the VCCR.

C. Procedure before the Court

- 6 On the merits of the *Avena Case*, the Court started by examining the question of whether some of the 52 individuals concerned were also nationals of the US, who would then fall under the protection of the VCCR. Having affirmed that

the burden of proof for this contention lay on the US, the Court concluded that this had not been established. Therefore, the Court found that the obligation of Art. 36 (1) (b) VCCR was owed to all 52 individuals mentioned in Mexico's claim.

- 7 With regard to the obligation to provide consular information 'without delay' set out in Art. 36 (1) (b) VCCR, the Court found that the duty to provide consular information exists once it is realized that the person is a foreign national, or once there are grounds to think so. However the Court also held that the term 'without delay' is not necessarily to be interpreted as meaning 'immediately upon arrest'. The Court then concluded that with one exception the US had nonetheless violated its obligation to provide consular notification.
- 8 Interpreting the obligations owed to Mexico, the Court then took note of the interrelated nature of the three subparagraphs (a), (b) and (c) of Art. 36 (1) VCCR and found, in 49 of the cases, that the US had also violated its obligation under subpara. (a) to enable Mexican consular officers to communicate with, have access to, and visit their nationals. In 34 cases, the Court found that the US had, in addition, violated its obligation under subpara. (c) to enable Mexican consular officers to arrange for legal representation of their nationals.
- 9 Mexico's submission in relation to Art. 36 (2) VCCR claimed that the US violated its obligations under that paragraph by failing to provide 'meaningful and effective review and reconsideration of convictions and sentences impaired by a violation of Article 36 (1)', inter alia as a result of the operation of the 'procedural default' rule. In this regard, the Court began by observing that the procedural default rule had not been revised since it drew attention in its judgment in the *LaGrand Case* to the problems which its application could cause for defendants who sought to rely on violations of the VCCR in appeal proceedings.
- 10 The Court then held that in three cases Art. 36 (2) VCCR had been violated by the US, but that the possibility of judicial re-examination was still open in 49 of the cases.
- 11 The Court then examined the different remedies requested by Mexico. Regarding reparation in the form of *restitutio in integrum*, that is to say partial or total annulment of conviction and sentence, as the 'necessary and sole remedy', the Court, citing the decision of its predecessor, the Permanent Court of International Justice, in the *Factory at Chorzów* case, pointed out that the adequacy of reparation was a central element of the finding in that case (*Avena* judgment para. 119). In the present case, the Court did not find that annulment of sentences of State courts would be an appropriate remedy. It held instead, as already indicated in its judgment in the *LaGrand Case*, that the adequate reparation for violations of Art. 36 VCCR should be provided by 'review and reconsideration' of the convictions and sentences of the Mexican nationals by US courts. At the same time, the Court indicated that the choice of means for review and reconsideration should be left to the US, but that it was to be carried out by taking account of the violation of rights under the VCCR. In a slightly ambiguous wording, and after having found that the judicial process was the most appropriate means of reviewing and reconsidering, the Court indicated that the clemency process was not sufficient in itself to serve that purpose, although appropriate clemency procedures can supplement judicial review and reconsideration.
- 12 The Court found no elements indicating that there was a 'regular and continuing' pattern of breaches by the US of Art. 36 VCCR, and therefore did not order 'cessation' of the wrongful act. As to Mexico's request for guarantees and assurances of non-repetition, the Court acknowledged the efforts undertaken by the US to encourage implementation of its obligations under the VCCR, and considered that the commitment shown by the US met Mexico's request.
- 13 Rephrasing President Guillaume's declaration in the *LaGrand Case*, the Court observed that, while the *Avena Case* concerned only Mexican nationals, its judgment could not be taken to imply that the Court's conclusions did not apply to other foreign nationals finding themselves in similar situations in the US.
- 14 Finally, the Court indicated that its order of 5 February 2003 was effective only pending final judgment of the Court and that the obligations incumbent upon the US were now to be replaced by the obligations declared in the final judgment. The Court then isolated three persons in relation to whom it had found that the US committed breaches of its obligations under Art. 36 (1) VCCR as well as breaches of Art. 36 (2) VCCR, no further domestic remedies being available to them. The Court held that in these three cases the US had to find an appropriate remedy having the nature of review and reconsideration according to the criteria indicated in the judgment.
- 15 It is noteworthy that the findings of the Court concerning the violation by the US of its obligations under the VCCR were made by a majority of 14 to one votes (Judge Parra-Aranguren dissenting).

D. Implementation of the *Avena* Judgment in Domestic Courts and Tribunals of the US

- 16 Having left it entirely to the domestic legal system of the US to find the means whereby 'review and reconsideration' would be given, it was to be expected that the *Avena* judgment would have a considerable impact on the domestic legal system of the US. The US government then had the admittedly rather difficult task of implementing the judgment of the ICJ and redressing the international wrongful act within the judicial system of a federal state.
- 17 On the political level, the *Avena* judgment of the Court was followed by two important decisions:
- 18 First, President George W. Bush issued a so-called Memorandum for the Attorney General from the President of the US of America on Compliance with the Decision of the International Court of Justice in *Avena* (28 February 2005) ('Memorandum') determining that
- the United States will discharge its international obligations under the decision of the International Court of Justice [...] by having State courts give effect to the decision in accordance with the general principles of comity in cases filed against 51 Mexican nationals addressed in that decision.
- 19 Second, on 7 March 2005, the Secretary of State, Condoleezza Rice, informed the UN Secretary General that the US would withdraw from the Optional Protocol to the Vienna Convention on Consular Relations concerning the Compulsory Settlement of Disputes ([opened for signature 24 April 1963, entered into force 19 March 1967] 596 UNTS 497) giving compulsory jurisdiction to the Court.
- 20 At the judicial level, several important decisions were taken in the aftermath of the *Avena* judgment. Before the *Avena* judgment of the ICJ, the US Supreme Court, in *Breard v Greene* (US Supreme Court [14 April 1998] 523 US 371) had found that Art. 36 VCCR arguably confers on an individual the right to consular assistance but that the rule of procedural default was fully applicable in that case.

1. *Torres v Oklahoma*

- 21 The case of Osvaldo (Osbaldo) Torres (case no 53 in the *Avena* judgment) has been the first to be subject to implementation of the Court's judgment in the US legal system.
- 22 After the judgment of the International Court of Justice became public, Torres filed an application for post-conviction relief and on 13 May 2004 the Oklahoma Court of Criminal Appeals decided to grant indefinite stay of execution and remanded evidentiary hearing in the case in order to assess whether Torres had suffered prejudice by the violations of his consular rights (*Torres v Oklahoma*). The specially concurring opinion of Judge Chapel is particularly telling:
- As this Court is bound by the treaty itself, we are bound to give full faith and credit to the *Avena* decision. I am not suggesting that the International Court of Justice has jurisdiction over this Court—far from it. However, in these unusual circumstances the issue of whether this Court must abide by that court's opinion in the Torres case is not ours to determine. The United States Senate and the President have made that decision for us. [...] I believe we cannot fulfill the goal of a fair and just review of Torres' case if we refuse to look at his Vienna Convention claims on the merits.
- 23 On the same day the Governor of Oklahoma took a decision to grant clemency and to commute the death sentence to a sentence of life without possibility of parole.
- 24 According to the Governor of Oklahoma, he had been previously contacted by the US State department and been urged to give 'careful consideration to the fact' that the ICJ had ruled that Torres' rights under the VCCR had been violated.

- 25 On 6 September 2005 the Oklahoma Court of Criminal Appeals held that it had become clear that Torres had indeed suffered prejudice by being sentenced to death but that in view of the clemency of the Governor all issues relating to Torres' sentences were rendered moot.
- 26 It seems that this first instance of importing the *Avena Case* findings into the domestic legal system of Oklahoma was well executed. The Court agreed to 'review and reconsider' the case by opening hearings on the prejudice suffered by Torres. Having concluded that the prejudice suffered was the death sentence itself and that this was now moot, the Oklahoma Court of Criminal Appeals reviewed the case of the defendant in light of his rights under the Vienna Convention on Consular Relations.

2. *Sanchez-Llamas v Oregon*

- 27 The case of *Sanchez-Llamas v Oregon* concerns a Mexican national who was not one of the 51 Mexican nationals referred to in the *Avena* judgment and was not directly involved with the proceedings before the ICJ, but was before the US Supreme Court in 2006. Sanchez-Llamas was not sentenced to death but to 20 and a half years of imprisonment.
- 28 Although Sanchez-Llamas was not part of the individual cases brought before the ICJ by the Mexican government, his judicial review and reconsideration was part of the binding part of the judgment. In the operative part of the judgment (*Avena* judgment para. 153 (11)) the Court unanimously found
- that should Mexican nationals nonetheless be sentenced to severe penalties, without their rights under Article 36, paragraph 1 (b), of the Convention having been respected, the United States of America shall provide, by means of its own choosing, review and reconsideration of the conviction and sentence, so as to allow full weight to be given to the violation of the rights set forth in the Convention [...].
- 29 The defendant in this case argued that his incriminating statements should be suppressed on the ground, inter alia, that his rights under the VCCR had been violated and that the appropriate remedy for that violation was the suppression of his statements. The state court and later the Oregon Court of Appeals rejected that claim. The US Supreme Court, on 28 June 2006, upheld the decisions of the lower courts and found that even assuming *arguendo* that the VCCR granted individuals enforceable rights, that the petition for *certiorari* could not be granted on the basis that the procedural default rule was fully applicable and prevented the defendant from invoking the violation of his rights under the VCCR.
- 30 The Supreme Court first held that the ICJ's interpretation in *LaGrand* and *Avena* was not conclusive for US courts and that it only granted entitlement to the 'respectful consideration' due to an interpretation of an international agreement by an international court.
- 31 The Supreme Court also found that the ICJ's interpretation of Art. 36 VCCR, inasmuch as it required that the rule of procedural default should be set aside in case of a violation of Art. 36 VCCR, was inconsistent with the adversary system.
- 32 From that opinion of the Supreme Court, it follows that the majority were of the view that by referring and analysing the ICJ's judgments and interpretation, it had given 'respectful consideration' to it while the dissenting judges considered that 'respectful consideration' would counsel in favour of adopting the ICJ's interpretation.

3. *Medellin v Texas*

- 33 At the time the ICJ issued its judgment in the *Avena Case*, the appeal of José Ernesto Medellin Rojas (case no 38 in the *Avena* judgment) was pending with the Fifth Circuit Court. The Fifth Circuit Court rejected the claim of Medellin for revision of his case following the *Avena* judgment. In particular, it held that it was not in a position to overrule the US Supreme Court's jurisprudence according to which Art. 36 VCCR did not constitute individually enforceable rights and that the ICJ's ruling had no binding effect on US courts. The Fifth Circuit Court held that only the Supreme Court itself would be entitled to overrule its own findings.
- 34 The case was then deferred to the US Supreme Court which initially granted *certiorari* in order to decide whether or not the *Avena* judgment of the ICJ had binding effect for domestic courts and tribunals—as claimed by the US government appearing as *amicus curiae* and the defendant. After issuance of the Memorandum, however, the Supreme Court

decided to dismiss its own writ of *certiorari* as improvidently granted because Medellín had filed a second procedure before Texas' courts asking for implementation of the Memorandum (*Medellin v Dretke*).

- 35 On 15 November 2006 the Texas Court of Criminal Appeals found that it was not bound by the Memorandum as the President had no constitutional authority to order state courts to follow a judicial decision of the International Court of Justice. The case was then referred back to the US Supreme Court which, on 25 March 2008, after five months of deliberations, handed in its judgment in the case *Medellin v Texas*. By six votes against three, the US Supreme Court held that neither the ICJ judgment in *Avena and Other Mexican Nationals*, nor the Memorandum, constituted directly enforceable federal law that would preempt State limitations on the filing of successive habeas petitions. The finding of the Texas Court of Criminal Appeals should therefore be upheld.
- 36 The reasoning of the majority was that while a treaty may constitute an international commitment, it is not binding domestic law unless Congress has enacted statutes implementing it, or unless the treaty is self-executing. The US Supreme Court acknowledged that the *Avena* judgment of the Court created international law obligations on the part of the US; it found however, that it was not automatically binding on domestic law. The Supreme Court further recognized that the obligation to abide by ICJ judgments is derived from Art. 94 UN Charter but it also held that Art. 94 UN Charter only constituted a commitment and was not intended to vest ICJ decisions with immediate legal effect in domestic courts.
- 37 With regard to President Bush's Memorandum on the implementation of the *Avena* judgment, the Supreme Court held—as did the Texas court—that the President's authority and powers did not include the ability to issue a directive to state courts.
- 38 From the reading of the reasoning of the US Supreme Court it also becomes clear that the majority of the judges considered US Congress to be the competent organ to enforce the international law obligations of the US flowing from the *Avena* judgment.
- 39 Shortly after the US Supreme Court's decision, the date of execution of Medellín was set to 5 August 2008.

4. Assessment of the Situation in 2008

- 40 The implications of the *Avena* judgment for the credibility of the international legal order are not to be underestimated. Even though the non-implementation of law or judgment does not say much about its binding character, the non-respect of judgments issued by any court is a threat to its authority and might imply obsolescence of the system as such. In this particular context, however, the non-implementation of the Court's judgment was also due to the particularity of the remedies the ICJ had granted. Not only was the reparation to be retrospective, but the remedies were to be granted by the judicial branch of the US. In addition, it was unclear from the judgment what kind of measures were expected from the 'review and reconsideration', whether for instance, the whole procedure was to be reopened or if self-incriminating statements made by the defendants were to be eliminated from the case files. While in more regular disputes, the remedies are to be provided by the government of the defendant State, in the particular situation of the *Avena* judgment, the government was not the first natural choice for implementing it. An absurd, albeit tragic, dialogue ensued therefore between the Mexican government, the US government, and the national courts and tribunals of the US. That dialogue culminated in new proceedings before the International Court of Justice.

E. The Case concerning 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*)

- 41 On 5 June 2008 the Government of Mexico filed a request for interpretation of the judgment of the Court of 31 March 2004 in the case concerning *Avena and Other Mexican Nationals* on the basis of Art. 60 ICJ Statute. In particular it requested the Court for an interpretation of para. 153 (9) of the operative part of the Court's judgment in the *Avena Case* on the grounds that the Court determined the remedial obligations incumbent upon the US. Mexico contended that 'a fundamental dispute' had arisen 'between the parties as to the scope and meaning' of para. 153 (9) *Avena* judgment and that the Court needed 'to provide guidance to the parties'.
- 42 It might be recalled at this stage, that in the law of → *State responsibility*, no distinction is drawn between governmental organs and judicial organs, ie courts and tribunals, both being considered as organs of a State which in case of an

internationally wrongful act, might engage the State's responsibility. Mexico did not, however, base its claim on the basis of the non-implementation of the *Avena* judgment, a procedure for non-compliance not being available before the Court. Mexico considered it to be a dispute about the interpretation of para. 153 (9) *Avena* judgment, while the US delegation claimed that there was no dispute at all, because the government itself fully supported the interpretation given by Mexico to the relevant passage of the *Avena* judgment.

- 43 Before the Court could turn to the request for interpretation, it had to examine a request for the indication of provisional measures, filed by Mexico on the same day.
- 44 In its request for the indication of provisional measures, Mexico asked that, pending judgment on its request for interpretation, the Court indicate that the US government take all measures necessary to ensure that José Ernesto Medellín and four other Mexican nationals were not executed. Mexico also asked that the US should inform the Court of all measures taken in implementation.
- 45 Before going on to examine the arguments of the parties as to the jurisdiction of the Court under Art. 60 ICJ Statute, the Court held that the jurisdiction of the Court on the basis of Art. 60 ICJ Statute was not preconditioned by the existence of any further basis of jurisdiction and that the withdrawal of the US from the Optional Protocol to the VCCR concerning the Compulsory Settlement of Disputes thus no effect in the current proceedings.
- 46 The US held that there was no dispute between the parties as to the meaning and scope of the *Avena* judgment, because the US government actually agreed with Mexico's interpretation of the nature of the obligation contained in para. 153 (9) *Avena* judgment, namely that it was an obligation of result. The US further argued that, in the absence of a dispute, the Court could not hear the case on the basis of Art. 60 ICJ Statute, and thus that it could not indicate provisional measures in the current proceedings (see also → *Interim [Provisional] Measures of Protection*).
- 47 The Court, in its order of 16 July 2008 (*Request for Interpretation of the Judgment of 31 March 2004 in the Avena and Other Mexican Nationals [Order]*), found that 'there appears to be a difference of opinion between them as to the meaning and scope of the Court's finding in para. 153 (9) of the operative part of the judgment and thus recourse could be had to the Court under Article 60 of the Statute' (at 14). The Court further found the other conditions for the indication of provisional measures to be equally fulfilled, ie the protection of rights, the risk of irreparable harm, and urgency. Accordingly, the Court concluded that in those circumstances it was required to indicate provisional measures to preserve the rights of Mexico, as Art. 41 ICJ Statute provides.
- 48 Despite that order of the Court, Medellín was executed on the scheduled day, 5 August 2008 at 10pm. The other four Mexican nationals concerned are still waiting for a date to be set for their execution.
- 49 On 19 January 2009 the Court rendered its decision on the request for interpretation.
- 50 The main point of disagreement between the parties seems to have been whether the conditions of Art. 60 ICJ Statute were fulfilled and whether the Court could examine the request for interpretation on that basis.
- 51 Mexico, in its request, asked the Court to establish that para. 153 (9) of the *Avena* judgment was an obligation of result and that, the 'free choice of means' referred to notwithstanding, that obligation had to be fulfilled by achieving the result of granting review and reconsideration. The US, as it did in the proceedings on the request for the indication of provisional measures, claimed to be in agreement with this interpretation and that, hence, there was no difference of views between the parties as to the meaning and scope of that part of the judgment. The conditions of Art. 60 ICJ Statute, it was argued, were not fulfilled and the Court could not examine Mexico's request. The Court found itself to be in agreement with this position. It held, in particular, that if a dispute were to exist, it did not bear on the 'meaning or scope' of the operative part of the *Avena* judgment, but rather on the question of whether para. 153 (9) *Avena* judgment 'envisages that a direct effect is to be given to be the obligation contained therein', a matter which, in the view of the

Court, had not been decided upon in the *Avena* judgment. The Court therefore declined to go further in the examination of the request for interpretation.

- 52 Judge Koroma, in his declaration, clarifies this finding of the Court, recalling that the limits of Art. 60 ICJ Statute are set out in the Courts jurisprudence, namely that a request for interpretation and the existence of a dispute under Art. 60 ICJ Statute is limited to the question of whether a difference of views between the parties is 'a difference of opinion as to those points which have been decided with binding force' including '[a] difference of opinion as to whether a particular point has or has not been decided with binding force' (see *Interpretation of Judgments Nos 7 and 8 (The Chorzów Factory) (Germany v Poland)* [PCIJ Series A No 13] 11–12; *Application for Revision and Interpretation of the Judgment of 24 February 1982 in the Continental Shelf (Tunisia/Libyan Arab Jamahiriya) (Tunisia v Libyan Arab Jamahiriya)* [(1985) ICJ Rep 192] 218).
- 53 On the issue of the execution of Medellín in violation of the ICJ's order of 16 July 2008, the Court rejected the argument of the US that it lacked jurisdiction to make findings on an alleged breach of the order of 16 July 2008. It upheld, however, the claim that it was beyond its jurisdiction to make any findings as to whether the US was in breach of the *Avena* judgment itself.
- 54 With regard to the alleged violation of the provisional measures in the case of Ernesto Medellín, the Court found that despite having found that it could not exercise its jurisdiction under Art. 60 ICJ Statute, it did not need to seek any further basis of jurisdiction to make findings about a breach of an order issued in incidental proceedings. The Court therefore found that its order of 16 July 2008 had been violated by the execution of Ernesto Medellín. The Court also noted that the obligation upon the US not to execute the other four Mexican nationals pending review and reconsideration was intact, not by virtue of the order of 16 July 2008 itself but by the operative part of the *Avena* judgment. The Court considered that, as an appropriate remedy for the violation of its order of 16 July 2008, it was sufficient for the Court to reiterate that the obligations of the US set out in the *Avena* judgment continued to be binding. The Court even included a paragraph in the operative part of its judgment (para. 61 (3)) in that sense. Judge Abraham in his declaration pointed out that by doing so the Court had trespassed the limits of its jurisdiction, be it incidental.

F. Assessment

- 55 Despite the Court's finding on the absence of a dispute between the Parties (*Avena* judgment para. 153 (1)), the Court in its reasoning does, it would seem, give some limited guidance as to the obligation contained in para. 153 (9) *Avena* judgment. It held in para. 44 that

[t]he *Avena* judgment nowhere lays down or implies that the courts in the United States are required to give direct effect to par. 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 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.

- 56 This last half-sentence seems to imply that the direct effect of an international obligation is a matter preconditioned by domestic law. However, from a purely international law perspective, it is very conceivable that an international obligation requires direct effect regardless of whether domestic law allows for it or not. But this issue aside, it is quite remarkable that the Court, in refusing to accede to Mexico's request for interpretation, added some important elements to the interpretation of para. 153 (9) *Avena* judgment. The Court in particular clarified that the obligation of result, while leaving the choice of means to the respondent, still needed to be fulfilled 'unconditionally'. The Court also held that the choice of means did not exclude the introduction of appropriate legislation, in a timely manner, or in words of the Court, within 'reasonable time'. Both these clarifications arguably constitute a gentle but firm reminder by the Court to the respondent as to what exactly the Court was hoping to see in a near future.

Select Bibliography

- RD Sloane 'Measures necessary to ensure' (2004) 17 LJIL 673–94.
- D Shelton 'Case concerning *Avena* and other Mexican Nationals' (2004) 98 AJIL 559–66.
- B Simma and C Hoppe 'From LaGrand and *Avena* to Medellín' (2005) 14 TulJIntl&CompL 7–59.

A Orekhelashvili 'Judicial Competence and Judicial remedies in the Avena Case' (2005) 18 LJIL 31–48.

CA Bradley 'Sanchez-Llamas v Oregon' (2006) 100 AJIL 882–88.

JJ Paust 'Medellin, Avena, the Supremacy of Treaties and Relevant Executive Authority' (2007/08) 31 Suffolk Transnational Law Review 301–33.

Select Documents

Avena and Other Mexican Nationals (Mexico v United States of America) [2004] ICJ Rep 12.

Avena and Other Mexican Nationals (Mexico v United States of America) (Order) [2003] ICJ Rep 77.

Medellín v Dretke United States Supreme Court (23 May 2005) 544 US 660.

Medellín v Texas United States Supreme Court (25 March 2008) <<http://www.supremecourtus.gov/opinions/07pdf/06-984.pdf>> (20 November 2009).

Memorandum for the Attorney General from the President of the United States of America on Compliance with the Decision of the International Court of Justice in Avena (28 February 2005) <<http://www.unhcr.org/refworld/docid/429c2fd94.html>> (20 November 2009).

Request for Interpretation of the Judgment of 31 March 2004 in the Avena and Other Mexican Nationals (Mexico v United States of America) (Mexico v United States of America) <<http://www.icj-cij.org/docket/files/139/14939.pdf>> (20 November 2009).

Request for Interpretation of the Judgment of 31 March 2004 in the Avena and Other Mexican Nationals (Mexico v United States of America) (Mexico v United States of America) (Request for the Indication of Provisional Measures) <<http://www.icj-cij.org/docket/files/139/14580.pdf>> (20 November 2009).

Sanchez-Llamas v Oregon United States Supreme Court (28 June 2006) 548 US 331.

Torres v Oklahoma United States Supreme Court (24 March 2003) 538 US 928.

Vienna Convention on Consular Relations (concluded 24 April 1963, entered into force 19 March 1967) 596 UNTS 261.