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Volume VI

ARTICLE 94

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TEXT OF ARTICLE 94

1. Each Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party.

2. 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.

I. GENERAL SURVEY

1. In its 2001 judgment in the *LaGrand Case (Germany v. the United States of America)*¹, the International Court of Justice (hereinafter, the Court) referred to Article 94 of the Charter in addressing the question of the binding effect of an order under Article 41 of its Statute.²

2. The question of the binding effect of the Court's judgments and orders was also touched upon by the Court in its 2009 judgment on the *Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning Avena and Other Mexican Nationals*.³

3. Article 94 was also at stake when Honduras requested the Security Council, in January 2002, to make recommendations to ensure the execution of the judgment rendered by the Court, on 11 September 1992, in the *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras)*.⁴

4. Furthermore, Article 94 was explicitly referred to at a meeting of the General Assembly concerning the case of the *Land and Maritime Boundary between Cameroon and Nigeria*.⁵

¹ *LaGrand Case (Germany v. United States of America)*, Judgment, I.C.J. Reports 2001, p. 466.

² See paragraphs 5 and 6 below.

³ See paragraphs 7-10 below.

⁴ *Case concerning the Land, Island and Maritime Frontier Dispute (El Salvador v. Honduras: Nicaragua intervening)*, Judgment of 11 September 1992, I.C.J. Reports 1992, par. 350. See paragraphs 11-13 below.

⁵ *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)*, Judgment, I.C.J. Reports 2002, p. 303. See paragraph 14 below.

II. ANALYTICAL SUMMARY OF PRACTICE

A. The *LaGrand Case*

5. The Court, in its judgment in the *LaGrand Case (Germany v. the United States of America)*, held that orders on provisional measures under Article 41 of its Statute have binding effect.⁶ The Court reached that conclusion by interpreting the terms of Article 41 in their context and in the light of the object and purpose of the Statute;⁷ that said, the Court also considered whether Article 94 of the United Nations Charter precluded attributing binding effect to such orders.

6. In this regard, the Court examined the meaning of the words “the decision of the International Court of Justice” in paragraph 1 of Article 94 of the United Nations Charter.⁸ The Court observed that this wording “could be understood as referring not merely to the Court’s judgments but to any decision rendered by it;” however, it “could also be interpreted to mean only judgments rendered by the Court as provided in paragraph 2 of Article 94.”⁹ In the Court’s opinion, the first interpretation would confirm the binding nature of provisional measures, whereas the second interpretation would not preclude the provisional measures from having binding force under Article 41 of the Statute. Consequently, the Court concluded that Article 94 of the Charter did not “prevent

orders made under Article 41 [of the ICJ Statute] from having a binding effect”.¹⁰

B. The case concerning *Avena and Other Mexican Nationals*

7. The Court, in its judgment of 31 March 2004 in the case concerning *Avena and Other Mexican Nationals*,¹¹ held that the United States had breached its obligations under Article 36 of the 1961 Vienna Convention on Consular relations and also found, *inter alia*, that “the appropriate reparation in this case consist[ed] 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 [certain] Mexican nationals [...], by taking account both of the violation of the rights set forth in Article 36 of the Convention and of paragraphs 138 to 141 of [the Court’s] Judgment”.¹²

8. On 5 June 2008, Mexico presented to the Court a request for interpretation of the 2004 judgment. It also requested the Court to adopt provisional measures to implement the judgment pending its interpretation by the Court.

9. The Court, in its order of 16 July 2008, indicated the following provisional measure:

⁶ *LaGrand Case (Germany v. United States of America)*, Judgment, I.C.J. Reports 2001, paras. 92-109.

⁷ *Ibid.*, para. 109.

⁸ *Ibid.*, para. 108.

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ *Avena and Other Mexican Nationals (Mexico v. United States of America)*, Judgment, I.C.J. Reports 2004, p. 12.

¹² *Ibid.*, p. 72, para. (9) of the operative part.

“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)*”¹³

10. On 19 January 2009, the Court rendered its judgment concerning the request for interpretation of the judgment of 31 March 2004 in the *Case concerning Avena and Other Mexican Nationals*¹⁴. The Court, while concluding that it could not “accede to Mexico’s request for interpretation”¹⁵ of the Avena judgment, observed that “its Avena Judgment remain[ed] binding and that the United States continue[d] to be under an obligation fully to implement it.”¹⁶ The Court also found 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.¹⁷

C. The case concerning the *Land, Island and Maritime Frontier Dispute between Honduras and El Salvador*

11. In a letter dated 22 January 2002, addressed to the President of the Security Council, Honduras requested that the Security Council intervene to ensure the execution of the judgment of the International Court of Justice of 11 September 1992 in the case concerning the *Land, Island and Maritime frontier dispute (Honduras/El Salvador)*.¹⁸

12. In so doing, Honduras indicated that “pursuant to Article 94, paragraph 2, of the Charter of the United Nations, it [felt] compelled to turn to the Security Council to request it to intervene and assist in securing the execution of and faithful compliance with the judgment of the International Court of Justice.”¹⁹

13. The Security Council **did not make any recommendations** on this matter during the period under review.

¹³ *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), Provisional Measures*, Order of 16 July 2008, *I.C.J. Reports 2008*, p. 331, para. 80, Operative Part, II (a).

¹⁴ *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), Judgment*, *I.C.J. Reports 2009*, p. 3.

¹⁵ *Ibid.*, para. 61, paragraph (1) of the operative part.

¹⁶ *Ibid.*, para. 60. See also para. 61, paragraph (3) of the operative part.

¹⁷ *Ibid.*, para. 61, paragraph (2) of the operative part.

¹⁸ *Case concerning the Land, Island and Maritime Frontier dispute (El Salvador v. Honduras: Nicaragua intervening), Judgment of 11 September 1992*, *I.C.J. Reports 1992*, p. 350.

¹⁹ S/2002/108, p. 2.

D. The case concerning the *Land and Maritime Boundary between Cameroon and Nigeria*

14. On 10 October 2002, the International Court of Justice rendered its judgment in the case concerning the *Land and Maritime Boundary between Cameroon and Nigeria*.²⁰ On 29 October 2002, Cameroon referred to a statement of its President which affirmed that the judgment “[was] final and [could not] be appealed”, and that Cameroon had undertaken to comply with the Court’s Judgment, “as laid down in the Charter of the United Nations” and “[was] convinced that it [was] through the parties’ respect for and application of the decision of the Court that the border dispute between the two countries [would] finally be peacefully resolved...”²¹ In this context, Cameroon made an explicit reference to Article 94 (1) of the Charter.²²

²⁰ *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening), Judgment, I.C.J. Reports 2002*, p. 303.

²¹ A/57/PV.37, p. 9.

²² *Ibid.*