SUPREME COURT OF THE UNITED STATES

No. 06–984

JOSE ERNESTO MEDELLIN, PETITIONER *v.* TEXAS

ON WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF TEXAS

[March 25, 2008]

JUSTICE STEVENS, concurring in the judgment.

There is a great deal of wisdom in JUSTICE BREYER's dissent. I agree that the text and history of the Supremacy Clause, as well as this Court's treaty-related cases, do not support a presumption against self-execution. See *post*, at 5–10. I also endorse the proposition that the Vienna Convention on Consular Relations, Apr. 24, 1963, [1970] 21 U. S. T. 77, T. I. A. S. No. 6820, "is itself self-executing and judicially enforceable." *Post*, at 19. Moreover, I think this case presents a closer question than the Court's opinion allows. In the end, however, I am persuaded that the relevant treaties do not authorize this Court to enforce the judgment of the International Court of Justice (ICJ) in *Case Concerning Avena and Other Mexican Nationals* (*Mex.* v. *U. S.*), 2004 I. C. J. 12 (Judgment of Mar. 31) (*Avena*).

The source of the United States' obligation to comply with judgments of the ICJ is found in Article 94(1) of the United Nations Charter, which was ratified in 1945. Article 94(1) provides that "[e]ach Member of the United Nations *undertakes to comply* with the decision of the [ICJ] in any case to which it is a party." 59 Stat. 1051, T. S. No. 993 (emphasis added). In my view, the words "undertakes to comply"—while not the model of either a self-executing or a non-self-executing commitment—are most naturally read as a promise to take additional steps

to enforce ICJ judgments.

Unlike the text of some other treaties, the terms of the United Nations Charter do not necessarily incorporate international judgments into domestic law. Cf., *e.g.*, United Nations Convention on the Law of the Sea, Annex VI, Art. 39, Dec. 10, 1982, S. Treaty Doc. No. 103–39, 1833 U. N. T. S. 570 ("[D]ecisions of the [Seabed Disputes] Chamber shall be enforceable in the territories of the States Parties in the same manner as judgments or orders of the highest court of the State Party in whose territory the enforcement is sought"). Moreover, Congress has passed implementing legislation to ensure the enforcement of other international judgments, even when the operative treaty provisions use far more mandatory language than "undertakes to comply."[1]

On the other hand Article 94(1) does not contain the kind of unambiguous language foreclosing self-execution that is found in other treaties. The obligation to undertake to comply with ICJ decisions is more consistent with self-execution than, for example, an obligation to enact legislation. Cf., *e.g.,* International Plant Protection Convention, Art. I, Dec. 6, 1951, [1972] 23 U. S. T. 2770, T. I. A. S. No. 7465 ("[T]he contracting Governments undertake to adopt the legislative, technical and administrative measures specified in this Convention"). Further-

---

[1] See, *e.g.,* Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention), Art. 54(1), Mar. 18, 1965, [1966] 17 U. S. T. 1291, T. I. A. S. No. 6090 ("Each Contracting State shall recognize an award rendered pursuant to this Convention as binding and enforce the pecuniary obligations imposed by that award within its territories as if it were a final judgment of a court in that State"); 22 U. S. C. §1650a ("An award of an arbitral tribunal rendered pursuant to chapter IV of the [ICSID Convention] shall create a right arising under a treaty of the United States. The pecuniary obligations imposed by such an award shall be enforced and shall be given the same full faith and credit as if the award were a final judgment of a court of general jurisdiction of one of the several States").

more, whereas the Senate has issued declarations of non-self-execution when ratifying some treaties, it did not do so with respect to the United Nations Charter.[2]

Absent a presumption one way or the other, the best reading of the words "undertakes to comply" is, in my judgment, one that contemplates future action by the political branches. I agree with the dissenters that "Congress is unlikely to authorize automatic judicial enforceability of *all* ICJ judgments, for that could include some politically sensitive judgments and others better suited for enforcement by other branches." *Post*, at 24. But this concern counsels in favor of reading any ambiguity in Article 94(1) as leaving the choice of whether to comply with ICJ judgments, and in what manner, "to the political, not the judicial department." *Foster* v. *Neilson*, 2 Pet. 253, 314 (1829).[3]

The additional treaty provisions cited by the dissent do not suggest otherwise. In an annex to the United Nations Charter, the Statute of the International Court of Justice (ICJ Statute) states that a decision of the ICJ "has no binding force except between the parties and in respect of that particular case." Art. 59, 59 Stat. 1062. Because I read that provision as confining, not expanding, the effect of ICJ judgments, it does not make the undertaking to comply with such judgments any more enforceable than

---

[2] Cf., *e.g.*, U. S. Reservations, Declarations and Understandings, International Covenant on Civil and Political Rights, 138 Cong. Rec. 8071 (1992) ("[T]he United States declares that the provisions of Articles 1 through 27 of the Covenant are not self-executing").

[3] Congress' implementation options are broader than the dissent suggests. In addition to legislating judgment-by-judgment, enforcing all judgments indiscriminately, and devising "legislative bright lines," *post*, at 24, Congress could, for example, make ICJ judgments enforceable upon the expiration of a waiting period that gives the political branches an opportunity to intervene. Cf., *e.g.,* 16 U. S. C. §1823 (imposing a 120-day waiting period before international fishery agreements take effect).

the terms of Article 94(1) itself. That the judgment is "binding" as a matter of international law says nothing about its domestic legal effect. Nor in my opinion does the reference to "compulsory jurisdiction" in the Optional Protocol Concerning the Compulsory Settlement of Disputes to the Vienna Convention, Art. I, Apr. 24, 1963, [1970] 21 U. S. T. 325, T. I. A. S. No. 6820, shed any light on the matter. This provision merely secures the consent of signatory nations to the specific jurisdiction of the ICJ with respect to claims arising out of the Vienna Convention. See ICJ Statute, Art. 36(1), 59 Stat. 1060 ("The jurisdiction of the Court comprises . . . all matters specially provided for . . . in treaties and conventions in force").

Even though the ICJ's judgment in *Avena* is not "the supreme Law of the Land," U. S. Const., Art. VI, cl. 2, no one disputes that it constitutes an international law obligation on the part of the United States. *Ante*, at 8. By issuing a memorandum declaring that state courts should give effect to the judgment in *Avena*, the President made a commendable attempt to induce the States to discharge the Nation's obligation. I agree with the Texas judges and the majority of this Court that the President's memorandum is not binding law. Nonetheless, the fact that the President cannot legislate unilaterally does not absolve the United States from its promise to take action necessary to comply with the ICJ's judgment.

Under the express terms of the Supremacy Clause, the United States' obligation to "undertak[e] to comply" with the ICJ's decision falls on each of the States as well as the Federal Government. One consequence of our form of government is that sometimes States must shoulder the primary responsibility for protecting the honor and integrity of the Nation. Texas' duty in this respect is all the greater since it was Texas that—by failing to provide consular notice in accordance with the Vienna Conven-

tion—ensnared the United States in the current controversy. Having already put the Nation in breach of one treaty, it is now up to Texas to prevent the breach of another.

The decision in *Avena* merely obligates the United States "to provide, by means of its own choosing, review and reconsideration of the convictions and sentences of the [affected] Mexican nationals," 2004 I. C. J., at 72, ¶153(9), "with a view to ascertaining" whether the failure to provide proper notice to consular officials "caused actual prejudice to the defendant in the process of administration of criminal justice," *id.*, at 60, ¶121. The cost to Texas of complying with *Avena* would be minimal, particularly given the remote likelihood that the violation of the Vienna Convention actually prejudiced José Ernesto Medellín. See *ante*, at 4–6, and n. 1. It is a cost that the State of Oklahoma unhesitatingly assumed.[4]

---

[4] In *Avena*, the ICJ expressed "great concern" that Oklahoma had set the date of execution for one of the Mexican nationals involved in the judgment, Osbaldo Torres, for May 18, 2004. 2004 I. C. J., at 28, ¶21. Responding to *Avena*, the Oklahoma Court of Criminal Appeals stayed Torres' execution and ordered an evidentiary hearing on whether Torres had been prejudiced by the lack of consular notification. See *Torres* v. *Oklahoma*, No. PCD–04–442 (May 13, 2004), 43 I. L. M. 1227. On the same day, the Governor of Oklahoma commuted Torres' death sentence to life without the possibility of parole, stressing that (1) the United States signed the Vienna Convention, (2) that treaty is "important in protecting the rights of American citizens abroad," (3) the ICJ ruled that Torres' rights had been violated, and (4) the U. S. State Department urged his office to give careful consideration to the United States' treaty obligations. See Office of Governor Brad Henry, Press Release: Gov. Henry Grants Clemency to Death Row Inmate Torres (May 13, 2004), online at http://www.ok.gov/governor/display_article.php?article_id=301&article_type=1 (as visited Mar. 20, 2008, and available in Clerk of Court's case file). After the evidentiary hearing, the Oklahoma Court of Criminal Appeals held that Torres had failed to establish prejudice with respect to the guilt phase of his trial, and that any prejudice with respect to the sentencing phase had been mooted by the commutation order. *Torres* v.

On the other hand, the costs of refusing to respect the ICJ's judgment are significant. The entire Court and the President agree that breach will jeopardize the United States' "plainly compelling" interests in "ensuring the reciprocal observance of the Vienna Convention, protecting relations with foreign governments, and demonstrating commitment to the role of international law." *Ante*, at 28. When the honor of the Nation is balanced against the modest cost of compliance, Texas would do well to recognize that more is at stake than whether judgments of the ICJ, and the principled admonitions of the President of the United States, trump state procedural rules in the absence of implementing legislation.

The Court's judgment, which I join, does not foreclose further appropriate action by the State of Texas.

Oklahoma, 120 P. 3d 1184 (2005).