**Oasis International School Model United Nations**

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**International Court of Justice (ICJ) – LaGrand case**

Guide Package

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**(The United Nations vs. Germany)**

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1. **Summary of the case**

On the 2nd of March 1999, the Federal Republic of Germany filed an application in the registry of the court inducting proceedings against the United States of America (USA) America in respect of a dispute regarding **alleged violations** of *“the 1963 Vienna Convention on Consular Relations”* (VCCR). Germany affirms that the authorities of the State of Arizona had **violated** fundamental obligations under the VCCR, since they detained two german **citizens** in 1982, Karl and Walter LaGrand, who were later on set for trial and sentenced to **death by procedural default without being informed of their rights**, as instructed in Article 36, paragraph 1 (*b*), of the Vienna Convention.

The LaGrand brothers executed a “botched” armed bank robbery in the State of Arizona in Marana, on the 7th of January 1982, which resulted in the **death** of a man and **severely injuring** a woman. The brothers were trialed and sentenced to death by the Arizona authorities **without** the knowledge of German counselors. Bearing in mind that the LaGrands lived most of their lives in the United States of America since they were 5 years old, they had **never** acquired **American citizenship**. Being of German nationality demands the United States of America to inform Germany of the arrest **WITHOUT DELAY**. Nevertheless, Germany stated that the United States of America **failed** to notify them of the arrest, which precluded Germany from protecting its nationals’ interest provided for by the VCCR Articles 5 and 36 at the trial and the appeal level in the United States’ courts.

In 1992, a day before the execution of one of the LaGrand brothers, Germany procured **knowledge** of the arrest by the LaGrand brothers and not by the Arizona Authorities. Since the brothers **failed to be notified** of their rights under the obligation of the Vienna Convention, they had no legal representation, didn’t get legal advice on their sentence and didn’t speak to a German consular. Karl LaGrand was later executed on the 24th of February 1999 by lethal injection. The execution of Walter LaGrand was set to be on the 3rd of March 1999. Germany's letter of application was accompanied by a **demand to urgently** leave the execution pending until the end of the case. Thus, the court delivered an order calling upon the United States of america to “take all measures at its disposal to ensure that the german national **was not executed** pending the final decision in the proceedings”[[1]](#footnote-0). Unfortunately , the two German nationals were executed by the United States which is a violation of individual rights. They were executed without counselor access.

1. **Parties involved**

***Plaintiff:*** *The Federal Republic of Germany :*

The Federal Republic of Germany filed the application declaring **alleged** violations and breaching of the VCCR and the “procedural default”[[2]](#footnote-1) of the USA. German nationals (LaGrand brothers) were tried and **executed** by Arizona authorities **without** notifying their proper country, despite never owning an American nationality. Therefore, Germany claims that the United States **did not sustain** and uphold Article 36 *of the Vienna Convention* : consular access that applies to any of their nationals in foreign countries in a case of arrest. Germany was informed by the arrest by the LaGrand brothers in **1992** when they were arrested in 1982. In addition, Germany included in its application an urgent request and demanded the ICJ for “the indication of provisional measures”, demanding the court to order the United States to leave the execution **pending** until the verdict of the case. Nonetheless the execution occurred, resulting in the execution of both the LaGrand brothers.

***Defendant:*** *The United States of America (USA) :*

The United States (authorities of the Arizona state) arrested the LaGrand brothers early 1982 after a “botched bank robbery”. The USA ruled the two brothers by “procedure of default” and sentenced them to **death**. The United States claimed that they didn’t breach article 36 of the Vienna Convention since they were **not aware** and failed to know that the LaGrand brothers were of German nationality. Hence they had no **consular access** and were not aware of their legal rights. The two brothers were detained without Germany’s knowledge… However, on the 23rd of February 1999, a day before the execution of the first LaGrand brother, the proceedings before the Arizona Mercy, State Attorney Peasley **admitted** that the authorities of the State of Arizona had indeed been aware all along, since 1982, that Karl and Walter LaGrand had been German **nationals**, and they were sentenced unfairly.

1. **History of the Case:** 
   1. **Parties involved:**

* The Federal Republic of Germany
* The United States of America
  1. **History of proceedings**
* January 7th, 1982, the LaGrand brothers Karl-Heinz LaGrand and Walter Bernhard LaGrand executed an armed and botched bank robbery which resulted in the death of a man (stabbed 24 times) and a severe injury of a woman (stabbed 7 times).
* They were arrested in 1982 by the authorities of the State of Arizona.
* In 1982, the authorities of the State of Arizona detained the two German nationals, Karl and Walter LaGrand. These German nationals went under trial and were sentenced to **death** without being advised of their rights to German consular assistance.
* In early 1992, the two LaGrand brothers informed the German consular officers of them being **detained**, not being informed of their rights, and the result of the trial (the death sentence).
* 23rd of February 1999, a day before the execution of the first LaGrand brother, the proceedings before the Arizona Mercy, State Attorney Peasley **admitted** that the authorities of the State of Arizona had indeed **been aware** **all along** since the arrest in 1982, that Karl and Walter LaGrand had been German nationals.
* 24th of February 1999, Karl LaGrand was **executed** by lethal injection.
* March 2nd, 1999, Germany filed an instituting proceeding against the United States of America in respect of a dispute regarding **alleged violations** of the Vienna Convention on Consular Relations of 24 April 1963 to the international court of justice. Germany also asked “that the United States should take all measures at its disposal to ensure that one of its nationals, whose date of execution had been fixed at 3 March 1999 **was not executed** pending final judgment in the case . . .” which was agreed by the court.
* March 3rd, 1999, Walter Bernhard LaGrand was **executed** disregarding Germany’s request by a gas chamber.

**3.3.** **Statement of facts**

* Germany signed the Vienna Convention on Consular Relations on 31st of October 1963 and ratified it on the 7th of September 1971.
* The United States of America signed the Vienna Convention on Consular Relations on the 24th of April 1963 and ratified it on the 24th of November 1969.
* Germany signed the Vienna Convention on the Law of Treaties on the 3th of April 1970 and ratified it 21 July 1987.
* The United States signed the Vienna Convention on the Law of Treaties on the 24th of April 1970.
* On the 7th of January 1982 the LaGrand brothers Karl-Heinz LaGrand and Walter Bernhard LaGrand executed a botched and violent armed bank robbery which resulted in the death of a man, who was stabbed over 20 times and a severely injured woman.
* The LaGrand brothers were both of German nationality from a German mother and didn’t have an American citizenship.
* In 1992 the LaGrand brothers informed Germany of their situation.
* 23rd of February 1999, one day before the execution of the first LaGrand brother, the proceedings before the Arizona Mercy, State Attorney Peasley admitted that the authorities of the State of Arizona had indeed been aware all along, since 1982, that Karl and Walter LaGrand had been German nationals.
* 24th of February 1999, the LaGrand brother Karl LaGrand, was executed by lethal injection.
* March the 2nd, Germany filed an application in the registry of the court inducting proceedings against the USA regarding their breaching of the Vienna Convention and submitted a request to leave the execution pending which was agreed by the ICJ.
* On the 3rdof March 1999, the second LaGrand brother, Walter LaGrand, was executed by a gas chamber .

1. **Key Terms**

* *Consular assistance* :consular assistance is help and advice provided by the **diplomatic agents of a country** to citizens of that country who are living or traveling overseas. [[3]](#footnote-2)
* *“Procedure Default”* : a **failure** to follow state appellate procedure (as in the exhaustion of state remedies) that bars federal especially habeas corpus review of a case in the absence of a showing of cause for and **prejudice** from the failure or sometimes in the absence of proof that the bar would result in a **miscarriage** of justice. (doctrine) [[4]](#footnote-3)
* *Lethal injection* : an injection that is intended to kill a person, esp as a method of capital punishment or form of euthanasia. [[5]](#footnote-4)
* *Legal representation* : the legal work that a licensed attorney performs on behalf of a client. Licensed attorneys have the **authority** to represent persons in court proceedings and in other legal matters. [[6]](#footnote-5)
* *Provisional measures* : These measures are designed to **protect** the rights of the parties **pending** the final decision in a dispute. [[7]](#footnote-6)

1. **Statement of law**

* Article I of the Optional Protocol of the Vienna Convention on Consular Relations
* Article 5 of the Vienna Convention on Consular Relations
* Article 36, paragraph 1 *(a),* of the Vienna Convention on Consular Relations
* Article 36, paragraph 1 *(b)*, of the Vienna Convention on Consular Relations
* Article 36, paragraph 1 *(c)*, of the Vienna Convention on Consular Relations
* Article 36, paragraph 2, of the Vienna Convention on Consular Relations
* The UN declaration on the human rights of aliens
* The Recognition of the individual right to consular United States Domestic law
* Article 26 of the Vienna Convention on the Law of Treaties
* Article 27 of the Vienna Convention on the Law of Treaties
* Article 94 of the United Nations Charter

1. **Statement of jurisdiction**

* Article 36, paragraph 1, of the Statue of the Court
* Article 38, paragraph 1, of the Statue of the Court
* Article 40 of the Statue of the Court
* Article 41 of the Statue of the Court
* Article 73 of the Rules of Court
* Article 74, paragraph 4, of the Rules of Court
* Article 75 of the Rules of Court

1. **Useful links**

* ABC, “LaGrand Brothers” : <https://www.abc15.com/news/crime/death-row-diary-the-arizona-executions-of-the-lagrand-brothers-causes-international-stir> **(news report of all the details of the crime of the LaGrand brothers).**
* AMERICAN, Society Of International Law. “World Court Rules Against the United States in LaGrand Case Arising from a Violation of the Vienna Convention on Consular Relations”: <https://www.asil.org/insights/volume/6/issue/16/world-court-rules-against-united-states-lagrand-case-arising-violation> **(detailed summary of the LaGrand case).**
* CASEBRIEF, “LaGrand Case” : <https://www.casebriefs.com/blog/law/international-law/international-law-keyed-to-damrosche/chapter-7/lagrand-case-germany-v-united-states/> **(summary and both point of views).**
* ICJ, “Instituting Proceedings” : <https://www.icj-cij.org/public/files/case-related/104/7153.pdf> **(Germany application).**
* ICJ, “LaGrand Case” : <https://www.icj-cij.org/en/case/104>
* ICJ, “Memorial of the Federal Republic Of Germany” : <https://www.icj-cij.org/public/files/case-related/104/8552.pdf> **(arguments + proof etc…).**
* ICJ, “Memorial of the United States Of America” : <https://www.icj-cij.org/public/files/case-related/104/8554.pdf> **(arguments + proof etc…).**
* UNITED NATIONS, “The Vienna Convention on Consular Relations” : <https://legal.un.org/ilc/texts/instruments/english/conventions/9_2_1963.pdf>

**8. Bibliography**

* ABC, “LaGrand Brothers”. Consulted in September 2021. <https://www.abc15.com/news/crime/death-row-diary-the-arizona-executions-of-the-lagrand-brothers-causes-international-stir>
* AMERICAN LAW, West's Encyclopedia edition 2. "Legal Representation." Consulted in August 2021. <https://legal-dictionary.thefreedictionary.com/Legal+Representation>
* COBUILDS, Collins. “Definition of Consular assistance”. Consulted in August 2021. [www.collinsdictionary.com/dictionary/english/consular-assistance](https://www.collinsdictionary.com/dictionary/english/consular-assistance)
* COBUILDS, Collins. “Definition of Lethal injection”. Consulted in August 2021. <https://www.collinsdictionary.com/dictionary/english/lethal-injection>
* ICJ, “LaGrand Case”. Consulted in August 2021. <https://www.icj-cij.org/en/case/104>
* ICJ, “Instituting Proceedings, Germany Application”. Consulted in August 2021. <https://www.icj-cij.org/public/files/case-related/104/7153.pdf>
* ICJ, “Memorial Of The Federal Republic Of Germany”. Consulted in August 2021. <https://www.icj-cij.org/public/files/case-related/104/8552.pdf>
* MERRIAM, Webster. “Definition of Procedure Default”. Consulted in August 2021. <https://www.merriam-webster.com/legal/procedural%20default>
* ROSENNE, Shabtai. “Definition of Provisional measures” Consulted August 2021.<https://oxford.universitypressscholarship.com/view/10.1093/acprof:oso/9780199268061.001.0001/acprof-9780199268061>
* UNITED NATIONS, “The Vienna Convention on Consular Relations”. Consulted in August 2021. <https://legal.un.org/ilc/texts/instruments/english/conventions/9_2_1963.pdf>

1. ICJ, “LaGrand Case” : <https://www.icj-cij.org/en/case/104> [↑](#footnote-ref-0)
2. Definition of “Procedure Default” : <https://www.merriam-webster.com/legal/procedural%20default> [↑](#footnote-ref-1)
3. Definition of “Consular assistance” : [www.collinsdictionary.com/dictionary/english/consular-assistance](https://www.collinsdictionary.com/dictionary/english/consular-assistance) [↑](#footnote-ref-2)
4. Definition of “Procedure Default” : <https://www.merriam-webster.com/legal/procedural%20default> [↑](#footnote-ref-3)
5. Definition of “Lethal injection” : <https://www.collinsdictionary.com/dictionary/english/lethal-injection> [↑](#footnote-ref-4)
6. Definition of “Legal representation” : <https://legal-dictionary.thefreedictionary.com/Legal+Representation> [↑](#footnote-ref-5)
7. Definition of “Provisional measures” : <https://oxford.universitypressscholarship.com/view/10.1093/acprof:oso/9780199268061.001.0001/acprof-9780199268061> [↑](#footnote-ref-6)