

DECLARATION OF PRESIDENT SCHWEBEL

I have voted for the Order, but with disquiet. The sensitive issues it poses have been hastily, if ably, argued. The evidence introduced is bare. The Court's consideration of the issues of law and fact, in the circumstances imposed upon it, has been summary. The United States maintains that no State has ever before claimed as Paraguay now does that, because of lack of consular access under the Vienna Convention on Consular Relations, the results of a trial, conviction, and appeal should be voided. Not only has the United States apologized to Paraguay for the unintentional failure of notification to Paraguay's consul of the arrest and trial of the accused, but it has taken substantial steps to strengthen what appears to be a practice in the United States of variable compliance with the obligations imposed upon it by the Vienna Convention.

All this said, I have voted for the Order indicating provisional measures suggested pursuant to Article 41 of the Statute of the Court. Those measures ought to be taken to preserve the rights of Paraguay in a situation of incontestable urgency.

I have so voted essentially for these reasons. There is an admitted failure by the Commonwealth of Virginia to have afforded Paraguay timely consular access, that is to say, there is an admitted breach of treaty. An apology and Federal provision for avoidance of future such lapses does not assist the accused, who Paraguay alleges was or may have been prejudiced by lack of consular access, a question which is for the merits. It is of obvious importance to the maintenance and development of a rule of law among States that the obligations imposed by treaties be complied with and that, where they are not, reparation be required. The mutuality of interest of States in the effective observance of the obligations of the Vienna Convention on Consular Relations is the greater in the intermixed global community of today and tomorrow (and the citizens of no State have a higher interest in the observance of those obligations than the peripatetic citizens of the United States). In my view, these considerations outweigh the serious difficulties which this Order imposes on the authorities of the United States and Virginia.

(Signed) Stephen M. SCHWEBEL.