

# UNITED STATES OF AMERICA

## The Execution of Ángel Breard: Apologies Are Not Enough

On 14 April 1998, in flagrant defiance of the International Court of Justice (ICJ), the Commonwealth of Virginia executed Ángel Francisco Breard, a Paraguayan national born in Argentina, who was sentenced to death after being deprived of his treaty-based right to consular assistance.

The Breard case has raised a storm of controversy on three continents, after the execution was allowed to proceed in defiance of an explicit order from the ICJ requiring the United States to halt the proceedings.

No other US death penalty case in recent memory more tellingly reveals the glaring double standard which exists between the United States' human rights rhetoric abroad and its own domestic practices. The US government portrays itself as a world leader in the protection of human rights and as a champion of international law. Yet, when confronted with a unanimous opinion from the world's highest court compelling its compliance, the United States chose instead to renege on its binding treaty obligations.

The execution of Ángel Francisco Breard is a human rights tragedy. It is also a shameful indictment of the United States' ambivalent commitment to the international rule of law.

Ángel Breard was sentenced to death in 1993 for the attempted rape and murder of Ruth Dickie in Arlington, Virginia. Before his trial, Breard rejected a plea bargain offer from the prosecution which would have resulted in a life sentence. Against the advice of his attorneys, Breard insisted on admitting his guilt on the witness stand and appealing to the jury for mercy, in the mistaken belief that they would show him leniency.

Virginia officials have never denied that they failed to inform Breard of his consular rights. By the time Paraguayan consular officers became aware of the treaty violation in 1996, the case had already progressed through the state appeal courts. In appeals filed in federal court, defence attorneys argued that consular officials would have persuaded Breard to accept the plea offer, by explaining the cultural and legal differences between the United States and his native country.

The case of Ángel Breard is far from unique. In January, Amnesty International issued a report identifying more than 60 foreign nationals facing execution in the USA, most of whom were never informed of their right to seek the crucial assistance of their consulate following their arrest<sup>1</sup>. US police forces nationwide routinely fail to comply with Article 36 of the Vienna

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<sup>1</sup>For further information see: *USA: Violation of the Rights of Foreign Nationals Under Sentence of Death*, AI Index: AMR 51/01/98.

Convention on Consular Relations -- with disastrous consequences for foreign citizens who face the death penalty. The report noted that the US Government continues to oppose efforts by foreign nationals under sentence of death and their governments to obtain relief through the US courts.

Amnesty International subsequently made comprehensive recommendations to US Secretary of State Madeleine Albright which the organization believes would ensure better compliance with Article 36 within the United States. The organization also called on the US State Department to assist in the development of fair and effective remedies for past violations of Article 36 which resulted in death sentences for foreign nationals.

In March 1998, Amnesty International released a report highlighting the case of Breard, which outlined the refusal of the US courts to address the violation of his consular rights on purely procedural grounds<sup>2</sup>. That same month, attorneys representing both Breard and the Republic of Paraguay filed appeals with the US Supreme Court.

In support of Paraguay's appeal, Argentina, Brazil, Ecuador and Mexico filed a joint 'amicus curiae' (meaning a "friend of the court") brief with the US Supreme Court. The international brief outlines the significance of consular assistance under the Vienna Convention and stresses the necessity of developing an effective judicial remedy for violations of the treaty within the United States.

The international amicus brief points out that the US Department of State promptly and vigorously intervenes whenever US citizens detained abroad are deprived of their consular rights. As one example, the brief quoted the text of a State Department telegram to the Government of Syria, in which the United States protested the denial of consular access to two detained Americans:

"The recognition of these rights is prompted in part by consideration of reciprocity. States accord these rights to other states in the confident expectation that if the situation were to be reversed they would be accorded equivalent rights to protect their nationals. The Government of the Syrian Arab Republic can be confident that if its nationals were detained in the United States the appropriate Syrian officials would be promptly notified and allowed prompt access to those nationals".

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<sup>2</sup>For further information see *USA: Ángel Francisco Breard: Facing Death in a Foreign Land*, AI Index: AMR 51/14/98

As Breard's execution date approached, the Republic of Paraguay sought a binding ruling from the International Court of Justice that the execution of Breard not take place because of the violation of his consular rights. Under the terms of the Vienna Convention's Optional Protocol Concerning the Compulsory Settlement of Disputes, any dispute over the application or interpretation of the consular treaty falls under the compulsory jurisdiction of the International Court. Both the USA and Paraguay are signatories to the Optional Protocol and are thus required to comply with any rulings of the ICJ on this dispute.

On 7 April 1998, attorneys representing the USA and Paraguay presented arguments before the 15-member International Court of Justice, which is one of the six principal organs of the United Nations. Paraguay contended that the violation of Article 36 of the Vienna Convention had directly contributed to Breard's death sentence and that the appropriate remedy was for Virginia to retry him.

The USA responded by asserting that the ICJ had no jurisdiction over US criminal cases; US authorities had already provided the only available remedy by investigating the incident and apologizing to Paraguay. In an argument that belittled the importance of consular access by foreign nations, the United States claimed that the breach of Breard's consular rights had no impact on the criminal proceedings against him.

On 9 April, the ICJ unanimously ruled in favour of a "provisional measures" order, requiring the United States to "take all measures at its disposal" to stop Breard's execution, pending full adjudication by the International Court of the treaty violation itself. This historic ruling is believed to be the first time that the International Court of Justice has intervened to halt an execution anywhere in the world.

Several of the judges issued separate opinions on the ruling, including the President of the Court, US jurist Stephen M. Schwebel, who wrote, "An apology does not assist the accused". He also noted that the United States had a strong interest in seeing that Article 36 is honoured worldwide, if only to protect its own citizens abroad. "In my view, these considerations outweigh the serious difficulties which this order imposes on the authorities of the United States and Virginia".

Reaction was swift within the United States to the unprecedented ICJ initiative. The day after the ICJ hearing, the US Supreme Court immediately requested an opinion from the US Solicitor General on the views of the United States concerning the appeals filed by Paraguay and Breard. Following the ICJ ruling, the US State Department sent a letter to Virginia Governor James Gilmore, apprising him of the decision and requesting that he give it his "full consideration". A spokesperson responded by stating that the governor "will continue to follow the US courts and the United States Supreme Court" and that Virginia would oppose all motions for a stay of execution.

Reaction from other quarters was even less constructive. A spokesperson for Senator Jesse Helms, Chairman of the US Senate Foreign Relations Committee -- who appeared to have forgotten that the USA entered into the terms of the Vienna Convention voluntarily -- was quick to condemn the ruling. "It's an appalling intrusion by the United Nations into the affairs of the State of Virginia", Mark Thiessen said. "There's only one court that matters here. That's the Supreme Court. There's only one law that applies. That's the United States Constitution".

In the final days leading up to the execution, new appeals were filed with the Supreme Court based on the ICJ ruling. The US government told the Court that no stay of execution should be granted, because the assistance of consular officials would not have changed the outcome of the criminal proceedings.

In a move that showed the clear double standard of the US authorities (that they deem consular rights vital for US citizens but not for foreign nationals detained in their own country), US Secretary of State Madeleine Albright took the unprecedented step of sending a letter to the Governor of Virginia, asking him to grant a temporary reprieve to Breard in order to protect the safety and consular rights of US citizens detained abroad.

A spokesperson for Albright was quoted as stating that she wanted to ensure "that nothing that happens in this complicated legal situation undermines the important value that American citizens get...(by being) able to meet with consular officers overseas. We have to bear in mind in many parts of the world the justice systems are rather fragmentary and unfair in many occasions." Amnesty International has documented numerous unfair trials in death penalty cases, including trials within the United States.

Albright also appeared to be contradictory in her message to Governor Gilmore. Her letter emphasized that the "United States has vigorously defended Virginia's right to go forward with the sentence imposed on Mr Breard by Virginia's courts."

However, any potentially beneficial impact of the Secretary of State's letter was annulled by the simultaneous assertion by the US government that Virginia had a legal right to proceed with the execution.

At 7.35pm on 14 April, the US Supreme Court finally issued its decision on the Breard case, less than two hours before the scheduled execution. In a 6 to 3 ruling, the Court denied all appeals. Following a last-minute round of emergency appeals, Ángel Francisco Breard was executed by lethal injection at 10.30 pm.

In its 7-page decision, the Supreme Court ruled that Breard had forfeited his right to appeal the violation of the Vienna Convention because he had failed to raise the issue in the state courts--even though he was unaware that the right existed. The Court further determined that

Paraguay had no standing to seek a remedy by suing Virginia officials for non-compliance with the Vienna Convention, because the US Constitution prohibits suits by foreign governments against US states without their consent.

Amnesty International strongly believes that the Supreme Court's decision flies in the face of well-founded principles of international law and the dictates of common sense.

International commitments should be fulfilled in good faith and the authorities of a country cannot make themselves exempt from them by arguing that there are obstacles within their national law. The existence of national constitutional, legislative or regulatory norms cannot be invoked to avoid or modify the fulfilment of international obligations. These are the general principles of the rights of peoples in jurisprudence, as is the principle that internal jurisdictional decisions cannot be used as an obstacle for the fulfilment of international obligations. These principles are affirmed in article 27 of the Vienna Convention on the Law of Treaties, signed by the USA in 1970.

By citing domestic legal obstacles to absolve the United States of its binding treaty obligations, the Supreme Court decision is itself in breach of international law. Article 27 of the Vienna Convention on the Law of International Treaties clearly states that a nation "may not invoke the provisions of its internal law as justification for its failure to perform a treaty".

Breard failed to raise a timely objection to the denial of his consular rights for one reason and one alone: because Virginia officials had never informed him of those rights to begin with--as required by Article 36. The Supreme Court's decision penalizes and victimizes foreign citizens ignorant of their consular rights. The brazen failure of state officials to meet their binding obligations under the Vienna Convention was an inconvenient truth that the Court chose simply to ignore.

Following the execution, Paraguayan officials expressed their resolve to pursue a binding judgement from the International Court of Justice against the United States, as a matter of principle. The ICJ has requested written submissions from Paraguay for 9 June and has instructed the USA to outline the steps it took to prevent the execution no later than 9 September.

Paraguayan officials could barely contain their outrage over the United States' failure to comply with the ICJ order. Deputy Foreign Minister Leila Rachid reportedly stated that "the United States has been the champion of democracy...let them be the first one to demonstrate to us the principles of democracy; let them also respect human rights". She reportedly added that "there is not an international summit at which they [the US government] do not preach the preservation of human rights".

Speaking to reporters on her way to attend the Summit of the Americas, Secretary of State Albright expressed her hope that the execution would not endanger the consular rights of Americans abroad, but that the United States "did the right thing". She went on to state:

"We have made very clear that it is essential any foreign national who is arrested for any reason...is told immediately that he or she is entitled to be in touch with their consulate. It is something that we will insist on and do insist on when one of our citizens is in trouble abroad."

During the Summit of the Americas, participants endorsed a statement calling for "full respect and compliance" with Article 36 of the Vienna Convention. Amnesty International welcomes this timely response from the Organization of American States. But as Amnesty International has previously stated, without fair and effective remedies for past violations of Article 36 in capital cases, any assurances of future domestic compliance from the US authorities can only be seen as hollow promises.

Amnesty International condemns the execution of Ángel Francisco Breard in the strongest possible terms and is calling on all governments to express their dismay and disapproval to the United States authorities for their shameful undermining of the international rule of law.

The implications of the Breard execution go far beyond the undermining of US credibility in the international community or the potential danger to US citizens arrested abroad. Even more significantly, the United States has eroded the foundations of international justice and accountability, on which all protection of universal human rights ultimately rests.

Amnesty International is further calling on all governments not to follow the example of the United States, but rather to reaffirm their support for universal compliance with international human rights standards.

On 22 April 1998, the state of Arizona executed Honduran national Jose Villafuerte, despite objections from the Honduran government. Like so many foreign citizens condemned in the United States to the cruel, degrading and inhuman punishment of execution, Villafuerte was never informed after arrest of his fundamental right to obtain the assistance of his consulate. Other foreign nationals also face imminent execution in the United States.

Whether or not the USA will fulfil its pledge to uphold consular law in the aftermath of the execution of Ángel Francisco Breard remains to be seen. But in the eyes of many members of the international community of nations, any further attempt by the US government to boast about its deep commitment to human rights protection will undoubtedly be seen as little more than arrogant hypocrisy.