

The Washington Post

April 14, 1998, Sunday, page A15

Anne-Marie Slaughter

On a Foreign Death Row

If you are planning to travel abroad this summer, you'd better stay out of trouble. The Vienna Convention on Consular Relations, signed by more than 130 nations including the United States, provides that whenever a national of a signatory country is arrested by another signatory, the police must immediately notify the consulate. The meaning is clear: A citizen is entitled to the protection and advice of his or her government when caught in a foreign legal system and a foreign language. You get a translator, local counsel and diplomatic pressure if needed.

The state of Virginia denied these rights to a Paraguayan citizen. Angel Breard was arrested, indicted, convicted and sentenced to death for the brutal murder of a Virginia woman, all without notification of the Paraguayan consulate. The Paraguayan government found out from family members three years later that he was in a U.S. prison awaiting execution.

Breard is scheduled to be executed tonight at 9 o'clock. No one is proclaiming his innocence, but his lawyers and his government point out, quite reasonably, that he did not understand the U.S. legal system. He certainly did not understand the implications of a proffered plea bargain -- which would have saved his life..

Virginia admits that it did not fulfill its obligations under the Vienna Convention. It plans to institute procedures to ensure such notification in future, but failed again to notify the consulate in the case of a Mexican woman tried for murder this past March. Breard and the Paraguayan government, meanwhile, have sought relief in state and federal court, to no avail. Several petitions are currently pending in the Supreme Court.

To break this logjam, Paraguay turned to another court. On April 3 it sued the United States in the International Court of Justice in the Hague and immediately asked for the international legal equivalent of a temporary restraining order. Both governments presented their cases in a hearing that lasted almost four hours, including sharp questioning by ICJ President Stephen Schwebel, a distinguished American international lawyer. The ICJ promptly issued a unanimous decision -- by 15 judges -- asking the United States to stay the execution while the litigation was pending.

What next? You might expect the State Department to be urging both the governor of Virginia and the Supreme Court to stay the execution until the ICJ can rule more fully. It is the State Department's job, after all, to protect American citizens around the world. Many Americans are particularly vulnerable to foreign arrest, sometimes for crimes they commit and sometimes for the crime of being American. To hold other countries to honor their obligation to notify the

American consulate under such circumstances, the United States must demonstrate that it is prepared to offer the same treatment to their nationals.

Instead, the State Department simply sent the ICJ judgment to the governor of Virginia with a request that he "consider" it. Anything stronger may not be forthcoming; Secretary of State Madeleine Albright and her advisers are almost certainly looking ahead to the battle over establishment of a permanent international criminal court. They will not want to give Sen. Jesse Helms, already on the warpath over the prospect of ceding one iota of U.S. sovereignty to an international tribunal, an easy victory in the first skirmish. In this calculus, the prospect of bringing perpetrators of genocide and crimes against humanity to justice could well outweigh justice for a Paraguayan murderer.

It is left to the Supreme Court to take a stand. The court can directly comply with the ICJ's request by issuing a stay of execution. It should grant the stay both as an exercise of its own power of review and as a response to a request from a fellow court.

Honoring this request would be entirely consistent with the court's growing appreciation of its power and responsibility as a member of a global network of judges. Justice Antonin Scalia has written of the "comity of courts," the respect and deference judges owe one another in recognition of their common transnational enterprise. Justice Stephen Breyer, when sitting on the First Circuit, emphasized the obligation of U.S. courts to help harmonize the world's legal systems. Justice Sandra Day O'Connor has campaigned vigorously for U.S. courts to pay greater attention to foreign law.

The ICJ is entitled to at least the same courtesy and respect as foreign courts. For independent judiciaries around the world to acknowledge one another and cooperate in upholding the rule of law wherever and however they find it is the best hope we have of safeguarding individual rights worldwide.

The writer is a law professor at Harvard.

Her uncle, Alexander H. Slaughter, is one of the lawyers for Angel Breard, but she has not been involved in his representation.