

DECLARATION OF JUDGE KOROMA

My decision to vote in favour of the Order granting the interim measures of protection in this matter was reached only after careful consideration and in the light of the urgency and exceptional circumstances of this case. Torn as I was between the need to observe the requirements for granting provisional measures of protection under Article 41 of the Statute of the Court, thereby ensuring that whatever decision the Court might reach should not be devoid of object, and the need for the Court to comply with its jurisdiction to settle disputes between States which, in my view, includes respect for the sovereignty of a State in relation to its criminal justice system.

It was, therefore, both propitious and appropriate for the Court to bear in mind its mission which is to decide disputes between States, and not to act as a universal supreme court of criminal appeal. On the other hand, it is equally true that the Court's function is to decide disputes between States which are submitted to it in accordance with international law, applying international conventions, etc. The Order, in my judgment, complies with these requirements.

Paraguay's Application, filed on 3 April 1998 instituting proceedings against the United States for purported violations of the 1963 Vienna Convention on Consular Relations, *inter alia*, requested the Court to grant provisional measures of protection under Article 41 of the Statute so as to protect its rights and the right of one of its nationals who had been convicted of a capital offence committed in the United States and sentenced to death.

The purpose of a request for provisional measures is to preserve as well as to safeguard the rights of the parties that are in dispute, especially when such rights or subject-matter of the dispute could be irretrievably or irreparably destroyed thereby rendering the Court's decision ineffective or without object. It is in the light of such circumstances that the Court has found it necessary to indicate interim measures of protection with the aim of preserving the respective rights of either Party to the dispute. But prior to this, the applicant State has the burden of indicating that *prima facie* the Court has jurisdiction.

When the facts presented were considered by the Court in the light of the Vienna Convention on Consular Relations, in particular in relation to its Articles 5 and 36, and Article I of the Optional Protocol concerning the Compulsory Settlement of Disputes of 24 April 1963, the Court reached the correct conclusion that a dispute existed and that its jurisdiction had been established *prima facie*.

In my view, in granting this Order, the Court met the requirements set out in Article 41 of the Statute, whilst at the same time the Order preserves the respective rights of either Party — Paraguay and the United States. The Order called for the suspension of the sentence of execution of Mr. Breard on 14 April 1998, thereby preserving his right to life pending the final decision of the Court on this matter, and also recognized the United States' criminal sovereignty in matters such as charging, trying, convicting and sentencing suspects as appropriate, within the United States or its jurisdiction. I concur with this finding.

In reaching this decision, the Court has also acted with the necessary judicial prudence in considering a request for interim measures of protection, in that it should not deal with issues which are not immediately relevant for the protection of the respective rights of either party or which are for the merits. It also thus, once again, confirmed its consistent jurisprudence that a provisional measure of protection should only be granted where it is indispensable and necessary for the preservation of the respective rights of either party and only with circumspection. It was in the light of the foregoing consideration that I joined the Court in granting the request under Article 41 of the Statute.

(Signed) Abdul G. KOROMA.