

A NEW REMEDY STRESSES THE NEED FOR INTERNATIONAL EDUCATION: THE IMPACT OF THE *LAGRAND* CASE ON A DOMESTIC COURT'S VIOLATION OF A FOREIGN NATIONAL'S CONSULAR RELATIONS RIGHTS UNDER THE VIENNA CONVENTION

I. INTRODUCTION

The Vienna Convention was established to preserve national sovereignty over social and political matters. Recently, the International Court of Justice (ICJ) held that a violation of Article 36 of the Vienna Convention on Consular Relations¹ (VCCR) has the potential of reversing a foreign national's conviction and sentence.² In the *LaGrand*³ case, the United States executed two German nationals in violation of both the Vienna Convention and provisional measures issued by Germany.⁴ The *LaGrand* case provides an overview of the problems with ICJ enforcement of the VCCR while shedding some light on the consequences that can arise when a nation does not comply with its treaty obligations.

The tragic events of September 11, 2001, and the subsequent detention of numerous foreign nationals, present a need to examine the *LaGrand* case as it relates to enforcement of ICJ decisions and the application of international law.

This Recent Development presents a first look at how the ICJ provides a remedy when a domestic court violates a foreign national's consular relations rights under the Vienna Convention. Additionally, I discuss the impact of the *LaGrand* decision on future VCCR violations by stressing the importance for law enforcement agencies and the judicial system to understand these treaty obligations.⁵

1. See Vienna Convention on Consular Relations, *infra* note 24.

2. See Frederic L. Kirgis, *World Court Rules Against the United States in LaGrand Case Arising from a Violation of the Vienna Convention on Consular Relations*, ASIL INSIGHTS ¶ 11 (July 2001), available at <http://www.asil.org/insights/insigh75.html>. This American Society of International Law (ASIL) article discusses the factual background of the *LaGrand* case, the issues resolved by the Court, and the decision's future application.

3. *LaGrand Case* (F.R.G. v. U.S.), 2001 I.C.J. (June 27), available at http://www.icj-cij.org/iccjwww/idocket/igus/igusjudgment/ijus_ijudgment_20010625.html.

4. *Id.* This final judgment from the ICJ discusses the facts of the *LaGrand* case, the admissibility of the German government's four submissions, and the judgment that followed. *Id.*

5. Rebecca E. Woodman, *International Miranda? Article 36 of the Vienna Convention on Consular Relations*, 70 J. KAN. BAR ASSOC. 41, 42 (2001). A nation's failure to comply with this

II. FACTUAL BACKGROUND

On February 17, 1984, an Arizona court convicted Walter LaGrand and his half-brother, Karl Hinze LaGrand, of murder and sentenced them to death.⁶ These convictions arose from the defendants' failed attempt to rob the Valley National Bank in Marana, Arizona, on January 7, 1982.⁷

The defendants presented several arguments to the Supreme Court of Arizona regarding the admission of Karl's confessions into evidence and the imposition of the death penalty for Walter's felony murder conviction.⁸ The issue of suppressing Karl's confession focused on the fact that he clearly invoked his Miranda rights to remain silent and speak to an attorney.⁹ Additionally, the court, while taking into account all appropriate mitigating factors, reviewed whether the aggravating circumstances were proven beyond a reasonable doubt.¹⁰ The Supreme Court of Arizona affirmed the trial court's judgment that Karl's confession, which exculpated his brother, Walter, was properly excluded on the basis of

treaty can threaten foreign relations, weaken its status and authority in the international community, and place its own citizens at serious risk. *Id.* See also Linda Jane Springrose, *Strangers in a Strange Land: The Rights of Non-Citizens Under Article 36 of the Vienna Convention on Consular Relations*, 14 GEO. IMMIGR. L.J. 185, 191 (1999) ("Remember, always, that these are mutual obligations. In general, you should treat the foreign national as you would want an American citizen to be treated in a similar situation in a foreign country." (quoting CONSULAR NOTIFICATION AND ACCESS, *infra* note 34, at 21)).

6. State v. LaGrand, 734 P.2d 563, 565 (Ariz. 1987). The defendants were convicted of first-degree murder, attempted murder in the first degree, attempted armed robbery, and two counts of kidnapping. *Id.* Subsequently, the defendants appealed to the Supreme Court of Arizona. *Id.*

7. *Id.* at 565. After the attempted bank robbery, the bank manager, Ken Hartsock, was found stabbed to death and the LaGrand brothers were identified as the prime suspects. *Id.* at 566.

8. *Id.* at 567.

9. *Id.* Although Karl confessed to the crimes, the trial court ruled that the confessions were taken in violation of his Miranda rights and granted the motion to repress. *Id.* at 568. However, both parties reversed their positions and the defendants then tried to have the confessions ruled admissible in order to prove that Walter should be charged with a lesser crime. *Id.* at 568. The Supreme Court of Arizona examined whether these hearsay confessions should be admitted to exculpate a co-defendant by looking at Arizona Rules of Evidence, which provide in Rule 804(b)(3) that, "a statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject him to civil or criminal liability . . . that a reasonable man in his position would not have made the statement unless he believed it to be true." *Id.* at 569. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement. *Id.*

10. *Id.* at 576-77. The trial court found the presence of three aggravating circumstances: the prior conviction of a violent felony, the expectation of receiving something of pecuniary value, and the "commission of the crime 'in an especially heinous, cruel or depraved manner.'" *Id.* at 576. In addition, the court considered three mitigating factors: the defendants "prior home life," their ages of eighteen and nineteen when the murder took place, and their remorse towards the death of the bank manager. *Id.* at 577. The trial court found that the three aggravating circumstances outweighed the mitigating factors and therefore imposed the death penalty. *Id.* at 576-77.

unreliability, and that the imposition of death penalty was proper.¹¹

At trial, the defendants' counsel did not raise the issue of noncompliance with the Vienna Convention, however, during the habeas corpus proceeding counsel raised these claims, only to be subsequently rejected on the basis of the procedural default rule.¹² The Ninth Circuit affirmed, holding that the LaGrands failed to show an objective external factor that prevented them from raising the issue of the VCCR violation at the state court level.¹³ After the Ninth Circuit ruling, Arizona executed Karl LaGrand on February 24, 1999.¹⁴

III. RULING OF THE INTERNATIONAL COURT OF JUSTICE

Although Walter and Karl LaGrand lived in the United States for most of their lives, they remained German nationals at all times and never acquired American citizenship.¹⁵ On March 2, 1999, the Federal Republic of Germany instituted an ICJ action against the United States for violations of the VCCR.¹⁶ The ICJ is the judicial branch of the United Nations and has the power to interpret treaties and resolve disputes.

11. *Id.* at 563. Chief Justice Gordon wrote the opinion with Justices Cameron and Holohan concurring and Justice Feldman filing an opinion concurring in part. *Id.* at 579-80.

12. *See* LaGrand Case (F.R.G. v. U.S.), 2001 I.C.J. ¶ 23 (June 27). According to American law, this rule:

is a federal rule that, before a state criminal defendant can obtain relief in federal court, the claim must be presented to a state court. If a state defendant attempts to raise a new issue in a federal habeas corpus proceeding, the defendant can only do so by showing cause and prejudice. Cause is an external impediment that prevents a defendant from raising a claim, and prejudice must be obvious on its face. One important purpose of this rule is to ensure that the state courts have an opportunity to address issues going to the validity of state convictions before the federal courts intervene.

Id.

13. *LaGrand v. Stewart*, 133 F.3d 1253 (9th Cir. 1998).

14. Roger Cohen, *U.S. Execution of German Stirrs Anger*, N.Y. TIMES, Mar. 5, 1999, at A14.

15. *LaGrand Case* (F.R.G. v. U.S.), 38 I.L.M. 308 (1999), Application Instituting Proceedings of Mar. 2, 1999, at <http://www.icj-cij.org>. The State of Arizona originally stated that they were unaware that Karl and Walter LaGrand were German nationals, but this proved to be false when the State Attorney, during the Arizona Mercy Committee proceedings on February 23, 1999, revealed that authorities had been aware of the LaGrands' German nationality since 1982. *LaGrand Case*, 38 I.L.M. at 309.

16. *LaGrand Case*, 38 I.L.M. at 308. Germany bases its jurisdiction on Article I of the Optional Protocol which reads:

Disputes arising out of the interpretation or application of the Convention shall lie within the compulsory jurisdiction of the ICJ and may accordingly be brought before the Court by an application made by any party to the dispute being a Party to the present Protocol.

Id. at 311. The United States did not deny that this violation of Article 36 would confer jurisdiction on the ICJ, but argued that the individual rights of the LaGrand brothers did not impose jurisdiction because diplomatic protection is a concept of customary international law and does not concern the interpretation or application of the Vienna Convention. *See LaGrand Case*, 2001 I.C.J. ¶ 40 (June 27).

In addition to the request for judicial proceedings on the violations by the United States, Germany also requested the immediate issuance of provisional measures.¹⁷ The ICJ unanimously adopted this Order and requested that the United States government transmit these demands to the Governor of Arizona and stay the execution.¹⁸ Germany, in requesting provisional measures, intended to force the United States to refrain from any action that might interfere with the subject matter of the dispute while judicial proceedings remained pending in the ICJ.¹⁹ The ICJ found that the execution of Walter LaGrand would cause irreparable harm to the rights claimed by Germany and that these provisional measures were justified due to the urgency of the scheduled execution.²⁰

The German government and the ICJ were not alone in arguing for a stay of execution. When the U.S. Supreme Court addressed the case, Justice Breyer's dissenting opinion argued that Germany had valid reasons for the late filing of its action.²¹ Additionally, the Arizona Board of Executive Clemency voted to recommend a reprieve for LaGrand.²² Nevertheless, Arizona executed Walter LaGrand on March 3, 1999.²³

After the executions, the German government continued its legal battle and its request for judicial proceedings was granted. During the ICJ hearings on November 13, 2000, Germany argued that in convicting and

17. *LaGrand Case*, 38 I.L.M. at 310. Karl LaGrand had already been executed and Walter LaGrand was scheduled for execution on March 3, 1999. *Id.*

18. Press Communiqué, ICJ, Case Concerning the Vienna Convention on Consular Relations (Germany v. United States of America) 1999/99 (Mar. 3, 1999), available at http://www.icj-cij.org/icjwww/ipresscom/ipress1999/ipresscom9909_igus_19990303.htm. The representative of the United States objected to the provisional measures because they had been made after much delay and were issued without hearing testimony from both parties. This was the first time that the Court issued provisional measures *proprio motu* ("without having first duly been heard"). *Id.*

19. *LaGrand Case*, 38 I.L.M. at 313. Due to the planned execution of Walter LaGrand, the ICJ issued provisional measures in accordance with Article 41 of the Vienna Convention stating that:

(a) The United States of America should take all measures at its disposal to ensure that Walter LaGrand is not executed pending the final decision in these proceedings, and should inform the Court of all the measures which it has taken in implementation of this Order; (b) The Government of the United States of America should transmit this Order to the Governor of the State of Arizona.

Id. at 313.

20. *Id.* at 310. Germany's rights were conferred onto them by signing the Vienna Convention, which enumerates in Article 41 the preservation of the respective rights of the parties pending the Court's decision. *Id.*

21. *Fed. Republic of Germany v. United States*, 526 U.S. 111, 114 (1999) (Breyer, J., dissenting).

22. *LaGrand Case*, 38 I.L.M. at 311. See also Jerry Kammer & Mary Beth Warner, *Germans Knock U.S. Justice: Media, Citizens Decry Death as Form of Punishment, Criticize Hull*, ARIZ. REPUBLIC, Mar. 4, 1999. The Governor of Arizona rejected this recommendation. *Id.*

23. *LaGrand Case* (F.R.G. v. U.S.), 2001 I.C.J. ¶ 34 (June 27).

executing the LaGrand brothers, the United States violated its international legal obligations to Germany as well as the diplomatic right of Germany to protect its nationals under Articles 5 and 36 of the Vienna Convention.²⁴ Secondly, Germany claimed that the United States, in barring the defendants from raising their VCCR claims in their habeas corpus petition, violated its international legal obligations to Germany under Article 36, paragraph 2.²⁵ Last, Germany claimed that the United States violated its international legal obligation to comply with the Order on Provisional Measures issued by the ICJ when it failed to stop Walter LaGrand's execution.²⁶

The ICJ held that the United States breached its obligations to both the LaGrand brothers and Germany.²⁷ The ICJ ruled that the United States violated the LaGrand brothers' rights when it failed to inform them,

24. *Id.* ¶ 10. Article 5 of the Vienna Convention defines consular functions. Vienna Convention on Consular Relations and Optional Protocol on Disputes, December 24, 1969, 21 U.S.T. 77, 82 [hereinafter Vienna Convention on Consular Relations]. Paragraph 1 of Article 36 of the Vienna Convention provides:

(a) consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State;

(b) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall also be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this subparagraph;

(c) consular officers shall have the right to visit a national of the sending State who is in prison, custody, or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgment. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action.

Id. at 10.

25. LaGrand Case (F.R.G. v. U.S.), 2001 I.C.J. ¶ 11 (June 27). This provision reads: "The rights referred to in paragraph 1 of this Article shall be exercised in conformity with the laws and regulations of the receiving State, subject to the proviso, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under this Article are intended." Vienna Convention on Consular Relations, *supra* note 24.

26. *See* LaGrand Case (F.R.G. v. U.S.), 2001 I.C.J. ¶ 11 (June 27). As a result of these alleged violations, Germany has requested remedies in that Germany and the LaGrand family receive reparations, that the criminal liability imposed on the LaGrand brothers be declared void, and that the United States provides an assurance that it will not repeat its unlawful acts and provides the ICJ with effective review and consideration of all convictions where a violation of the VCCR has occurred. *Id.* ¶ 12.

27. *See id.* ¶ 128. The Court during the LaGrand ICJ proceedings was comprised as follows: President Guillaume; Vice-President Shi; Judges Oda, Bedjaoui, Herczegh, Fleischhauer, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buerghental; Registrar Couvreur. *Id.*

without delay, of their rights under Article 36, paragraph 1(b) of the Vienna Convention on Consular Relations following their arrest.²⁸ The ICJ further held that the United States deprived Germany of its ability to render timely assistance to the individuals concerned, as provided by the Convention.²⁹ Additionally, by failing to take all measures at its disposal to ensure that Arizona did not execute Walter LaGrand pending the final decision of the ICJ, the United States breached its obligation under the Order that issued provisional measures on March 3, 1999.³⁰ Lastly, the ICJ ruled that, in the future, the United States must allow review and reconsideration of the conviction and sentence for future German nationals whose rights are protected under the Vienna Convention.³¹

IV. ANALYSIS

In analyzing whether a treaty violation has taken place, the ICJ must first examine whether the United States has frustrated the purpose and intent of the VCCR. The outcome of this decision will not only determine the extent and consequences of the U.S. violation in the *LaGrand* case, but also present a framework for applying the VCCR on future violators.³²

A. Interpretation and Application of the VCCR

After World War II, the international community wanted to codify consular law.³³ On April 24, 1963, more than ninety nations joined together to create a treaty called the Vienna Convention on Consular

28. *Id.*

29. *Id.*

30. *Id.*

31. Press Communiqué, ICJ, *LaGrand Case (F.R.G. v. U.S.)*, 2001/16 (June 24, 2001), available at http://www.icj-cij.org/icjwww/ipresscom/ipress2001/ipresscom2001-16_20010627.htm. The Court reasoned that the U.S. procedural default rule violated Article 36, not on its face, but rather by not allowing a detained individual to challenge a conviction and sentence by invoking the failure of the U.S. authorities to comply with their obligations under Article 36. *Id.* The Court ruled that the legal effects of the provisional measures under Article 41 create a legal obligation upon the United States. *Id.* Lastly, the Court set forth new precedent with its remedial measures in having the United States agree to have future violations be reviewed and reconsidered by the ICJ. *Id.*

32. Kirgis, *supra* note 4, ¶ 11.

33. Kelly Trainer, *The Vienna Convention on Consular Relations in the United States Courts*, 13 *TRANSNAT'L LAW* 227, 231 (2000). The formation of this treaty was in response to an effort by the United Nations to move towards the codification of international law as enumerated in Article 13(1) of the United Nations charter, which reads: "The General Assembly shall initiate studies and make recommendations for the purpose of . . . encouraging the progressive development in international law and its codification." See LUKE T. LEE, *CONSULAR LAW AND PRACTICE* 23 (2d ed. 1991) (quoting U.N. Charter art. 13, para. 1).

Relations.³⁴ The purpose of this treaty was to provide a uniform body of laws that would govern consuls.³⁵

Under current international law, foreign nationals have the right to contact their consulate and communicate with consular officers of their own nationality.³⁶ Consulates provide invaluable services, such as explaining legal systems and cultural differences, comforting families, assessing one's rights, and obtaining proper legal defense.³⁷ The VCCR states that agents must, without delay, notify nationals of their right to contact the consul.³⁸

Currently, the Vienna Convention is binding on 163 nations, including Germany and the United States.³⁹ In order to establish uniformity and promote fairness, a treaty must be evenly applied to all members. Therefore, one nation's continuous noncompliance without retribution can make a treaty obsolete. If the United States continues to violate the VCCR then international reciprocity will ensue, causing the treaty's mandate to lose effect.⁴⁰

34. Trainer, *supra* note 33, at 232. Presently, over 160 countries have ratified the VCCR, and there are also numerous bilateral agreements dealing with consular relations. *Id.* at 232-33. A State Department Handbook issued in January 1998 summarizes the requirements for consular notification and bases its legal authority on the Vienna Convention, bilateral agreements, and customary international law. See U.S. Dep't of State, Pub. No. 10518, CONSULAR NOTIFICATION AND ACCESS: INSTRUCTIONS FOR FEDERAL, STATE, AND LOCAL LAW ENFORCEMENT AND OTHER OFFICIALS REGARDING FOREIGN NATIONALS IN THE UNITED STATES AND THE RIGHT OF CONSULAR OFFICIALS TO ASSIST THEM 42(1998) [hereinafter CONSULAR NOTIFICATION AND ACCESS]. This handbook served as an attempt to inform local authorities of the importance of the VCCR. Trainer, *supra* note 33, at 251. It set out the procedures for when a foreign national is detained and that the right to consular notification is mandatory. *Id.*

35. The laws set forth in the treaty deal with various aspects of consular duties, including: the general details of setting up a consul, the duties and privileges of the consul staff, and the rights of the foreign nationals, and the right to contact one's consulate when arrested or detained by local authorities. Vienna Convention on Consular Relations, *supra* note 24. See also Trainer, *supra* note 33, at 232.

36. E.g., Cara S. O'Driscoll, *The Execution of Foreign Nationals in Arizona: Violations of the Vienna Convention on Consular Relations*, 32 ARIZ. ST. L.J. 323, 326 (2000). See also Trainer, *supra* note 33, at 234 (discussing how a consuls' duties involve assisting their citizens and can prove even more necessary when foreign nationals face the death penalty).

37. John Cary Sims & Linda E. Carter, *Representing Foreign Nationals: Emerging Importance of the Vienna Convention on Consular Relations as a Defense Tool*, CHAMPION, Sept.-Oct. 1998 at 28. A foreign government's communication with their detained citizen is "essential to guard against the possible mistreatment of prisoners, and to facilitate the presentation of an effective legal defense by those possibly facing serious charges in a language they do not understand under a legal system with which they are unfamiliar." *Id.* See also Springrose, *supra* note 5, at 195.

38. *United States v. Alvarado-Torres*, 45 F. Supp. 2d 986 (S.D. Cal. 1999). The State Department has defined "without delay" as "notification that should occur as soon as reasonably possible under the circumstances." *Id.* at 991 (quoting CONSULAR NOTIFICATION AND ACCESS, *supra* note 34, at 20). The standard for this requirement is any time before a foreign national is booked for detention. *Id.*

39. Trainer, *supra* note 33, at 232.

40. *Id.* at 234-35. This reciprocity "will lead to U.S. citizens finding themselves in a strange land

B. *Issues in the ICJ Decision*

In its *LaGrand* decision, the ICJ examined three issues in determining whether the United States violated its treaty obligations under the Vienna Convention. First, the ICJ looked at a foreign national's rights in alleging a VCCR violation. In so doing, the ICJ examined the language and intent of the treaty, along with how both domestic and international courts have viewed previous violations. Next, the ICJ determined the weight of international law on U.S. courts. This analysis specifically revolved around the U.S. use of its federal doctrines to preempt VCCR application. Lastly, the ICJ focused on whether the issuance of provisional measures in the *LaGrand* case was binding on the United States. The ICJ's decision in the *LaGrand* case and its following analysis provide careful examinations on the effects of international law on domestic courts and the ICJ's ability to enforce a nation's treaty obligations.

1. *Foreign National's Rights*

One of the arguments the United States presented in the *LaGrand* case was that the defendants did not have standing to allege a violation of the Vienna Convention.⁴¹ In determining the validity of this argument, the ICJ looked at the language and intent of the Vienna Convention along with legal precedent.

The plain language of the Vienna Convention confirms the drafter's intent, which confers a private right upon individuals. The language of Article 36, paragraph 1(b) of the Vienna Convention provides:

[I]f he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State . . . [that] a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner.⁴²

being charged with a crime they do not understand without any access to their consulate." *Id.* The result of the United States' continual violation of the VCCR will be poor trade relations and less tourism, which will cause a decrease in economic growth for the entire international community. *Id.*

41. See *LaGrand Case* (F.R.G. v. U.S.), 2001 I.C.J. ¶ 89 (June 27). I will take a look at recent cases, which dealt with the issue of an individual's private rights and whether they had standing when a violation of the Vienna Convention took place.

42. Trainer, *supra* note 33, at 257 (quoting from the Vienna Convention on Consular Relations, *supra* note 24, art. 36). There were many statements made regarding the debated issue of what language should be included that would implicate individual's rights, and eventually the drafters decided upon the language adopted in paragraph 1(b): to "safeguard a foreign national's right to be informed." See Mark J. Kadish, *Article 36 of the Vienna Convention on Consular Relations: A Search*

Additionally, both the ICJ and U.S. courts have supported the provision that foreign nationals have standing to assert their individual rights against a violation of the Vienna Convention. In one of these cases, the ICJ granted a Paraguayan national standing when the United States violated its international treaty obligations under the VCCR.⁴³ In *Breard*, the Paraguayan government issued provisional measures in order to stay the execution as proceedings in the ICJ were pending, but the Governor of Virginia and the U.S. Supreme Court went forward with the execution.⁴⁴ Similarly, in *State v. Reyes*,⁴⁵ a Guatemalan national made custodial statements to law enforcement officials without being informed of his rights under the VCCR.⁴⁶ In *Reyes*, the Delaware Superior Court held that the foreign national had standing to bring a claim alleging a violation of the Vienna Convention which, in effect, required suppression of the defendant's testimony.⁴⁷

On the other hand, some courts have departed from this plain language test and imposed a burden upon a foreign national, in order to obtain relief via the VCCR, must show that the lack of consular notification prejudiced their case.⁴⁸ This burden of prejudice test was used in *United States v. Rangel-Gonzalez*,⁴⁹ where the court held that there was prejudice because the submitted affidavits fulfilled the three evidentiary prongs in the

for the Right to Consul, 18 MICH. J. INT'L L. 565, 599 (1997).

43. *Breard Case* (Paraguay v. U.S.), 37 I.L.M. 810 (International Court of Justice: Case Concerning the Vienna Convention on Consular Relations of April 9, 1998). The defendant in this case was a Paraguayan national convicted of murder and sentenced to death. The Paraguay Government only had limited communication with the defendant when they learned of his detention three years after the conviction. The defendant's habeas corpus petition brought forth these claims of violations under Article 36 of the Vienna Convention perpetrated by the United States, but were subsequently denied based on the procedural default rule. *Id.*

44. *Id.*

45. 740 A.2d 7 (Del. Super. Ct. 1999).

46. *Id.* The defendant was the prime suspect in a murder. After the police detained him, he admitted to the shooting but claimed self-defense. *Id.* at 7-8. Facing a charge of first-degree murder, defendant moved "to suppress the alleged statements on the grounds that he was denied his consular notification rights in violation of international law." *Id.* at 8.

47. *Id.* at 14. The court stated that the defendant was not required to show that he would have contacted the Guatemalan consul if he was informed of his rights under the VCCR, or that the consul would have affected the defendant's decision to make a confession to police. *Id.* at 13.

48. Springrose, *supra* note 5, at 191. The test to prove prejudice is whether the defendant can produce evidence that (1) he did not know of his right; (2) he would have availed himself of the right had he known of it; and (3) there was a likelihood that the contact [with the consul] would have resulted in assistance to him." *Id.* This test to prove prejudice came from the court in *United States v. Esparza-Ponce*, 7 F. Supp. 2d 1084, 1096-97 (S.D. Cal. 1998) (holding that the violation of the defendant's consular relations rights did not suppress his statements because the defendant did not have standing to challenge a violation of the convention as he was unable to show prejudice).

49. No. 99-10513, 2001 WL 820910 (9th Cir. July 9, 2001).

Esparza-Ponce test.⁵⁰ Conversely, the court in *United States v. Rodrigues*,⁵¹ held that the defendant did not show that he was prejudiced by the authorities' failure to notify him of his consular relations rights.⁵²

In response to the U.S. argument that the LaGrands lacked standing, the German government claimed that not only did the U.S. violation of the VCCR infringe upon its rights as a member of the Treaty, but also the individual rights of the LaGrand brothers.⁵³ In addition to the clear language of the VCCR, Germany introduced evidence that the "United Nations Declaration on the human rights of individuals who are not nationals of the country in which they live," confirms this view that the right of access to the consulate constitutes a foreign national's individual rights.⁵⁴

The United States argued that the recognition of rights under Article 36 does not determine the nature of those rights or provide remedies for breaches of that article.⁵⁵ In weighing these arguments, the ICJ looked specifically at the language of the provisions in Article 36 and concluded that both the national's state of citizenship and the foreign national himself have standing to bring a violation of the VCCR.⁵⁶ Therefore, the Court had jurisdiction to hear the case of whether the United States violated the LaGrand brothers' individual rights under the VCCR.⁵⁷

50. *Id.* The defendant brought forth three affidavits as evidence of prejudice: his own stated that he did not know that he could contact his consul and that if he had known he could, he would have contacted them; an affidavit from the consul explaining the steps they would have taken to assist the defendant throughout his case; and an affidavit from an experienced immigration attorney stating that the defendant would have obtained a better result in the case with consulate assistance. *Id.*

51. 68 F. Supp. 2d 170, 183 (E.D.N.Y. 1999).

52. *Id.* This court reasoned that foreign nationals must demonstrate that the VCCR violation prejudiced their case because these rights are derived from a treaty that does not implicate fundamental rights. *Id.* at 183. Furthermore, a VCCR violation is to be treated as a non-constitutional right and does not rise to the level of a Miranda violation. *Id.* The only evidence of prejudice in this case was a letter stating that the defendant had made incriminating statements, which provided evidence against him at trial. *Id.* The court ruled that this evidence did not rise to the level of obtaining relief for a VCCR violation. *Id.* at 183.

53. See *LaGrand Case (F.R.G. v. U.S.)* 2001 I.C.J. (June 27). Like the Paraguayan Government in *Breard*, Germany contends that Article 36, paragraph 1(b) discusses "rights" of "the person concerned," thus conferring an individual right upon a detained foreign national. *Id.* ¶ 75.

54. *Id.* This resolution was adopted by the General Assembly as 40/144 on December 13, 1985, in order to characterize the human rights of aliens. *Id.*

55. *Id.* ¶ 76. The United States continually argues that, although the rights under the VCCR may benefit individuals, they constitute neither a fundamental nor a human right giving rise to diplomatic protection. *Id.*

56. *Id.* ¶ 77. The ICJ reasons that the language of the provisions, which discuss "his rights" and "if he expressly opposes such action," clarifies the intent of the drafters to create individual rights through the enactment of Article 36, paragraph 1. *Id.*

57. *Id.* ¶ 78.

2. American Courts v. International Tribunals

In understanding the ICJ's determination of whether a VCCR violation occurred in *LaGrand*, it is important to realize that there is constant tension between international and domestic law.⁵⁸ Therefore, a nation's application of the Treaty is important because it determines whether its legal and political institutions will incorporate the Treaty's norms into domestic law.⁵⁹ In considering whether the U.S. application of the VCCR should preempt its procedural default rule, we must examine the validity of the treaty in relation to the national legal system.⁶⁰ This can be done by determining whether the treaty conforms with American jurisprudence.⁶¹ If a treaty is found to be self-executing, then its norms are directly applied.⁶² Most case law dictates that a directly applied treaty has the same status as federal law, with the most recent law prevailing.⁶³ However, this statute-like status can differ depending on the nation's policy for favoring or opposing the direct application of treaties.⁶⁴ The United States holds the view that international and domestic law are two separate entities, thus

58. I believe the tension arises from each separate nation allocating varying weight to the power of the provisions and rights granted within the treaty. These views may change depending on a nation's reliance on the treaty's protection, and therefore it is "hypocrisy" that continues to create this strain on treaty compliance.

59. John H. Jackson, *Status of Treaties in Domestic Legal Systems: A Policy Analysis*, 86 AM. J. INT'L L. 310, 315 (1992). This transformation is a government action that interprets the statutory language. *Id.* A statute can clarify the language by paraphrasing, and other legal instruments, including an administrative regulation or legal precedent, can serve as an act of transformation in incorporating the treaty into domestic law. *Id.* at 314-15.

60. *Id.* at 316. This article discusses the landscape of legal/constitutional issues regarding treaties in domestic law: (1) the power to negotiate; (2) the power to "sign"; (3) the power to accept the treaty as a binding international law obligation; (4) the validity of the treaty under national constitutional law; (5) the power to implement the treaty obligations; (6) direct applicability of the treaty in domestic law; (7) invocability in municipal law; (8) a hierarchy of norms in domestic law when treaty norms conflict with norms of that law; and (9) the power to administer the treaty. *Id.*

61. *Id.* at 317. Sometimes, legal institutions determine that only portions of a treaty are directly applicable while the rest of the treaty is not. *Id.*

62. *Id.* at 320. To determine self-execution, U.S. courts will look to the intent of the drafters. *Id.* When the treaty's language is precise requiring no further government action, the treaty is self-executing. *Id.*

63. *Id.* at 320. "Direct application of a treaty" means that courts will look to the treaty language as a source of law. *Id.* at 321.

64. *Id.* at 323. Individuals in favor of the direct application of treaties argue that international law forms a world legal system that has a higher status than domestic law. *Id.* In addition, it is argued that a policy of direct application assures treaty members that their international obligations will be carried out uniformly, and enhances the effectiveness of international norms and respect for international law, thus attributing to the benefit of world order. *Id.* at 322-23. Those who oppose this policy argue that international law is a separate legal system, and that an international norm should not be a part of a nation's domestic legal system. *Id.* at 323. Similarly, direct application of a treaty would transform an international body's interpretation of the law to be definitive in domestic law as well. *Id.* at 326-27.

only “requiring the implementation of international laws at the domestic level.”⁶⁵

In the *LaGrand* case, the United States continued its firm policy of allowing a later U.S. statute to prevail over the international agreement, which the ICJ interpreted as a violation of U.S. international obligations. The basis of Germany’s argument in *LaGrand* was that by applying rules of domestic law with the doctrine of procedural default, the United States did not give full effect to the rights conferred upon foreign nationals under Article 36 of the VCCR.

Although the federal habeas corpus statute grants jurisdiction to a prisoner who alleges that a conviction in state court violated the “Constitution or law or treaties of the United States,” procedural hurdles remain.⁶⁶ To overcome these hurdles, the petitioner must demonstrate a claim of “actual innocence” or that there was “cause and prejudice.”⁶⁷ In recent years, death penalty cases where the defendants alleged violations under the VCCR have been dismissed under the procedural default rule.⁶⁸

The *LaGrand* case reinforces the U.S. policy of opposing the direct application of treaties as exemplified through the enforcement of domestic law when international law, or as in this case, the VCCR, conflicts with domestic procedural rules.⁶⁹ Commentators believe that this conflict will not be eliminated and eventually international dispute resolution will cease

65. See O’Driscoll, *supra* note 36, at 325 (citing PETER MELANCUZUK, *AKEHURST’S MODERN INTRODUCTION TO INTERNATIONAL LAW* 65 (1997)). This dualist approach proscribes that “international treaties are part of a separate legal system from that of the domestic law.” See Jackson, *supra* note 59, at 314.

66. Jehanne E. Henry, *Overcoming Federalism in Internationalized Death Penalty Cases*, 35 *TEX. INT’L L.J.* 459, 472 (2000). The doctrine of procedural default states that if a defendant fails to raise a federal or constitutional claim in accordance with state rules, the claim is defaulted and a federal court cannot hear it. See *LeGrand Case* (F.R.G. v. U.S.), 2001 I.C.J. ¶ 23 (June 27). The *LaGrand* brothers’ claims were rejected in federal court under this premise. *Id.*

67. See Henry, *supra* note 66, at 473. To show cause, the petitioner “must make a novel claim or show that some objective factor impeded counsel’s efforts to comply with the state’s procedural rule.” *Id.* The Ninth Circuit held that a showing of ineffective assistance of counsel does not rise to the level of proving cause to overcome procedural default. *LaGrand v. Stewart*, 133 F.2d at 1262. Rather something external to the defense, which prevented the lawyer from raising the claim, must be proven. *Id.* To show prejudice, the petitioner must show that contact with the consul would have changed the plea or sentence. See Henry, *supra* note 66, at 474.

68. *Id.* at 466. These judicial barriers of applying treaty obligations have not been overcome in order to challenge the imposition of the death penalty. *Id.*

69. Molly Warner Lien, *The Cooperative and Integrative Models of International Judicial Comity: Two Illustrations Using Transnational Discovery and Breard Scenarios*, 50 *CATH. U. L. REV.* 591, 638-39 (2001). This conflict is created because the United States is a dualist system that considers international and domestic law separately. *Id.* The Supreme Court, in the 1889 *Chinese Exclusion Case*, held that the Constitution does not prohibit the enactment of laws inconsistent with an earlier treaty. *Chae Chen Ping v. United States*, 130 U.S. 581 (1889).

to function unless American courts, when confronted with a decision by the ICJ, “accord a high degree of comity, deference, and respect for that court and . . . aid it in the . . . enforcement of its judgements unless to do so would violate a clear and express constitutional or statutory prohibition under U.S. law.”⁷⁰

If this conflict between international and domestic laws is to be viewed differently by the United States in the future, then the American legal system should also look at the burdens imposed on foreign nationals’ civil liberties. VCCR violations have become a due process catch-22 because foreign nationals are unable to seek relief when their claims are not brought forth during their habeas corpus proceedings, however, these claims are sometimes not presented because the violation deprived them of access to their consul who could then supply them with knowledge on how to bring a timely claim.⁷¹

3. *Request for Provisional Measures*

The purpose of issuing provisional measures is to preserve the rights that are the subject matter of the ICJ dispute. In addition, provisional measures provide an appropriate response to an urgent situation, which may be a threat to the international rights of states and to the proceedings before the ICJ while preventing irreparable damage.⁷² The issuance of provisional measures does not serve to undermine the findings by the domestic court, but rather to determine whether the treaty had been violated.⁷³

There are three main requirements for the issuance of provisional measures: (1) a prima facie demonstration of jurisdiction, (2) the risk of irreparable prejudice to the rights of either party, and (3) urgency.⁷⁴ In

70. See generally Lien, *supra* note 69, at 639. This degree of deference is a vertical model of integrative comity, which would create a global reliance on an international tribunal’s decision. *Id.* However, U.S. attitude of domestic legal superiority, combined with the recent tragedy on September 11, 2001, will deter this model from ever being followed.

71. See Springrose, *supra* note 5, at 195.

72. Sanja Djajic, *The Effect of International Court of Justice Decisions on Municipal Courts in the United States: Breard v. Greene*, 23 HASTINGS INT’L & COMP. L. REV. 27, 35-36 (1999). As in *LaGrand*, a sentence of the death penalty would qualify for this request. The international community has favored the abolition of the death penalty by providing provisional measures as a safeguard to protect against its imposition. See Henry, *supra* note 66, at 466.

73. See Henry, *supra* note 66, at 475.

74. Alison Duxbury, *Saving Lives in the International Court of Justice: The Use of Provisional Measures to Protect Human Rights*, 31 CAL. W. INT’L L.J. 141, 161 (2000). Humanitarian considerations like the preservation of life were the basis for the ICJ’s grant of provisional measures. *Id.* at 162.

VCCR cases, the ICJ bases its jurisdiction on the existence of a dispute between the parties as to whether the relief sought is available under the Vienna Convention.⁷⁵ The question also arises as to whether pecuniary damages would be an appropriate and adequate remedy for a breach of rights in Article 36 or whether a stay of execution is necessary to prevent irreparable prejudice.⁷⁶ The ICJ reasoned that the execution of Walter LaGrand would make it impossible to grant him relief.⁷⁷ Germany's request stemmed from the immediate threat of death to its national citizen, thus satisfying the third prong of the test relating to urgency.⁷⁸

One issue in *LaGrand* was whether the provisional measures were binding on the United States. An ICJ order is binding either as a matter of treaty law or from general international law.⁷⁹ As discussed earlier, Germany could argue that because the United States consented to the treaty, it is bound by all the provisions inscribed therein.⁸⁰ Germany could have also applied Article 38(1)(c) of the ICJ Statute, which provides that interim measures are "a general principle of law recognized by civilized nations."⁸¹ In response, the United States argued that the use of precatory language supported their conclusion that the request was nonbinding and then put forth their position that federalism prevented an order to stay the execution.⁸²

75. *Id.* at 164. Recent case law indicates that the ICJ must satisfy jurisdiction on the merits of the case rather than evidence of the continued loss of human life. *Id.* at 163.

76. *Id.* at 166. "Irreparable prejudice" is defined as damage which "could not be adequately compensated for in a final judgment on the merits." *Id.* at 165.

77. *Id.* at 166-67. Although the execution would cause irreparable prejudice to the defendants' human rights, there was no evidence that it would have this same effect on their rights under Article 36. *Id.* at 167. Instead, the ICJ ignored the procedural rules of issuing provisional measures due to the presence of humanitarian concerns. *Id.*

78. With only a day before the scheduled execution, the ICJ examined the case and issued the order. *LaGrand Case*, 38 I.L.M. at 310. Although the ICJ has been criticized for permitting Germany to wait until the eve of execution, their ability to act quickly to protect human life demonstrates the world's concern regarding violations of international law. *Id.* at 168-169.

79. See Djajic, *supra* note 72, at 37.

80. See *id.* This compliance comes under Article 94 of the U.N. Charter, which states that "[e]ach member of the United Nations undertakes to comply with the decision of the ICJ in any case to which it is a party." *Id.* at 38. These decisions include all those entered by the court and interlocutory decisions like an order on provisional measures. *Id.*

81. See *id.* at 40. Questions of enforcement, compliance, and relief do not affect the validity of an order for provisional measures. *Id.*

82. See Henry, *supra* note 66, at 475. In *Breard* and *LaGrand*, the U.S. government argued that following the provisional measures would disrupt the individual state's criminal justice system by creating a "universal supreme court of criminal appeals." *Id.* at 476. *Black's Law Dictionary* defines federalism as "interrelationships among the states and between the states and the federal government." BLACK'S LAW DICTIONARY 612 (6th ed. 1990).

The major problem with the use of provisional measures is their lack of effectiveness.⁸³ The *LaGrand* case reveals how the ICJ is unable to enforce both its provisional measures orders and final judgments.⁸⁴ These results demonstrate that the ICJ is not the proper forum for dealing with nationals who face the immediate threat of death.⁸⁵ Some commentators have suggested that human rights institutions should make the requests for provisional measures when the situation involves death row inmates.⁸⁶ However, in *LaGrand* these procedures were not used because the United States was not subject to these jurisdictions.⁸⁷ Because many states are not subject to other procedures used in other international and human rights institutions, the trend of using the ICJ to request provisional measures will continue.⁸⁸ The use of provisional measures in *LaGrand* and other VCCR cases demonstrates how the ICJ's effective response to the imminent threat of execution is negated by the United States' lack of adherence.⁸⁹ Therefore, any future changes in the use of provisional measures must take into account the United States' refusal to implement ICJ's orders and enforce international human rights law.⁹⁰

V. FUTURE IMPACT

The United States' continual violations of the VCCR have an impact on both the international and domestic level. First, there is the increase in litigation.⁹¹ There is also the threat of reciprocity.⁹² Lastly, these violations

83. See Duxbury, *supra* note 74, at 169.

84. *Id.* at 169. The enforcement of an ICJ judgment by the Security Council is an empty threat when the country being reprimanded, such as the United States in *LaGrand*, is a permanent member. *Id.* at 170. Any permanent member may veto a proposed action by the Security Council, therefore, this threat against the United States would prove ineffective.

85. See *id.* at 171. The ICJ is not a court of criminal appeal. *Id.*

86. *Id.* at 172-73. These fora differ from the ICJ in that they are designed to prevent irreparable damage to the rights of persons rather than the rights of states. *Id.* at 174.

87. *Id.*

88. *Id.* at 175. Article 41 will be exercised to protect one's nationals from threat of irreparable harm. *Id.*

89. *Id.* In order for the ICJ to play a more credible role in enforcing its orders, it needs to clarify its purposes and requirements for granting a request for provisional measures in the context of threats to persons rather than states. *Id.*

90. *Id.*

91. See O'Driscoll, *supra* note 36, at 339. Presently, there have been no successful challenges to a conviction for redress of a violation of VCCR. *Id.*

92. *Id.* at 340. Treaties themselves are reciprocal obligations between countries. *Id.* The continual failure of the United States to comply with the VCCR shows a disregard for the consequences of an ICJ decision. *Id.* If other nations follow suit in ignoring treaty obligations, the safety of all Americans abroad will be put in jeopardy. *Id.*

can weaken the United States' international reputation.⁹³

While violations of Article 36 of the VCCR have continued, courts have failed to provide relief to those foreign nationals whose rights have been violated.⁹⁴ One possible solution is to change the burden of proof. Currently, defendants bear the burden of proving prejudice.⁹⁵ Shifting the burden to the government makes sense because they are responsible for these violations of international law.

Numerous policy reasons favor shifting the burden of proof.⁹⁶ As stated above, the United States' continued denial of foreign nationals' access to their consul will have a reciprocal effect.⁹⁷ Therefore, it is important for law enforcement officials and the judicial system to become more educated on international law obligations and be diligent in informing foreign nationals of their consular relations rights.⁹⁸

Over the past couple of years, the U.S. State Department has implemented changes to provide greater enforcement of the Vienna Convention.⁹⁹ One of these changes was to publish a handbook in January 1998, which sets out procedures for detaining a foreign national.¹⁰⁰ The federal government has provided international law resources and

93. *Id.* at 341. The denial of consular access to foreign nationals has resulted in significant disapproval by their governments. *Id.* The *LaGrand* case had the effect of causing Germany to submit an anti-death penalty resolution to the U.N. Human Rights Commission. *Id.*

94. See Springrose, *supra* note 5, at 193.

95. See generally *id.* By placing the burden on defendants, the courts find it easier to reject their theory. *Id.* Since the burden is on the government to make notification, they should also prove that the defendant was not prejudiced by the failure to notify. *Id.* at 194.

96. *Id.* Law enforcement officials continue to disregard a foreign national's right to counsel. *Id.*

97. *Id.* at 196. Reciprocity could adversely affect U.S. citizens abroad. *Id.* Consular relations rights are mutual obligations, and the old adage "do unto your neighbor as you would want to be done unto you" is an important policy consideration in determining how to decrease these violations.

98. *Id.* at 198. This compliance with international obligations will also help prevent the recent increase in litigation that has put a further strain on government lawyers and judicial systems. *Id.*

99. See O'Driscoll, *supra* note 36, at 342. The State Department sends notices to governors, attorney generals, and mayors to remind them of their obligations under the Vienna Convention. *Id.*

100. See Trainer, *supra* note 33, at 251. The handbook provides instructions when detaining a foreign national as:

- (1) when foreign nationals are arrested or detained, they must be advised of the right to have their consular officials notified;
- (2) in some cases, the nearest consular officials must be notified of the arrest or detention of a foreign national, regardless of the national's wishes;
- (3) consular officials are entitled to access to their nationals in detention, and are entitled to provide consular assistance;
- (4) when a government official becomes aware of the death of a foreign national, consular officials must be notified;
- (5) when a guardianship or trusteeship is being considered with respect to a foreign national who is a minor or incompetent, consular officials must be notified;
- (6) when a foreign ship or aircraft wrecks or crashes, consular officials must be notified.

Id. Part One of this handbook provides a statement for officials to use when detaining foreign nationals; Part Two sets forth specific instructions in explaining the mandate of these rights; and Part Three explains the reasons for granting these rights of consular access. *Id.* at 252.

encouraged state and local governments to require training of consular relations rights in a similar fashion as they do with Miranda warnings.¹⁰¹ Only with a clearer understanding at the domestic level of the possible consequences for failing to recognize a foreign national's rights under the Vienna Convention will violations decrease and litigation subside.¹⁰² United States compliance with the VCCR is essential to ensuring better foreign relations and to providing adequate representation to all people under the American justice system.¹⁰³

By fourteen votes to one, the ICJ held:

[S]hould nationals of the Federal Republic of Germany nonetheless be sentenced to severe penalties, without their rights under Article 36, paragraph 1(b), of the Convention having been respected, the United States of America, by means of its own choosing, shall allow the review and reconsideration of the conviction and sentence by taking account of the violation of the rights set forth in that Convention.¹⁰⁴

The implication of this decision should be to establish precedent for the application of this remedy to all foreign nationals. The decision should also apply to sentences less severe than the death penalty.¹⁰⁵ This new development is of even greater importance after the tragic events of September 11, 2001, which has shaped American attitudes toward foreign nationals detained for criminal behavior. Although the *LaGrand* decision signals a commitment by the United States to respect ICJ decisions regarding VCCR violations, it is highly unlikely that compliance or enforcement will result from its interpretation.

However, with the recent increases in the number of detained foreign nationals, it is more important than ever for the United States to abide by the Vienna Convention. The new war on terrorism will require much

101. *Id.* at 252-53.

102. *See* O'Driscoll, *supra* note 36, at 341-42. These violations have had a detrimental impact on U.S. reputation abroad. *Id.* at 341.

103. *Id.* at 343. The international outcry over the recent executions of foreign nationals resulted in the United States, for the first time, being placed on Amnesty International's list of human rights violators.

104. *See* *LaGrand Case (F.R.G. v. U.S.)*, 2001 I.C.J. ¶ 128 (June 27). United States courts have consistently declined this remedy for a violation of Article 36 of the VCCR.

105. *See* Kirgis, *supra* note 2. It is highly unlikely that U.S. courts will order retrials or even rehearings on sentences imposed in these cases. However, some academics believe that this remedy will increase compliance as it provides an incentive for law enforcement officials who, oppose the release of convicted foreign nationals when the release stems from a violation of their rights. *See* Springrose, *supra* note 5, at 213.

financial and international support. Therefore, building foreign relations should be a top priority. If a VCCR violation by the United States cannot be properly enforced, however, the United States' real concern is not that domestic convictions will be overturned by an ICJ decision, but rather the eventual backlash from the international community because of its continual noncompliance.

VI. CONCLUSION

The United States has an international obligation to comply with Article 36 of the Vienna Convention. When a foreign national is arrested or detained, he must be notified of his right to consular access under the Vienna Convention. As demonstrated in *LaGrand*, the United States has failed and continues to fail to notify detained foreign nationals of their rights. This attitude is also apparent in U.S. decisions to ignore previous orders by the ICJ to stay an execution.¹⁰⁶ These violations of international law have led the ICJ to impose a new remedy of "review and consideration" upon a U.S. domestic court's criminal decision.

The tragic events of September 11, 2001 have caused our legal system to tighten due process rights and to place burdens on civil liberties. Therefore, it is important for law enforcement officials and the judicial system to be better educated about the rights of detainees under international law. There will be a time when the international community is not as sensitive to the United States' non-performance of its international obligations.

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106. *Breard Case (Paraguay v. U.S.)*, 37 I.L.M. 810.

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