

Corrigé
Corrected

CR 2024/25

International Court
of Justice

THE HAGUE

Cour internationale
de Justice

LA HAYE

YEAR 2024

Public sitting

held on Tuesday 30 April 2024, at 10.05 a.m., at the Peace Palace,

President Salam presiding,

*in the case concerning the Embassy of Mexico in Quito
(Mexico v. Ecuador)*

VERBATIM RECORD

ANNÉE 2024

Audience publique

tenue le mardi 30 avril 2024, à 10 h 5, au Palais de la Paix,

sous la présidence de M. Salam, président,

*en l'affaire de l'Ambassade du Mexique à Quito
(Mexique c. Équateur)*

COMPTE RENDU

Present: President Salam
 Vice-President Sebutinde
 Judges Tomka
 Abraham
 Xue
 Bhandari
 Iwasawa
 Nolte
 Charlesworth
 Brant
 Gómez Robledo
 Cleveland
 Aurescu
 Tladi
Judge *ad hoc* McRae

Registrar Gautier

Présents : M. Salam, président
M^{me} Sebutinde, vice-présidente
MM. Tomka
Abraham
M^{me} Xue
MM. Bhandari
Iwasawa
Nolte
M^{me} Charlesworth
MM. Brant
Gómez Robledo
M^{me} Cleveland
MM. Aurescu
Tladi, juges
M. McRae, juge *ad hoc*

M. Gautier, greffier

The Government of the United Mexican States is represented by:

Mr Alejandro Celorio Alcántara, Legal Adviser, Ministry of Foreign Affairs of the United Mexican States,

as Agent;

HE Ms Carmen Moreno Toscano, Ambassador of the United Mexican States to the Kingdom of the Netherlands,

Mr Miguel Ángel Reyes Moncayo, Deputy Legal Adviser “A”,

as Co-Agents;

Mr Alfredo Uriel Pérez Manríquez, Director for International Tribunals and Organizations, Ministry of Foreign Affairs of the United Mexican States,

Ms Fadia Ibrahim Nader, Director of the Settlement of Disputes regarding Privileges and Immunities, Ministry of Foreign Affairs of the United Mexican States,

Mr Max Orlando Benítez Rubio, Director for the Defense of Territory And Sovereignty, Ministry of Foreign Affairs of the United Mexican States,

Mr Rubén Darío Álvarez Ángeles, Deputy Director for International Tribunals and Organizations, Ministry of Foreign Affairs of the United Mexican States,

Mr Eduardo Fragoso Jacobo, Attorney at Law,

Mr Leonardo David Lima Valdés, Attorney at Law,

Ms Alicia Patricia Pérez Galeana, Multilateral Legal Affairs, Embassy of the United Mexican States in the Kingdom of the Netherlands,

Mr Salvador Tinajero Esquivel, International Legal Counsel, Embassy of the United Mexican States in the Czech Republic,

Ms Liliana Oliva Bernal, International Legal Counsel, Embassy of the United Mexican States in the Republic of Austria,

as Counsel and Advocates.

The Government of the Republic of Ecuador is represented by:

HE Mr Andrés Terán Parral, Ambassador of the Republic of Ecuador to the Kingdom of the Netherlands,

as Agent;

Ms Ana María Larrea, Director of International Affairs and Arbitration, Attorney General’s Office,

Mr Alfredo Crosato Neumann, Assistant Professor, Head of the Department of International Law, Kadir Has University, Istanbul, member of the Lima Bar,

Le Gouvernement des États-Unis du Mexique est représenté par :

M. Alejandro Celorio Alcántara, conseiller juridique, ministère des affaires étrangères des États-Unis du Mexique,

comme agent ;

S. Exc. M^{me} Carmen Moreno Toscano, ambassadrice des États-Unis du Mexique auprès du Royaume des Pays-Bas,

M. Miguel Ángel Reyes Moncayo, conseiller juridique adjoint catégorie « A »,

comme coagents ;

M. Alfredo Uriel Pérez Manríquez, directeur des juridictions et organisations internationales, ministère des affaires étrangères des États-Unis du Mexique,

M^{me} Fadia Ibrahim Nader, directrice du règlement des différends concernant les privilèges et immunités, ministère des affaires étrangères des États-Unis du Mexique,

M. Max Orlando Benítez Rubio, directeur de la défense du territoire et de la souveraineté, ministère des affaires étrangères des États-Unis du Mexique,

M. Rubén Darío Álvarez Ángeles, directeur adjoint des juridictions et organisations internationales, ministère des affaires étrangères des États-Unis du Mexique,

M. Eduardo Frago Jacobo, avocat,

M. Leonardo David Lima Valdés, avocat,

M^{me} Alicia Patricia Pérez Galeana, affaires juridiques multilatérales, ambassade des États-Unis du Mexique au Royaume des Pays-Bas,

M. Salvador Tinajero Esquivel, conseiller juridique international, ambassade des États-Unis du Mexique en République tchèque,

M^{me} Liliana Oliva Bernal, conseillère juridique internationale, ambassade des États-Unis du Mexique en République d'Autriche,

comme conseils et avocats.

Le Gouvernement de la République de l'Équateur est représenté par :

S. Exc. M. Andrés Terán Parral, ambassadeur de la République de l'Équateur auprès du Royaume des Pays-Bas,

comme agent ;

M^{me} Ana María Larrea, directrice des affaires internationales et de l'arbitrage, bureau du procureur général,

M. Alfredo Crosato Neumann, professeur adjoint, chef du département de droit international, Université Kadir Has (Istanbul), membre du barreau de Lima,

Mr Sean Murphy, Manatt/Ahn Professor of International Law, The George Washington University Law School, associate member of the Institut de droit international, member of the Bar of Maryland,

Mr Omri Sender, Attorney at Law, S. Horowitz & Co.,

Sir Michael Wood, KCMG, KC, member of the Bar of England and Wales, Twenty Essex, London,

Ms Anne Coulon, member of the Bar of the State of New York, Temple Garden Chambers, The Hague,

Ms Alegría Baus Pinto, Legal and Multilateral Affairs Adviser, Embassy of the Republic of Ecuador in the Kingdom of the Netherlands,

as Counsel and Advocates.

M. Sean Murphy, professeur de droit international titulaire de la chaire Manatt/Ahn à la faculté de droit de l'Université George Washington, membre associé de l'Institut de droit international, membre du barreau du Maryland,

M. Omri Sender, avocat au cabinet S. Horowitz & Co.,

Sir Michael Wood, KCMG, KC, membre du barreau d'Angleterre et du pays de Galles, cabinet Twenty Essex (Londres),

M^{me} Anne Coulon, membre du barreau de l'État de New York, Temple Garden Chambers (La Haye),

M^{me} Alegria Baus Pinto, conseillère juridique et aux affaires multilatérales, ambassade de la République de l'Équateur au Royaume des Pays-Bas,

comme conseils et avocats.

The PRESIDENT: Please be seated. The sitting is open.

The Court meets this morning, under Article 74, paragraph 3, of the Rules of Court, to hear the single round of oral argument of the United Mexican States on its Request for the indication of provisional measures submitted in the case concerning *Embassy of Mexico in Quito (Mexico v. Ecuador)*.

For reasons known to me, Judge Yusuf is unable to be present on the Bench for the duration of these hearings.

As the Court does not include upon the Bench a judge of Ecuadorian nationality, Ecuador availed itself of the right, under Article 31, paragraph 2, of the Statute, to choose a judge *ad hoc* to sit in the case; it chose Mr Donald McRae. Article 20 of the Statute provides that “[e]very Member of the Court shall, before taking up his duties, make a solemn declaration in open court that he will exercise his powers impartially and conscientiously”. Pursuant to Article 31, paragraph 6, of the Statute, that same provision applies to judges *ad hoc*. Notwithstanding that Judge McRae has been a judge *ad hoc* and made a solemn declaration in previous cases, Article 8, paragraph 3, of the Rules of Court provides that he must make a further solemn declaration in the present case.

Before inviting Judge McRae to make his solemn declaration, I shall first, in accordance with custom, say a few words about his career and qualifications.

Judge McRae, of Canadian and New Zealand nationalities, is Professor Emeritus and former Dean of Common Law at the Faculty of Law, at the University of Ottawa. He has extensive experience as counsel in the context of international fisheries and boundary arbitrations, and has also appeared as counsel before this Court in proceedings involving the interpretation of a Judgment rendered in a case between Cambodia and Thailand. In the framework of the World Trade Organization (WTO), he has appeared as counsel before that organization’s dispute settlement panels and Appellate Body and has also served as a member of several WTO panels. In addition, he has been a member and chair of various arbitral tribunals, including cases brought under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, and Chapter 11 of the North American Free Trade Agreement. Judge McRae is the former Editor-in-Chief of the *Canadian Yearbook of International Law* and has published widely on international law, including on the law of the sea and international trade law. He is a member of the Institut de droit

international, a member of the Royal Society of Canada, a Companion of the Order of Canada and an Officer of the New Zealand Order of Merit. He was a member of the International Law Commission from 2007 to 2016. Judge McRae previously served as judge *ad hoc* in the case concerning *Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile)*, the case concerning *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)* and the case concerning the *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua v. Colombia)*. He is currently sitting in the case concerning *Guatemala's Territorial, Insular and Maritime Claim (Guatemala/Belize)*.

I shall now invite Judge McRae to make the solemn declaration prescribed by the Statute, and I request all those present to rise.

Mr McRAE:

“I solemnly declare that I will perform my duties and exercise my powers as judge honourably, faithfully, impartially and conscientiously.”

The PRESIDENT: I thank Judge McRae. Please be seated. I take note of the solemn declaration made by Judge McRae and declare him duly installed as judge *ad hoc* in the case concerning *Embassy of Mexico in Quito (Mexico v. Ecuador)*.

Je vais à présent retracer les principales étapes de la procédure en l'espèce. Le 11 avril 2024, les États-Unis du Mexique ont déposé au Greffe de la Cour une requête introductive d'instance contre la République de l'Équateur relative à « des questions juridiques concernant le règlement des différends internationaux par des moyens pacifiques et les relations diplomatiques et l'inviolabilité d'une mission diplomatique ». En particulier, le Mexique se réfère à un incident qui s'est produit le 5 avril 2024 au cours duquel des forces spéciales équatoriales auraient pénétré de force dans l'ambassade du Mexique à Quito, auraient malmené le personnel de la mission, et se seraient emparées de M. Jorge David Glas Espinel, ancien vice-président de la République de l'Équateur, à qui il avait accordé l'asile.

Le demandeur entend fonder la compétence de la Cour sur les paragraphes 1 et 2 de l'article 36 du Statut de la Cour et sur l'article XXXI du pacte de Bogotá, auquel les deux États sont parties.

La requête contenait également une demande en indication de mesures conservatoires, présentée au titre de l'article 41 du Statut de la Cour. Le Mexique y prie la Cour d'indiquer, dans l'attente de son arrêt définitif en l'affaire, des mesures conservatoires

« pour protéger l'intérêt primordial qu'attache le Mexique à l'inviolabilité et au respect des locaux diplomatiques, des biens qui s'y trouvent et des archives, y compris la résidence de son personnel diplomatique précédemment accrédité auprès de l'Équateur, et pour permettre à la Cour de prescrire les mesures demandées par le Mexique ».

Le greffier va à présent donner lecture du passage de la demande dans lequel sont précisées les mesures conservatoires que le Gouvernement du Mexique prie la Cour d'indiquer. Monsieur le greffier, vous avez la parole.

Le GREFFIER : Merci, Monsieur le président. Le Gouvernement du Mexique demande :

- « a) que le Gouvernement de l'Équateur prenne des mesures appropriées et immédiates pour assurer la protection et la sécurité pleines et entières des locaux diplomatiques, des biens qui s'y trouvent et des archives, en les protégeant de toute forme d'intrusion ;
- b) que le Gouvernement de l'Équateur autorise le Gouvernement mexicain à vider les locaux diplomatiques et la résidence privée des agents diplomatiques ;
- c) que le Gouvernement de l'Équateur veille à ce qu'il ne soit pris aucune mesure qui puisse porter atteinte aux droits du Mexique en ce qui concerne toute décision que la Cour pourrait prendre au fond ;
- d) que le Gouvernement de l'Équateur s'abstienne de tout acte ou comportement qui risquerait d'aggraver ou d'étendre le différend dont la Cour est saisie ».

Le PRÉSIDENT : Je remercie le greffier. Immédiatement après le dépôt de la requête contenant la demande en indication de mesures conservatoires, le greffier en a communiqué un exemplaire original au Gouvernement de l'Équateur. Il a également informé le Secrétaire général de l'Organisation des Nations Unies de ce dépôt.

Aux termes du paragraphe 1 de l'article 74 du Règlement de la Cour, une demande en indication de mesures conservatoires a priorité sur toutes autres affaires. Il est précisé au paragraphe 2 de ce même article que la Cour doit statuer d'urgence sur une telle demande. Cet impératif doit néanmoins être concilié avec la nécessité de fixer la date de la procédure orale de manière à donner aux parties la possibilité d'y être représentées. La Cour a décidé que la procédure orale s'ouvrirait le 30 avril 2024.

Je voudrais à présent souhaiter la bienvenue aux délégations des Parties. Je prends note de la présence des agents et conseils du Mexique et de l'Équateur. La Cour entendra ce matin le Mexique en son tour unique de plaidoiries sur sa demande en indication de mesures conservatoires. Elle entendra l'Équateur en son tour unique de plaidoiries demain, mercredi 1^{er} mai 2024 à 10 heures. Chacune des deux Parties disposera de deux heures maximum pour présenter son exposé oral.

Pour la séance de ce jour, le Mexique pourra, si nécessaire, poursuivre un peu au-delà de midi, compte tenu du temps consacré à mes observations liminaires.

Avant de donner la parole à l'agent du Mexique, je tiens à appeler l'attention des Parties sur l'instruction de procédure XI, selon laquelle :

« [d]ans leurs exposés oraux sur les demandes en indication de mesures conservatoires, les parties devraient se limiter aux questions touchant aux conditions à remplir aux fins de l'indication de mesures conservatoires, telles qu'elles ressortent du Statut, du Règlement et de la jurisprudence de la Cour. Les parties ne devraient pas aborder le fond de l'affaire au-delà de ce qui est strictement nécessaire aux fins de la demande. »

I now give the floor to the Co-Agent of Mexico, HE Ms Carmen Moreno Toscano. You have the floor, Excellency.

Ms MORENO TOSCANO:

I. PRESENTATION OF THE DELEGATION MEMBERS

1. Mr President, Madam Vice-President, distinguished Members of the Court, it is an honour and a privilege for me to appear before the International Court of Justice on behalf of the United Mexican States.

2. I wish to express my gratitude to the Court for convening this hearing on the earliest possible date, to entertain Mexico's request for the indication of provisional measures in this case, in light of the risk and urgency of the situation.

3. In its Application, and in the accompanying Request, Mexico firmly asserts that the Vienna Convention on Diplomatic Relations has been violated, and expresses its concern that such violations may recur in the absence of provisional measures. Through this intervention, the representatives of the Mexican State will express the factual and legal grounds upon which this concern is based.

4. With the permission of the Court, the statement by Mexico will be delivered as follows:

- (a) Mr Alejandro Celorio Alcántara, Legal Adviser at the Mexican Ministry of Foreign Affairs, will introduce the context of the present case and the request for provisional measures.
- (b) Mr Alfredo Uriel Pérez Manríquez, Director for International Tribunals and Organizations, will deliver a brief recount on the relevant facts.
- (c) Ms Liliana Oliva Bernal, International Legal Counsel, will present Mexico's considerations regarding the prima facie jurisdiction of the Court to entertain the present request.
- (d) Ms Fadia Ibrahim Nader, Director for the Settlement of Disputes regarding Privileges and Immunities, will state the rights of Mexico that must be protected, and their link with the provisional measures requested.
- (e) Mr Miguel Ángel Reyes Moncayo, Deputy Legal Adviser, will present Mexico's position regarding the existence of a real and imminent risk of irreparable damage.
- (f) Finally, Mr Alejandro Celorio will present this Court with Mexico's concluding statement and final submissions.

5. I thank you for allowing me to address you, and now, with the permission of this honourable Court, I will ask you, Mr President, to invite Mr Alejandro Celorio Alcántara to the podium to present the context of this case and the request of provisional measures.

The PRESIDENT: I thank the Co-Agent of Mexico for her statement. I now invite Mr Alejandro Celorio Alcántara to take the floor. You have the floor, Sir.

Mr CELORIO ALCÁNTARA:

II. INTRODUCTION AND CONTEXT OF THE REQUEST

1. Mr President, honourable judges, it is an honour to appear before you and to present the context of this case, which must be underscored.

2. Your Excellencies, there are lines in international law which should not be crossed. Regrettably, the Republic of Ecuador has crossed them. The actions undertaken by Ecuador not only transversed the established boundaries of international law, but also have served a disconcerting precedent that reverberates across the international community. This very Court has stated, in the *Hostages* case, that the inviolability of diplomatic premises is a rule protected by the Vienna

Convention on Diplomatic Relations, which has binding force upon both States party to the present dispute. Moreover, it has asserted that this rule is of a fundamental character. With its actions, Ecuador has infringed upon one of the cornerstones that governs the relationships between States.

3. The Secretary-General of the United Nations has taken a stance regarding the matters of the case at hand. A day after the violent and aggressive incursion by Ecuador into the Mexican Embassy, the Secretary-General released a statement emphatically reaffirming that “the cardinal principle of the inviolability of diplomatic and consular premises and personnel . . . must be respected in all cases, in accordance with international law”.

4. At the core of this case lies not only the egregious transgression against Mexico, but also the legal certainty of every other sovereign State, international organization and tribunals in the sacrosanct principles that govern the inviolability of diplomatic premises and personnel, a tenet this honourable Court has deemed a cornerstone for the conduct of relations between States.

5. The forceful and violent incursion of Ecuadorian authorities into the premises of the Mexican Embassy, and the unjustified exercise of violence against members of our diplomatic mission, alongside the blatant attempt to justify a grave violation of international law, vividly showcase Ecuador’s disregard for fundamental, universally accepted and long-standing norms. This conduct creates an imminent risk that another violation could occur. A worrisome doubt arises about the true intentions of Ecuador now that the Mexican diplomatic premises and private residences are vacant, with documents and property therein, that might be of interest to Ecuador.

6. In addition, the abrupt and inexplicable change of dynamics that took place on 4 and 5 April deepens our scepticism. Notwithstanding the extensive diplomatic dialogue, including the exchange of information regarding the asylum request of Mr Jorge David Glas, the former Vice-President of the Republic of Ecuador, and even after the declaration of the Mexican Ambassador as *persona non grata*, along with the exchange of Notes Verbales concerning the request and denial of entry to the premises, diplomatic personnel witnessed a heightened level of surveillance imposed by Ecuador that resulted in the assault of our Embassy.

7. Ecuadorian authorities not only breached international law. They exhibited wilful negligence that posed an enormous risk to the security and lives of the members of the mission. Had the gun aimed at the Mexican Deputy Chief of Mission been fired, we would now be addressing a

far more serious and irreparable violation of international law. The declarations made by Ecuador's authorities after the incident, instead of allaying our concerns regarding a potential recurrence of breaches to the inviolability of our premises and archives, only serve to exacerbate them.

8. While we acknowledge and are mindful of the security situation in Ecuador, and of the measures implemented by its Government to address it, we remain determined in recognizing that this circumstance cannot serve as an exemption to Ecuador's obligations under the Vienna Convention. There is no rule under international law that could nullify the inviolability of the Embassy of Mexico, and no standard under which the assault could be deemed as a lawful operation.

9. The inviolability of diplomatic premises is even recognized under Ecuadorian law which explicitly states: "diplomatic premises, consular offices and those of international organizations, as well as their belongings and archives, will be inviolable and will enjoy immunity against search, requisition, confiscation, expropriation, and any other form of intervention". This law makes no distinction regarding acts of authority ordered by administrative, executive, judicial or legislative authorities¹.

10. It must be stressed that throughout this ordeal, Mexico consistently adhered to international law. Nevertheless, despite Mexico's compliance, the inviolability of its premises and diplomatic personnel was violated. There is not a valid justification for the incursion that occurred on 5 April 2024, nor for the harassment in the preceding days. Let me be clear, there will never be a valid justification for any breach of international obligations owed to Mexico. States cannot invoke internal dispositions, like the measures taken by Ecuador to address its security situation, to exempt themselves from complying with their international obligations. This Court has the opportunity to firmly reiterate this well-known principle of international law by granting the provisional measures that Mexico respectfully asks for.

11. This case is not only of concern for Mexico. Sixty-eight States and international organizations, both at the regional and universal level, have united to express solidarity with Mexico and their disapproval to Ecuador's actions. The international community has lost confidence in

¹ Ecuadorian Law of Diplomatic Immunities, Privileges and Franchises. Available at: https://www.cancilleria.gob.ec/wp-content/uploads/downloads/2013/02/ley_inmunidades.pdf.

Ecuador's commitment and capacity to honour its most basic obligations under international law, raising justified concerns of potential recurrence of similar breaches.

12. Your Excellencies, it is most likely that Ecuador will attempt to justify its disregard for international law, and its attack on the Mexican Embassy. First, Ecuador might allege that through the protection and eventual granting of asylum to Mr Jorge Glas, Mexico supposedly violated Article 41 of the Vienna Convention. Second, Ecuador might also argue that the granting of such status was against the 1954 Caracas Convention on Diplomatic Asylum. Mexico will certainly, in due course, provide this Court with the information that supports the legality of its decision under international law.

13. However, as clearly stated in Practice Direction XI adopted by this Court, these hearings shall only address the request for provisional measures submitted by Mexico, and not the merits of the case.

14. Distinguished judges, the assault on the Mexican Embassy unequivocally constituted a breach of the inviolability of the diplomatic premises and personnel. No credible and reliable assurance has been provided to prevent further violations, nor has there been full acknowledgment by Ecuador of its obligation to refrain from entering the Mexican premises. Therefore, we respectfully ask this Court to grant provisional measures, pursuant to the applicable provisions of the Statute.

15. With the permission of the Court, I would ask you now, Mr President, to give the floor to Mr Alfredo Uriel Pérez Manríquez to present the facts on which the request for provisional measures is based.

The PRESIDENT: I thank the Agent of Mexico for his statement. I now give the floor to Mr Alfredo Uriel Pérez Manríquez. You have the floor, Sir.

Mr PÉREZ MANRÍQUEZ:

III. STATEMENT OF FACTS

1. Honourable Members of the Court, I stand before you to recount the harrowing sequence of events leading up to the blatant violation of international diplomatic law by the Government of

Ecuador against the premises of the Mexican Embassy. These events represent an unfortunate and pivotal precedent that stress the imperative necessity to grant provisional measures.

2. On the night of 5 April 2024, Ecuadorian special operation agents forcibly entered the Mexican Embassy in Quito. Approximately 15 agents and a couple of vehicles raided the Embassy. During this raid, our Deputy Chief of Mission, Mr Roberto Canseco Martínez, was subjected to physical assault while attempting to prevent the illegal intrusion and subsequent apprehension of Mr Glas, who at the time of the events was under our protection, in accordance with both Mexican and international asylum law. These actions egregiously violate the sanctity of diplomatic missions as enshrined in international law.

3. Unfortunately, these were not isolated events, but rather the culmination of a sequence of intimidation and harassment tactics directed against the Mexican diplomatic mission since Mr Glas' arrival at the Embassy on 17 December 2023. Considering the circumstances of persecution targeting individuals affiliated with the political party of former President Correa, Mr Glas sought asylum to protect his life and personal safety. Following his formal application for asylum, the Embassy and diplomatic personnel were subjected to constant surveillance by Ecuadorian authorities, evidencing a systematic disregard for diplomatic norms.

4. In response, Mexico initiated diplomatic efforts, exemplified by high-level meetings between Mexican and Ecuadorian foreign affairs representatives, aimed at resolving the situation through peaceful diplomatic dialogue. Despite these efforts, the situation escalated, as evidenced by the Ecuadorian Foreign Ministry's requests in early 2024 to enter our Embassy to detain Mr Glas — a request our Government denied. This refusal was notified by a Note Verbale transmitted to Ecuador on 4 March 2024, which also requested all necessary means to safeguard the integrity and inviolability of the diplomatic premises of Mexico.

5. However, these diplomatic efforts were met with increasing hostility. By 4 and 5 April 2024, Ecuador had drastically intensified its actions against Mexico. Firstly, Ecuador declared Mexico's Ambassador — Raquel Serur — as *persona non grata*. Secondly, Ecuadorian authorities significantly increased surveillance and harassment tactics by police forces in the vicinity of the Embassy. All this culminated in the violent events of 5 April.

6. In the morning of 5 April, the President of Mexico publicly requested the support of the Mexican air force to retrieve our Ambassador, in order to vindicate her dignity and guarantee her return to Mexico. Later that day, through a press release, Mexico protested the decision to declare our Ambassador as *persona non grata*, as well as the increase of Ecuadorian police presence at the Embassy. Additionally, Mexico announced its decision to grant asylum to Mr Glas and the intention to request a safe conduct to transfer him from Ecuador through diplomatic means.

7. In a press release issued on 5 April 2024, shown as Annex 2 of the judges' folder, the Ecuadorian Ministry of Foreign Affairs gave false assurances to Mexico, stating that "in strict compliance with the norms of the Vienna Convention, it would continue to provide protection to the premises of the Mexican Embassy in Quito". However, as this honourable Court will note, Ecuador did not keep its word.

8. Up to this point and albeit the disturbing presence of security forces, Mexico believed that the diplomatic dialogue would prevail. Surprisingly, the Republic of Ecuador deployed a military-style operation in the vicinity of the Embassy and, at around 10 p.m., personnel of Ecuadorian security forces entered the Mexican Embassy without authorization. In the video which will be shown, this honourable Court will observe that Ecuadorian agents scaled our walls, forcibly knocked down the door, subdued the private police officer of the Embassy, assaulted our diplomatic personnel and forcibly substracted Mr Glas.

9. Honourable Members of the Court, as shown in the video, the operation not only entailed the physical assault of Mr Canseco but also a significant violation of his personal dignity, as he was pointed at with a firearm and forcibly restrained.

10. It is crucial to note what it seems the disabling of communication devices during the raid, a tactic that points to a premeditated effort to isolate our staff during these critical moments.

11. As these events demonstrate, the raid was carried out in a violent and premeditated manner. Although there were only unarmed diplomatic personnel in the Embassy, Ecuador decided to deploy an operation with tactical and military-style equipment with long firearms to subdue whoever was necessary.

12. This also demonstrates Ecuador's capacity and intention to carry out this type of operation whenever they deem it necessary, bypassing the norms of international law.

13. In light of these severe violations, and the sustained threat to the safety and dignity of our diplomatic personnel, Mexico was compelled to break off diplomatic and consular relations with Ecuador. As a consequence, our diplomatic premises are empty and unprotected from any actions Ecuador may take to re-enter, inspect, seize or damage Mexico's property and archives.

14. Ecuador's actions demonstrate its disregard for international law, which is why Mexico is turning to the Court to request provisional measures.

15. This, your Excellencies, concludes my presentation on the factual background to the present dispute. I am grateful for your kind attention. With the permission of the Court, I would ask you now, Mr President, to give the floor to Ms Liliana Oliva Bernal, who will present how this Court has *prima facie* jurisdiction in the present request.

The PRESIDENT: I thank Mr Alfredo Uriel Pérez Manríquez for his statement. Je donne à présent la parole à M^{me} Liliana Oliva Bernal. Vous avez la parole, Madame.

M^{me} OLIVA BERNAL :

IV. JURIDICTION *PRIMA FACIE*

1. Monsieur le président, Madame la vice-présidente, Mesdames et Messieurs les juges, c'est un grand honneur de prendre la parole devant la Cour aujourd'hui au nom du Mexique. Comme M^{me} l'ambassadrice Moreno Toscano l'a avancé, je vais adresser dans ma plaidoirie la question de la juridiction *prima facie* de la Cour pour indiquer les mesures conservatoires demandées dans l'espèce.

2. Comme votre jurisprudence l'a confirmé à plusieurs reprises, dans les procédures visant une indication de mesures conservatoires, la Cour « n'a pas besoin de s'assurer de manière définitive qu'elle a compétence quant au fond de l'affaire »². Au contraire, à ce stade, la Cour est seulement appelée à avérer, et je vous cite dans l'affaire *Avena*, « si les dispositions invoquées par le demandeur

² *Immunités et procédures pénales (Guinée équatoriale c. France), mesures conservatoires, ordonnance du 7 décembre 2016, C.I.J. Recueil 2016 (II), p. 1155, par. 31.*

semblent *prima facie* constituer une base sur laquelle la compétence de la Cour pourrait être fondée »³.

3. Monsieur le président, Mesdames et Messieurs les juges, en l'occurrence, le Mexique satisfait manifestement à ce critère. Le présent différend a été introduit en prenant pour base de la compétence de la Cour l'article XXXI du pacte de Bogotá, qui prévoit :

« Conformément au paragraphe 2 de l'article 36 du Statut de la Cour internationale de Justice, les Hautes Parties Contractantes en ce qui concerne tout autre État américain déclarent reconnaître comme obligatoire de plein droit, et sans convention spéciale tant que le présent Traité restera en vigueur, la juridiction de la Cour sur tous les différends d'ordre juridique surgissant entre elles et ayant pour objet :

- a) L'interprétation d'un traité ;
- b) Toute question de droit international ;
- c) L'existence de tout fait qui, s'il était établi, constituerait la violation d'un engagement international ;
- d) La nature ou l'étendue de la réparation qui découle de la rupture d'un engagement international. »

4. Il ne s'agit pas de la première affaire dans laquelle la Cour affirme sa compétence sur la base du pacte de Bogotá. Ce traité a servi en fait à ce propos dans près de 20 affaires. En outre, dans l'affaire relative à *Certaines activités menées par le Nicaragua dans la région frontalière*, la Cour s'est déclarée compétente *prima facie* sur la demande en indication de mesures conservatoires du Costa Rica sur la base *inter alia* du pacte de Bogotá⁴.

5. Mesdames et Messieurs les juges, le pacte de Bogotá prévoit deux conditions pour donner compétence à cette Cour. Premièrement, l'existence d'un différend juridique lié aux matières listées en son article XXXI et, secondement, que les deux parties aient précédemment tenté de régler leurs différends par des négociations directes suivant les voies diplomatiques ordinaires.

6. En ce qui concerne la première condition, je vous rappelle qu'après les regrettables événements du 5 avril et la rupture des relations diplomatiques et consulaires annoncée par le Mexique le 6 avril, le ministère des affaires étrangères de l'Équateur a publié, le jour même, un

³ *Avena et autres ressortissants mexicains (Mexique c. États-Unis d'Amérique), mesures conservatoires, ordonnance du 5 février 2003, C.I.J. Recueil 2003, p. 87, par. 38 ; Usines de pâte à papier sur le fleuve Uruguay (Argentine c. Uruguay), mesures conservatoires, ordonnance du 13 juillet 2006, C.I.J. Recueil 2006, p. 129, par. 57.*

⁴ *Certaines activités menées par le Nicaragua dans la région frontalière (Costa Rica c. Nicaragua), mesures conservatoires, ordonnance du 8 mars 2011, C.I.J. Recueil 2011 (I), p. 18, par. 52.*

communiqué de presse, figurant à l'annexe 3 de votre dossier, justifiant les actions des forces équatoriennes par une prétendue violation par le Mexique de l'article 41 de la convention de Vienne sur les relations diplomatiques⁵. Cet argument a été réitéré par le vice-ministre des affaires étrangères de l'Équateur, M. Alejandro Dávalos, lorsqu'il a déclaré, le 9 avril, à l'occasion de la réunion spéciale convoquée par le Conseil permanent de l'Organisation des États américains pour traiter du conflit entre le Mexique et l'Équateur, que les actions du Mexique étaient contraires à l'article 41 de ladite convention.

7. Le Mexique a déployé plusieurs démarches, au niveau bilatéral comme multilatéral, afin d'exprimer et de clarifier sa position sur les règles de droit international en jeu dans la présente affaire. Ces démarches comprennent, notamment, une lettre adressée au Secrétaire général des Nations Unies, datée du 12 avril et figurant à l'annexe 4 du dossier, portant sur « les graves violations commises par la République de l'Équateur à l'encontre de l'ambassade du Mexique dans ce pays et de son personnel diplomatique ».

8. Les divergences entre les deux États concernant les obligations qui découlent de la convention de Vienne, Mesdames et Messieurs les juges, ne sauraient être plus aiguës. Alors que, d'une part, le Mexique insiste, pour sa part, sur le fait que l'inviolabilité des locaux diplomatiques et du personnel diplomatique ne connaît pas d'exception en droit international, l'Équateur a tenté de justifier la violation des obligations lui incombant en vertu de la convention de Vienne.

9. Comme cette Cour l'a rappelé dans l'affaire des *Îles Marshall* « pour qu'un différend existe, ... “[l]es points de vue des deux parties, quant à l'exécution ou à la non-exécution” de certaines obligations internationales, “[doivent être] nettement opposés” »⁶. Le Mexique et l'Équateur n'ont manifestement pas la même conception de la manière dont ils doivent s'acquitter des obligations qui découlent de la convention de Vienne. Or, cela met bel et bien en évidence qu'un

⁵ Communiqué de presse du ministère des affaires étrangères de l'Équateur du 6 avril 2024 (annexe 3 du dossier de plaidoiries).

⁶ *Obligations relatives à des négociations concernant la cessation de la course aux armes nucléaires et le désarmement nucléaire (Îles Marshall c. Royaume-Uni), exceptions préliminaires, arrêt, C.I.J. Recueil 2016 (II), p. 849, par. 37.*

différend de nature juridique entre le Mexique et l'Équateur existait au moment où la requête introductive d'instance a été déposée⁷ et que ce différend subsiste, voire, il s'élargit.

10. En ce qui concerne la deuxième condition, permettez-moi de rappeler le contenu de l'article II du pacte :

« Les Hautes Parties Contractantes acceptent l'obligation de résoudre les différends internationaux à l'aide des procédures pacifiques régionales avant de recourir au Conseil de sécurité des Nations Unies.

En conséquence, au cas où surgirait, entre deux ou plusieurs États signataires, un différend qui, de l'avis de l'une des parties, ne pourrait être résolu au moyen de négociations directes suivant les voies diplomatiques ordinaires, les parties s'engagent à employer les procédures établies dans ce Traité sous la forme et dans les conditions prévues aux articles suivants, ou les procédures spéciales qui, à leur avis, leur permettront d'arriver à une solution. »

11. À cet égard, la Cour a dit pour droit que l'article II du pacte constitue « une condition préalable du recours aux procédures pacifiques du pacte » ; et donc il s'ensuit que la Cour doit examiner comment cette condition s'applique dans l'affaire en cause⁸.

12. En l'espèce, il convient de rappeler qu'après les efforts diplomatiques déployés visant une solution au différend entre les Parties, et le refus du Mexique d'accorder l'accès à ses locaux diplomatiques, les autorités équatoriennes ont lancé une opération pour prendre d'assaut l'ambassade du Mexique et enlever M. Jorge Glas, au lieu d'entamer des négociations à ce sujet. Après l'attaque, Mesdames et Messieurs les juges, le ministère équatorien des affaires étrangères a indiqué, dans son communiqué de presse du 6 avril, qu'il avait épuisé les voies diplomatiques pour régler ce différend.

13. Monsieur le président, Mesdames et Messieurs les Membres de la Cour, les actions perpétrées par l'Équateur contre le Mexique auront non seulement aggravé le conflit, mais elles ont également prouvé qu'il n'y avait aucune possibilité raisonnable d'essayer de régler le différend par le biais des négociations diplomatiques. Ainsi, d'ores et déjà, les conditions fixées par le pacte de Bogotá pour avoir recours à la Cour sont tout à fait satisfaites.

14. Il convient, en outre, de rappeler que les traités dont le Mexique se prévaut pour donner à la Cour compétence de la présente affaire étaient en vigueur entre les Parties quand la requête

⁷ *Questions concernant l'obligation de poursuivre ou d'extrader (Belgique c. Sénégal), mesures conservatoires, ordonnance du 28 mai 2009, C.I.J. Recueil 2009, p. 149, par. 48.*

⁸ *Actions armées frontalières et transfrontalières (Nicaragua c. Honduras), compétence et recevabilité, arrêt, C.I.J. Recueil 1988, p. 94, par. 62.*

introductive d'instance a été déposée, et qu'ils le sont toujours. Le Mexique est partie à la convention de Vienne sur les relations diplomatiques depuis 1965, tandis que l'Équateur en est partie depuis 1964. En ce qui concerne le pacte de Bogotá, le Mexique en est partie depuis 1948, tandis que l'Équateur l'est depuis l'année 2008. Tout cela démontre que les critères permettant de constater la compétence *prima facie* de la Cour *ratione materiae*, *ratione temporis* et *ratione personae* sont en l'occurrence clairement remplis.

15. Enfin, j'attirerai l'attention de la Cour sur le fait que l'Équateur n'a pas, à ce jour, contesté la compétence de la Cour. Et cela est bien parce que l'article XXXI du pacte de Bogotá est manifestement applicable au présent différend.

16. Monsieur le président, Mesdames et Messieurs les juges, les deux États sont parties à la convention de Vienne sur les relations diplomatiques et au pacte de Bogotá, les conditions fixées par le pacte pour saisir la Cour sont remplies et il existe un différend lié à un traité en vigueur entre les Parties, en l'occurrence la convention de Vienne. Le Mexique est de l'avis, donc, que vous avez compétence *prima facie* pour ordonner des mesures conservatoires conformément aux critères énoncés par la Cour elle-même.

17. Avec ces conclusions, Mesdames et Messieurs les Membres de la Cour, je clos ma plaidoirie et je vous remercie sincèrement de votre attentive écoute. Monsieur le président, je vous saurais gré maintenant d'appeler M^{me} Fadia Ibrahim à la barre. Merci beaucoup.

Le PRÉSIDENT : Je remercie M^{me} Liliana Oliva Bernal pour son exposé. I now invite Ms Fadia Ibrahim Nader to take the floor. You have the floor, Madam.

Ms IBRAHIM NADER:

V. PLAUSIBILITY OF THE RIGHTS THAT MEXICO SEEKS TO PROTECT AND THE LINK BETWEEN THEM AND THE PROVISIONAL MEASURES REQUESTED

Introduction

1. Mr President, Madam Vice-President, distinguished Members of the Court, it is a great honour for me to appear before you on behalf of Mexico.

2. Today, I will address the rights that Mexico seeks to preserve through its request for provisional measures. These rights are fundamentally straightforward, as they pertain to the

fundamental rules underpinning diplomatic relations between States. Specifically, I am referring to the inviolability of diplomatic premises, their property and archives.

3. At this stage of the proceedings, the Court is not called upon to definitively determine the existence of the rights Mexico seeks to protect. Instead, this Court is solely required to decide whether the rights claimed by Mexico on the merits, and for which it is seeking protection, are plausible⁹.

4. In the case at hand, the rights asserted by Mexico not only meet but significantly exceed the threshold of plausibility, as they are explicitly granted by the Vienna Convention. Therefore, I would like to draw your attention to:

- (a) the rights and corresponding obligations outlined in the Vienna Convention;
- (b) the link between said rights and the provisional measures requested;
- (c) the complementary provisional measures needed to preserve those rights.

**A. Rights and obligations under the Vienna Convention
on Diplomatic Relations**

5. The Vienna Convention was concluded bearing in mind “the purposes and principles of the Charter of the United Nations concerning the sovereign equality of States, the maintenance of international peace and security, and the promotion of friendly relations among nations”¹⁰.

6. The principle of inviolability stands as a core requisite to conduct diplomatic relations between States. This right is explicitly enshrined in the Vienna Convention in Article 22 for diplomatic premises, in Article 24 for archives and documents of the mission, and in Article 30 for the private residences of diplomatic agents.

7. This Court has previously stated the fundamental relevance of inviolability, as it did in *United States Diplomatic and Consular Staff in Tehran*:

“38. Whereas there is no more fundamental prerequisite for the conduct of relations between States than the inviolability of diplomatic envoys and embassies, so that throughout history nations of all creeds and cultures have observed reciprocal obligations for that purpose;

.....

⁹ *Immunities and Criminal Proceedings (Equatorial Guinea v. France), Provisional Measures, Order of 7 December 2016, I.C.J. Reports 2016 (II)*, p. 1167, para. 78.

¹⁰ Vienna Convention on Diplomatic Relations, Preamble.

41. Whereas, while no State is under any obligation to maintain diplomatic or consular relations with another, yet it cannot fail to recognize the imperative obligations inherent therein, now codified in the Vienna Conventions of 1961 and 1963”¹¹.

8. Therefore, honourable Members of the Court, there is no doubt as to the critical importance of the principle of inviolability, which prevails in all situations with no exceptions. As affirmed by Article 45 of the Vienna Convention which states that in case of the breach of diplomatic relations between two States, the receiving State must respect and protect the premises of the mission, together with its property and archives¹².

9. Article 45 describes an obligation for the receiving State, which correlates to the right of the sending State to have its diplomatic premises, property and archives respected and protected. This Court interpreted this in its provision in the *Hostages* case, observing that:

“The fundamental character of the principle of inviolability is . . . strongly underlined by the provisions of Articles 44 and 45 of the Convention of 1961 . . . Even in the case of armed conflict or in the case of a breach in diplomatic relations those provisions require that both the inviolability of the members of a diplomatic mission and of the premises, property and archives of the mission must be respected by the receiving State.”¹³

10. Thus, Article 45 is the source of the right that Mexico seeks to preserve and it applies to the present dispute since 6 April 2024. On this date, Mexico notified through a Note Verbale the termination of diplomatic and consular relations with Ecuador. This action was taken in response to the unauthorized intrusion by Ecuadorian authorities into the Mexican Embassy in Quito, as well as its heinous acts against diplomatic personnel.

11. Now that both States have severed their diplomatic relations, Ecuador is unequivocally obligated to uphold and safeguard Mexico’s diplomatic premises, their property and archives.

12. The present case revolves around Ecuador’s egregious violation of the principle of inviolability under a non-existent justification. Ecuador’s actions implied a perceived exception to the principle of inviolability where none exists. In contrast, Mexico firmly asserts that this principle is of the utmost importance in the conduction of diplomatic relations and that no justification can legitimately exempt its application.

¹¹ *United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran)*, Provisional Measures, Order of 15 December 1979, I.C.J. Reports 1979, pp. 19-20, paras. 38 and 41.

¹² Vienna Convention on Diplomatic Relations, Article 45 (a).

¹³ *United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran)*, Judgment, I.C.J. Reports 1980, p. 40, para. 86.

13. The same criteria apply with Article 45, which enshrines the principle of inviolability even when diplomatic and consular relations have been broken off. There are no exceptions to this provision, although the Government of Ecuador has expressed that it is of a different view, and that the inviolability of diplomatic premises can be set aside upon the discretion of the receiving State, as evidenced in the press release contained in the judges' folder as Annex 3¹⁴.

14. Your Excellencies, it is worth mentioning that, should the Government of Ecuador advance that there may be an exception to this provision, this would be a matter for the merits.

15. Up to this point, Your Excellencies, it is clear that the rights of Mexico, whose protection is requested, are more than plausible and must be preserved.

16. For these reasons, the Government of Mexico seeks from this Court to declare that Ecuador must comply with Article 45 (*a*) of the Vienna Convention, in order to undertake all appropriate and immediate measures to ensure the respect and protection of the premises of the mission, its property and archives¹⁵.

17. Your Excellencies, the principle of inviolability lies at the heart of this dispute, even following the severance of diplomatic relations. The existence of this principle, along with the rights and obligations they confer upon the concerned parties is unquestionable. This underscores that the threshold for the plausibility of the rights Mexico seeks to preserve before this Court has been duly met.

18. Only the preservation of those rights by means of an order of provisional measures may subsequently allow this Court to adjudge upon them.

B. The link between the rights claimed and the provisional measures requested

19. Your Excellencies, please allow me to recall the four provisional measures Mexico requested before this Court in its Application for the institution of proceedings:

“*a*) That the Government of Ecuador takes appropriate and immediate steps to provide full protection and security of diplomatic premises, their property, and archives, preventing any form of intrusion against them.

¹⁴ Press Release. Gabriela Sommerfeld, Ministry of Foreign Affairs and Human Mobility. 6 April 2024. <https://x.com/CancilleriaEc/status/1777125118164017406?t=vTMMRnO2ePqnWllM2xJP7A&s=08>.

¹⁵ Application and Request for provisional measures of the United Mexican States, 11 April 2024 (hereinafter “Application and Request of Mexico”), p. 10, para. 52.

- b) That the Government of Ecuador allows the Mexican Government to clear diplomatic premises and the private residence of diplomatic agents.
- c) That the Government of Ecuador ensures that no action is taken which might prejudice the rights of Mexico in respect of any decision which the Court may render on the merits.
- d) That the Government of Ecuador refrains from any act or conduct likely to aggravate or widen the dispute of which the Court is seized.”¹⁶

20. This Court has stated that, in addition to the plausibility of the rights claimed by the requesting State, “a link must exist between the rights which form the subject of the proceedings before the Court on the merits of the case and the provisional measures being sought”¹⁷.

21. In this regard, Your Excellencies, the first two provisional measures Mexico has requested are clearly linked to the right asserted regarding the principle of inviolability embodied in Article 45.

22. The first provisional measure corresponds to the application of the principle of inviolability in its performative character, that is: an obligation upon the concerned State whereby, by means of its own choosing, it is bound to provide protection and security to the mission and its property. This, without prejudice to the obligation to respect the premises of the mission, with its property and archives.

23. Your Excellencies, ordering Ecuador to provide full protection and security of the diplomatic premises, their property and archives would not only restate the content of this protection as enshrined in the Vienna Convention. It would also respond directly to Ecuador’s previous breach of the inviolability bestowed by the Vienna Convention on the Mexican mission and prevent the real possibility that such violation occurs again. This measure seeks to ensure that Ecuador takes the appropriate and immediate action to thwart any further breach.

24. The second provisional measure naturally follows the severance of diplomatic relations and is essential for the retrieval of all items from the diplomatic premises and private residences of diplomatic agents. This measure is necessary to ensure the safe return of all property and archives to Mexico, minimizing the risk of further transgression by Ecuadorian authorities.

¹⁶ *Ibid.*, pp. 12-13, para. 66.

¹⁷ *Immunities and Criminal Proceedings (Equatorial Guinea v. France), Provisional Measures, Order of 7 December 2016, I.C.J. Reports 2016 (II)*, p. 1166, para. 72.

C. Complementary provisional measures

25. In addition to the provisional measures requested to preserve specific rights, “the Court . . . possesses by virtue of Article 41 of the Statute the power to indicate provisional measures with a view to preventing the aggravation or extension of the dispute whenever it considers that circumstances so require”¹⁸. The Court has on several occasions issued provisional measures directing the parties not to take any action which could aggravate or extend the dispute or render more difficult its settlement, usually accompanying other measures protecting specific rights¹⁹.

26. Therefore, the last two measures requested by Mexico have a complementary nature and will serve for the protection of its rights provided in the Vienna Convention, in order to ensure the orderly administration of justice in the present case.

27. These complementary measures bear similarities to those requested in other cases before this Court, such as *Certain Activities Carried Out by Nicaragua in the Border Area*, where Costa Rica sought “that Nicaragua shall refrain from any other action which might prejudice the rights of Costa Rica, or which may aggravate or extend the dispute before the Court”²⁰. In that case, the Court considered “whereas the final provisional measure sought by Costa Rica, being very broadly worded, is linked to the rights which form the subject of the case before the Court on the merits, in so far as it is a measure complementing more specific measures protecting those same rights”²¹.

28. The third and fourth provisional measures seek to ensure that Ecuador will not take any steps to cause further prejudice to Mexico’s rights, and to safeguard the status quo before the Court decides upon the merits.

29. With the leave of the Court, I respectfully ask you, Mr President, to give the floor to Mr Miguel Ángel Reyes Moncayo, who will now delve into Mexico’s argument regarding the existence of real and imminent risk of irreparable damage.

¹⁸ *Frontier Dispute (Burkina Faso/Republic of Mali)*, Provisional Measures, Order of 10 January 1986, I.C.J. Reports 1986, p. 9, para. 18.

¹⁹ *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Provisional Measures, Order of 23 January 2007, I.C.J. Reports 2007 (I), p. 16, para. 49.

²⁰ *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Provisional Measures, Order of 8 March 2011, I.C.J. Reports 2011 (I), p. 11, para. 19.

²¹ *Ibid.*, p. 21, para. 62.

The PRESIDENT: I thank Ms Fadia Ibrahim Nader for her statement. I now give the floor to Mr Miguel Ángel Reyes Moncayo. You have the floor, Sir.

Mr REYES MONCAYO:

**VI. RISK OF IRREPARABLE DAMAGE AND URGENCY OF
THE NEED FOR PROVISIONAL MEASURES**

1. Mr President, Madam Vice-President, distinguished Members of the Court, it is certainly a great honour for me to appear before you as Agent for the United Mexican States, in spite of the regrettable circumstances that bring us before this Court today. With the leave of the Court, I will address the element of urgency due to the existence of a real and imminent risk of irreparable damage upon the rights of Mexico.

A. Risk of irreparable prejudice

2. As previously mentioned, Mexico broke off diplomatic relations with Ecuador. Thus, Article 45 (a) of the Vienna Convention establishes that the receiving State must respect and protect the premises of the mission, its property and archives. Consequently, even in the case of the breach of diplomatic relations, the premises of the mission, including the private residences of the diplomatic agents, its property and archives, must continue enjoying the status of inviolability established in Articles 22, 24 and 30 of the Vienna Convention.

3. To put in context the irreparable prejudice that the rights and interests of Mexico could suffer, I shall recall the Court that: (a) Mexico is the owner of the building located at 6 de Diciembre Avenue and Naciones Unidas Street, which housed the premises of the Embassy; (b) there are lease agreements in force for the private residence of the diplomatic agents of the Embassy, including the Head of Mission; (c) given the sudden departure of the members of the mission, both physical and digital archives and documents of the Embassy were left in the diplomatic premises. These contain confidential and sensitive information regarding the diplomatic functions that Mexico performed in Ecuador.

4. Thus, Ecuador is under a performative duty to protect. This duty can be fulfilled by means of its own choosing. However, Ecuador is under an unrestricted obligation to provide full protection

and security to the premises, the property and archives of Mexico from physical invasion or interference, and from any impairment to their status.

5. Concerning the irreparability of a prejudice against diplomatic inviolability, in the case of *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, this Court established: “any infringement of the inviolability of the premises may not be capable of remedy, since it might not be possible to restore the situation to the *status quo ante*”²².

6. In consequence, any act, omission or negligence of Ecuador that endangers or infringes the inviolability granted to the premises, property and archives of the Mexican Embassy will cause an irreparable harm to the legal rights and interests of Mexico in the present proceedings.

7. Distinguished Members of the Court, we cannot go back in time and restore the *status quo ante* before the violent attack of 5 April 2024 on the Mexican mission. The damages suffered by our rights and interests thereby are irreparable. This is why we appeal to this Court to issue the provisional measures requested in these proceedings, in order to avoid further irreparable damages upon the rights of Mexico protected by the Vienna Convention.

B. Urgency

8. Mr President, Your Excellencies, I will now address how there is a real and imminent risk that justifies the provisional measures requested to the Court.

9. This Court stated that it will indicate provisional measures only if there is urgency. As previously established by this Court, the condition of urgency is met when the acts susceptible of causing irreparable prejudice can “occur at any moment” before the Court makes a final decision on the case²³.

10. In this regard, Mexico is deeply concerned about the possibility that Ecuador causes an irreparable prejudice to its rights which it claims *pendente lite* and that are enshrined in the Vienna Convention.

11. The concerns of Mexico are based on the following arguments.

²² *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, Provisional Measures, Order of 7 December 2016, I.C.J. Reports 2016 (II), p. 1169, para. 90.

²³ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Provisional Measures, Order of 23 January 2020, I.C.J. Reports 2020, p. 24, para. 65.

12. First, the environment of distrust created by Ecuador, as reasonable indications of a risk upon the rights of Mexico.

13. On this matter, we have to bear in mind that the principle of good faith is one of the cornerstone principles of international law. As this Court has recognized in the *Nuclear Tests* case, good faith is a basic principle that governs the creation and performance of legal obligations. Trust and confidence are inherent in co-operation between States²⁴.

14. In the context of diplomatic relations, the principle of good faith is of the utmost importance, since only with trust and confidence can States develop effective diplomatic relations. It was under those assumptions that Mexico conducted its relationship with Ecuador, since there were reasonable expectations that Ecuador would abide by its obligations and duties under international law.

15. Those expectations were based on: (i) the public defence that Ecuador made about inviolability of diplomatic premises in the case of Mr Julian Assange for seven years; (ii) its active participation within the framework of General Assembly resolution 75/139 concerning “Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives”; (iii) the existence of a Diplomatic Immunities, Privileges and Franchises Act, enacted by Ecuador, and still in force today; (iv) the Note Verbale of 29 February 2024, submitted as Annex 5, in which Ecuador asked for Mexico’s consent to execute a warrant upon Mr Glas inside the diplomatic premises; and (v) the statement of 2 April 2024, in which the representative of Ecuador to the Security Council of the United Nations reaffirmed the obligation that all States, in accordance with international law, must respect the immunity and inviolability of diplomatic and consular premises. The representative of Ecuador also mentioned that any violation of the Vienna Convention in that regard is a serious incident that causes damage and negatively affects the promotion of the shared values of the international community.

16. All these facts created reasonable expectations for Mexico that Ecuador would comply with its obligations concerning diplomatic privileges and immunities. However, the events of 5 April 2024 show that even with these international and national regulations in force, and running counter

²⁴ *Nuclear Tests (Australia v. France), Judgment, I.C.J. Reports 1974*, p. 268, para. 46.

to the position it upheld along years in the case of Mr Julian Assange, Ecuador decided to act contrary to international law.

17. As previously stated by my Co-Agent, Ecuador's actions have created an environment of distrust in the region. This is aggravated due to the security policies implemented by the Government, including the establishment of three states of exception from January to this day, which entail the suspension of rights such as the inviolability of domiciles.

18. Our second argument on urgency is the continuous disregard of Ecuador for the privileges and immunities of Mexico in accordance with the Vienna Convention, which might be indicative of further law enforcement operations into the premises.

19. As previously stated, on 29 February 2024 Ecuador asked for Mexico's consent to enter into the Embassy. However, on 4 March the Mexican Ministry of Foreign Affairs responded through a Note Verbale that the consent would not be granted and reminded Ecuador of the obligation to respect the inviolability of the premises. Notwithstanding the inviolability, Ecuador illegally entered into the diplomatic premises.

20. Additionally, on 15 April 2024, SBS News published an interview with President Noboa, in which he declared that he did not have any regrets about the illegal entry into the Mexican Embassy in Ecuador since "they were on the right side of history"²⁵. Later, on 23 April, Minister Sommerfeld questioned the validity of the Vienna Convention during an interview in the following terms: "Do conventions of which we are signatories respond to the realities that the world faces today regarding organized crime and all the industries that derive from it? They were created 50 or 70 years ago, I think that today they do not respond to reality."²⁶

21. Upon the analysis of the aforementioned facts, it becomes evident that there is clear and convincing evidence that Ecuador, despite being fully aware of the inviolability afforded to the diplomatic premises, property and archives of the Embassy of Mexico, willingly decided to disregard those obligations. Despite such knowledge, Ecuador proceeded with an illegal raid into diplomatic

²⁵ "Ecuador's President Noboa defiant in the face of international outrage over embassy raid", 15 April 2024. Available at: <https://www.youtube.com/watch?v=c5HrgegT3dY>

²⁶ "Foreign Ministry removed video of Gabriela Sommerfeld's statements at the Concordia 2024 event", 23 April 2024. Available at: https://twitter.com/ecuainm_oficial/status/1782575730959823054?s=48&t=_bgkmtNsGQ7aQMkngF2-A

premises. Moreover, the declaration of President Noboa shows a total lack of respect for international obligations, which in his view can be ignored.

22. Finally, since the breaking-off of diplomatic relations, the building on 6 de Diciembre Avenue, along with the archives, documents and other property of the former Embassy, remain unprotected and vulnerable to possible damage, confiscation or inspection from national authorities or even from private individuals.

23. The urgency of the measures stems from the vulnerability and need for protection based on the possibility that Ecuadorian authorities could try to enter and conduct searches upon the premises, archives and documents of the former Embassy, due to the habeas corpus judicial procedure initiated by Mr Glas on 7 April 2024. There could be, moreover, other judicial proceedings involving Mr Glas, of which Mexico is not cognizant, where search mandates were issued and enforced inside our former Embassy in Quito, and the property and documents found therein.

24. The aforementioned bears a striking resemblance to the case *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, in which this Court granted provisional measures, due to the fact that there was a risk of intrusion to the diplomatic premises of Equatorial Guinea, since there was a possibility that French authorities could conduct new searches due to pending judicial procedures²⁷.

25. In consequence, the arguments previously raised sustain the possibility of a continuous risk of intrusion and confiscation upon the premises, property, archives and documents of the former Mexican Embassy.

26. It is also important to mention, your Excellencies, that Ecuador did not provide any appropriate and credible assurances to Mexico that its rights under the Vienna Convention will be respected.

27. Mexico recognizes that, on 9 April 2024, the Ministry of Foreign Affairs of Ecuador sent a Note Verbale, as shown on Annex 6 in the judges' folder, assuring the respect and the protection of diplomatic premises, property and archives in accordance with Article 45 (a) of the Vienna

²⁷ *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, Provisional Measures, Order of 7 December 2016, I.C.J. Reports 2016 (II), p. 1169, para. 89.

Convention. However, such Note Verbale did not mention anything about its duty to protect its inviolability.

28. Furthermore, it is important to recall that on 5 April 2024, hours after the declaration of *persona non grata* of our Ambassador, through a press release, as shown in the judges' folder as Annex 1, the Ministry of Foreign Affairs informed that the Government of Ecuador was going to respect and comply with its obligations under the Vienna Convention. Nevertheless, in the course of the night, Ecuador orchestrated a police operation at the Embassy doing the opposite.

29. Moreover, in the frame of the present proceedings, on 19 April 2024, through a Note Verbale of its Embassy to the Netherlands, Ecuador reiterated its acknowledgment of its obligations under the Vienna Convention, along with assurances to this Court and to Mexico that it would respect and protect the premises of the Mexican Embassy in Quito. Those same acknowledgments and assurances were given to Mexico on 5 April 2024, just before raiding the Embassy.

30. It is true that this Court has recognized that an undertaking by the respondent State might deprive the urgency character of the request, like in the case of *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*. However, in the case of *Certain Documents and Data (Timor-Leste v. Australia)*, even though it was considered that a written undertaking of the respondent State makes a significant contribution towards mitigating the imminent risk of irreparable prejudice, this Court concluded that the undertaking did not remove the risk in its entirety.

31. In the present case, both Notes Verbales may seem as a commitment by Ecuador to respect and protect the premises, property and archives of Mexico in terms of Article 45 of the Vienna Convention. However, in the *Hostages* case, this Court established that the same article requires the respect of the inviolability of the premises, property and archives of the mission. Without a credible and express commitment from Ecuador to respect the inviolability of the Mexican mission, its property and archives, both Notes Verbales fall short on Ecuador's obligations and, therefore, the imminent risk and the urgency of the measures remain.

32. It must be recalled, moreover, that Minister Sommerfeld mentioned at an interview, submitted by Mexico as Annex 8, that the Ecuadorian Ministry of Foreign Affairs only has informative and advisory functions within the Government, and that said Ministry has no final word concerning security strategies like the one deployed against the Mexican Embassy. Hence, it is

reasonable to conclude that the assurances given by the Ministry of Foreign Affairs are insufficient since other government agencies or departments might act on their own.

33. The above-mentioned Notes Verbales do not provide credible and appropriate assurances that Ecuador will quash each and any risk upon the premises, property and archives of the former Embassy. Furthermore, the Notes do not remove the risk nor the sense of urgency to grant the provisional measures requested by Mexico.

34. On the contrary, only a binding order of provisional measures from this Court will provide the necessary assurances to Mexico that its rights will be protected pending litigation. Thus, if Ecuador fails to comply with the provisional measures dictated by this Court, Mexico may recourse to one of the compliance mechanisms established within the UN Charter.

35. In the present state of diplomatic relations, the issuance of the requested provisional measures is imperative to establish a vital precedent affirming the absolute inviolability of diplomatic premises, property and archives, under all circumstances. It is essential to compel Ecuador to adhere to the fundamental principles enshrined in the Vienna Convention and customary international law.

36. Mr President, Members of the Court, I thank you for your attention and would kindly ask you, Mr President, to give the floor again to Mr Alejandro Celorio to conclude the oral pleadings on behalf of the United Mexican States.

The PRESIDENT: I thank Mr Miguel Angel Reyes Moncayo for his statement. I now give the floor back to the Agent of Mexico, Mr Alejandro Celorio Alcántara. You have the floor, Sir.

Mr CELORIO ALCÁNTARA:

VII. CONCLUDING STATEMENT AND FINAL SUBMISSIONS

1. Honourable judges of the International Court of Justice, I am honoured to conclude Mexico's oral pleadings and make Mexico's final submissions regarding its urgent request for the indication of provisional measures.

2. Let me reiterate Mexico's gratitude for the opportunity to present before this Court our request for the indication of provisional measures, along with the facts and legal considerations that support this petition.

3. Mexico is satisfied that this Court has jurisdiction to entertain the request, that we are entitled to rights that must be protected, that these rights face a real and imminent risk of irreparable damage, and that they bear a link with the provisional measures that we respectfully ask this Court to grant.

4. It is important to note that in addition to Ecuador's obligation to respect and protect the premises of the diplomatic mission, as well as its properties and archives in accordance with Article 45 of the Vienna Convention, Ecuador is also obligated under the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents to sanction any violent attack against the official premises of Mexico and any threat to commit such an attack.

5. This orchestrated raid against the premises and diplomatic staff of Mexico poses a serious threat to the maintenance of international relations and is a cause of grave concern for the international community. In this regard, through these measures, Mexico seeks to protect its premises, properties and archives, and ensure that incidents like the one on 5 April 2024 do not recur while the merits of this case are being decided.

6. Ecuador's actions demonstrate its disregard for international law, which is why Mexico is turning to the Court to request provisional measures. The discrepancies observed in Ecuador's declarations and conduct prevent Mexico from fully trusting its assurances. Consequently, Mexico is seeking the imposition of provisional measures, which are binding for States, to ensure that Ecuador's adherence to its international obligations is not left to its own discretion.

7. For the aforementioned reasons:

“The United Mexican States respectfully requests, that pending final judgment in these proceedings, the Court indicates the following provisional measures:

- a) That the Government of Ecuador refrains from acting against the inviolability of the premises of the Mission and the private residences of diplomatic agents, and that it takes appropriate measures to protect and respect them, as well as the property and archives therein, preventing any form of disturbance.
- b) That the Government of Ecuador allows the Mexican Government to clear diplomatic premises and the private residence of diplomatic agents.
- c) That the Government of Ecuador ensures that no action is taken which might prejudice the rights of Mexico in respect of any decision which the Court may render on the merits.

d) That the Government of Ecuador refrains from any act or conduct likely to aggravate or widen the dispute of which the Court is seized.”

8. Mexico respectfully requests the Court to affirm the necessity of adhering to international norms and to grant the requested provisional measures, ensuring violations of the inviolability do not recur. Through your decision, this honourable Court can reaffirm to the world the importance of the law on privileges and immunities and the international rule of law.

9. On behalf of the Government of Mexico, I thank you for your attention in this matter. This concludes Mexico’s presentation this morning.

The PRESIDENT: I thank the Agent of Mexico, Mr Alejandro Celorio Alcántara, whose statement brings to an end the single round of oral argument of Mexico, as well as this morning’s sitting. The Court will meet again tomorrow, Wednesday 1 May 2024, at 10 a.m., to hear Ecuador present its single round of oral argument. The sitting is adjourned.

The Court rose at 11.35 a.m.
