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CR 2024/26

International Court  
of Justice

THE HAGUE

Cour internationale  
de Justice

LA HAYE

YEAR 2024

*Public sitting*

*held on Wednesday 1 May 2024, at 10 a.m., at the Peace Palace,*

*President Salam presiding,*

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

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VERBATIM RECORD

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ANNÉE 2024

*Audience publique*

*tenue le mercredi 1<sup>er</sup> mai 2024, à 10 heures, 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)*

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COMPTE RENDU

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

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*Présents :* M. Salam, président  
M<sup>me</sup> Sebutinde, vice-présidente  
MM. Tomka  
Abraham  
M<sup>me</sup> Xue  
MM. Bhandari  
Nolte  
M<sup>me</sup> Charlesworth  
MM. Brant  
Gómez Robledo  
M<sup>me</sup> Cleveland  
MM. Aurescu  
Tladi, juges  
M. McRae, juge *ad hoc*  
  
M. Gautier, greffier

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***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,

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

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*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,

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S. Exc. M<sup>me</sup> Carmen Moreno Toscano, ambassadrice des États-Unis du Mexique auprès du Royaume des Pays-Bas,

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M<sup>me</sup> 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,

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M<sup>me</sup> Ana María Larrea, directrice des affaires internationales et de l'arbitrage, bureau du procureur général,

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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),

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M<sup>me</sup> Alegría 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.

La Cour se réunit ce matin pour entendre la République de l'Équateur en son tour unique de plaidoiries sur la demande en indication de mesures conservatoires présentée par les États-Unis du Mexique en l'affaire de l'*Ambassade du Mexique à Quito (Mexique c. Équateur)*. Pour des raisons dont il m'a dûment fait part, M. le juge Iwasawa est dans l'incapacité de participer à l'audience de ce jour.

I now give the floor to the Agent of Ecuador, His Excellency Mr Andrés Terán Parral. You have the floor, Excellency.

Mr TERÁN PARRAL:

### **1. OPENING REMARKS BY THE AGENT**

1. Mr President, Madam Vice-President, distinguished Members of the Court, it is a great honour to appear before you and to do so on behalf of the Republic of Ecuador.

2. Let me say at the outset how much importance Ecuador attaches to the work of the Court and to its contribution to international law. As a friend of the Court, we follow your work with great attention and respect.

3. At the same time, it can only be regretted that Mexico has forced upon this busy Court a two-day hearing that is both unnecessary and completely unjustified.

4. Mr President, this hearing is unnecessary and unjustified because Ecuador has already provided assurances, of its own volition, both to Mexico and to this Court, that it will respect and protect the premises of Mexico's diplomatic mission in Quito, together with its property and archives, in full accordance with international law. On behalf of my country, I hereby confirm these assurances, which speak directly and fully to Mexico's request for provisional measures. I reiterate unequivocally that, in accordance with the Vienna Convention on Diplomatic Relations and other relevant rules of international law, Ecuador will:

- (1) provide full protection and security to the premises, property and archives of the diplomatic mission of Mexico in Quito, to prevent any form of intrusion against them;
- (2) allow Mexico to clear the premises of its diplomatic mission and the private residences of its diplomatic agents; and



(3) refrain from any action that is likely to aggravate or widen the dispute of which the Court is seised, and instead to pursue the peaceful settlement of disputes.

5. Mr President, Ecuador provided assurances directly to Mexico, in writing, as early as 9 April 2024, shortly after Mexico abruptly broke off diplomatic relations with Ecuador in the wake of the wholly exceptional incident of 5 April 2024. Mexico did not respond. Instead, just two days later, it filed with the Court an Application instituting proceedings and a Request for the indication of provisional measures.

6. Ecuador then provided its assurances to the Court in our letter dated 19 April 2024. These assurances, it should be stressed, were in a form and in language that was fully responsive to the very terms of Mexico's Request for the indication of provisional measures. They were, of course, immediately transmitted by the Court to Mexico. Moreover, Ecuador made clear that it was willing for those assurances to be recorded in an order of the Court. This act of goodwill was met by Mexico with a dismissive response and a clear desire simply to have a hearing before the Court, for no real purpose.

7. I would add, Mr President, that the assurances provided by Ecuador clearly attest to our recognition of the imperative obligations prescribed by international law in relation to protection of diplomats and diplomatic premises. We fully subscribe to the Court's important statement in the case concerning *Diplomatic and Consular Staff in Tehran* that the inviolability of diplomatic envoys and embassies is a most fundamental prerequisite for the conduct of international relations<sup>1</sup>.

8. Mr President, Ecuador is indeed well aware of the importance of international law, including the law on diplomatic relations. We regret — and we reject — Mexico's calling into question of our good faith. It is not only that bad faith on the part of a State may not be presumed: in the present case it simply does not exist.

9. Mexico's counsel yesterday asserted that Ecuador's assurances cannot be trusted, in light of the events that occurred on 5 April 2024. But those events were highly exceptional in nature and there is no basis for regarding any such circumstances as still existing today.

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<sup>1</sup> *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.

10. Indeed, Ecuador is fully protecting the Embassy and Mexican diplomatic residences, just as it respects and protects all diplomatic missions in our capital.

11. Further, there are no threats to Mexico's properties or archives; they remain the same as they were when Mexico broke off diplomatic relations, and Mexico is fully free to remove such property and archives whenever it wishes.

12. Mexico presents no information of any kind that since 5 April 2024 there have been any difficulties in this regard. Insinuations by Mexico that Ecuadorian courts might order further entry into the Embassy have no basis in Ecuadorian law and no basis in any evidence before the Court.

13. Mr President, the reason that the events of 5 April 2024 were exceptional and no longer exist today is quite simple. Mexico for months misused its diplomatic premises in Quito to shelter a common criminal, who had been duly convicted twice by the highest Ecuadorian courts of very serious, corruption-related offences, and was subject to ongoing proceedings concerning yet more corruption and other offences. We heard virtually nothing about these facts yesterday.

14. Mexico's wrongful conduct is the subject of a separate dispute that Ecuador brought before the Court on 29 April 2024. That case concerns, among other things, the violations by Mexico of the Vienna Convention on Diplomatic Relations; the need to prevent abuse of the institution of asylum as known to Latin America; Mexico's complete disregard of its obligations to co-operate under the inter-American and the UN anti-corruption conventions; and the blatant interference by Mexico in Ecuador's internal affairs. Ecuador wishes to emphasize that it is determined to fight the corruption that has engulfed our continent. It is determined to fight the impunity that has been harmful to peace and prosperity not only in Ecuador but also far beyond. It will do so in accordance with the law.

15. Even at a time when it is dealing with internal unrest of an unprecedented scale, Ecuador remains committed to the rule of law. The President of Ecuador expressed this sentiment when he said on 8 April 2024:

“Ecuador is a country of peace and justice that respects all nations and international law. I want to express to our sister nation Mexico that I will always be willing to solve any difference between us, but justice is not negotiable. We would never protect criminals that have harmed Mexicans”<sup>2</sup>.

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<sup>2</sup> Translated from Spanish.

16. Mr President, distinguished Members of the Court, the isolated incident of 5 April 2024 was just that. It took place in very exceptional circumstances. Ecuador remains open to meeting with Mexico to discuss this matter, which is now in the past. And given the assurances Ecuador has made, there are no exceptional facts or circumstances of the kind requiring the Court to order provisional measures.

17. Mr President, Members of the Court, counsel for Ecuador will demonstrate this morning that Mexico's request for provisional measures is indeed without any legal basis. Mexico manifestly cannot meet the conditions required for the indication of interim relief.

18. First, Dr Crosato will set out the facts that are relevant to this provisional measures stage of the case instituted by Mexico.

19. He will be followed by Professor Murphy, who will explain that the requirement of prima facie jurisdiction is not met in this case, because the precondition for bringing a dispute to the Court under the Pact of Bogotá has not been met.

20. Sir Michael Wood will then show that the rights sought to be protected by the provisional measures are not plausible, and that in no case are these measures even remotely urgent.

21. I will then read out Ecuador's final submission.

22. Mr President, distinguished Members of the Court, that concludes my opening statement. I thank you for your kind attention, and ask that you call Dr Crosato to the podium.

The PRESIDENT: I thank the Agent of Ecuador for his statement. I now invite Mr Alfredo Crosato to take the floor. You have the floor, Sir.

Mr CROSATO:

## **2. THE FACTUAL CONTEXT**

1. Merci, Monsieur le président. Mr President, Members of the Court, it is an honour to appear before you on behalf of the Republic of Ecuador.

2. Mr President, yesterday Mexico presented its version of the facts. That presentation focused almost exclusively on the events of the evening of 5 April 2024, which are indeed the subject of the

dispute Mexico has brought before the Court. But counsel for Mexico said little or nothing about the extraordinary circumstances in which those events took place.

3. Those events include Mexico's own conduct that ultimately led to the exceptional measures that Ecuadorian authorities felt compelled to take on 5 April 2024: the misuse by Mexico of the premises of its diplomatic mission to shield a convicted Ecuadorian national from criminal law enforcement; the serious obstruction by Mexico of Ecuador's judicial system; and the blatant interference by Mexico with Ecuador's internal affairs.

4. My task today is to place the events of 5 April 2024 within this full context.

### **I. Preliminary remarks**

5. Before that, Mr President, allow me to make two preliminary remarks.

6. My first preliminary remark concerns the relevance of the context of the events of 5 April 2024 for purposes of assessing Mexico's request for provisional measures. That context may be essentially relevant in two ways.

7. The events prior to 5 April 2024 shed light on the circumstances in which Ecuadorian authorities made the exceptional decision to enter the Embassy — something that Ecuador had never done before in its history. When they did this, they had one objective only: bringing Mr Jorge Glas to justice. No more, no less. Mr Glas is no longer present in Mexico's Embassy and Ecuador has no reason — *no reason* — to enter the premises again.

8. This fact, together with Ecuador's assurances to Mexico and to the Court that the Agent has just recalled, demonstrates that there is no imminent risk of harm that would warrant an indication of provisional measures. Sir Michael will address this later this morning.

9. The context also includes what happened after 5 April 2024. Mexico broke diplomatic relations with Ecuador the very next day. Five days after the incident, the Organization of American States (OAS) Permanent Council urged the Parties to engage in constructive dialogue to find a solution. Regrettably, Mexico never tried to engage in such dialogue. Instead, it rushed to institute the present proceedings.

10. Mexico's hasty behaviour is relevant for assessing another flaw in the request for provisional measures before you, and which Professor Murphy will address: the lack of prima facie jurisdiction to entertain the case.

11. My second preliminary remark is that Mexico has made several factual allegations, both in its Application and in its presentation yesterday, but many of them are simply irrelevant at this phase of the case. Indeed, yesterday one sometimes had the impression of being at the merits stage already. As regards the allegations that may be pertinent to this phase, there is often no evidence other than Mexico's own assertions. But mere assertions cannot serve as the basis for the provisional measures that Mexico seeks.

## **II. The criminal proceedings against Mr Jorge Glas**

12. Mr President, with these points in mind, let me now turn to the facts.

13. The cause of the events of 5 April 2024 was the presence in Mexico's Embassy in Quito of Mr Jorge Glas, an Ecuadorian national convicted by Ecuadorian courts for serious corruption crimes, who was evading justice.

14. Mr Glas occupied various public offices in Ecuador from 2009, including the office of Vice-President of Ecuador between 2013 and 2018. During and after this term of office, the Prosecutor General of Ecuador initiated criminal investigations relating to Mr Glas for alleged corruption offences, leading to a number of criminal proceedings and convictions.

15. The first investigation took place within the broader context of what is widely known as the "Odebrecht corruption scandal", the largest transnational bribery scheme ever uncovered in Latin America. Mr Glas was indicted for the offence of illicit association<sup>3</sup> in connection with offences of embezzlement of public funds, bribery, illicit enrichment, trading in influence and money laundering.

16. Ecuador's National Court of Justice — the highest court in the judicial system — rendered a final judgment finding Mr Glas guilty of these offences on 23 January 2018<sup>4</sup>. He was sentenced to six years in prison.

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<sup>3</sup> Criminal Code of Ecuador, Article 370.

<sup>4</sup> National Court of Justice, Case No. 17721-2017-00222, Judgment of 23 January 2018.

17. While in prison, Mr Glas was investigated, indicted, tried and convicted, on 26 April 2020, for another corruption offence. In this instance, the National Court of Justice found him guilty of bribery<sup>5</sup> and he was sentenced to eight years in prison. This conviction, which is also final, was rendered in the context of a different corruption scandal, commonly known in Ecuador as “Caso Sobornos” (the “Briberies Case” in English)<sup>6</sup>.

18. On 28 November 2022, Mr Glas was temporarily released from prison following a request for precautionary measures, claiming health issues. This request was granted by a court of first instance, subject to the condition that he would appear once a week before the competent authorities and that he would not leave the country<sup>7</sup>.

19. Mr Glas’ temporary release was in effect until 28 February 2024, when the Constitutional Court of Ecuador determined that it had not been granted in conformity with Ecuador’s constitutional law<sup>8</sup>. At that point, Mr Glas was obligated to surrender to the authorities so as to resume his jail sentences.

20. Mr Glas had also pursued a separate action requesting early release from prison, having fulfilled a portion of his sentences in the “Odebrecht” and “Sobornos” cases. This request was denied on 28 December 2023 by a Special Court on Penitentiary Guarantees, which determined that the conditions for early release under Ecuadorian law were not met<sup>9</sup>.

21. The Regional Court of Justice of Pichincha rejected an appeal by Mr Glas on 7 March 2024. It confirmed the decision of the lower court and it ordered, consistent with the Constitutional Court’s ruling of 28 February 2024, that Mr Glas be located and arrested so as to bring him back to prison<sup>10</sup>.

22. Separately, on 5 January 2024, the National Court of Justice ordered the pre-trial detention of Mr Glas for yet another corruption offence. Mr Glas was indicted for alleged embezzlement of

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<sup>5</sup> Criminal Code of Ecuador, Articles 285 and 287.

<sup>6</sup> National Court of Justice, Case No. 17721-2019-00029G, Judgment of 26 April 2020.

<sup>7</sup> Criminal Judicial Unit, Santo Domingo Canton, Province of Santo Domingo de los Tsáchilas, Case No. 23281-2022-05925, decision of 28 November 2022.

<sup>8</sup> Constitutional Court of Ecuador, Case No. 12-23-JC/24, Judgment of 28 February 2024.

<sup>9</sup> Special Court of Penitentiary Guarantees, Province of Pichincha, Case No. 17U06202300032G, decision of 28 December 2023.

<sup>10</sup> Court of Justice of the Province of Pichincha, Case no. 17U06202300032G, Judgment of 7 March 2024.

public funds<sup>11</sup> that had been provided to grant relief following the devastating earthquake in the Manabí region of Ecuador in 2016. The National Court of Justice accordingly issued another order for the location and arrest of Mr Glas<sup>12</sup>.

23. Finally, Mr Glas also faces a criminal investigation based on a complaint filed on 11 October 2023 by a former employee concerning intimidation and psychological violence when Mr Glas was Vice-President<sup>13</sup>. Mr Glas is required to appear before the competent authorities to give his version of the facts.

24. Mr President, Members of the Court, the legal and factual situation of Mr Glas on 5 April 2024 was, in summary, as follows. There were two final convictions against him for illicit association and bribery; he was subject to ongoing criminal proceedings for alleged embezzlement of public funds; and he faced an investigation for alleged intimidation and psychological violence.

25. On 17 December 2023, the day he entered the Embassy of Mexico, Mr Glas had been temporarily released from prison, but he had an obligation to appear regularly before the competent judicial authorities and was prohibited from leaving the country. After certain appeals were exhausted, he was required to return to prison.

26. The criminal investigations, proceedings and convictions that I have just described were conducted with full respect for Mr Glas' right to due process and right to counsel, in strict adherence to Ecuador's criminal law and procedure. Such proceedings were also consistent with, and in implementation of, Ecuador's obligations under the 1996 Inter-American Convention against Corruption and the 2003 UN Convention against Corruption.

27. At no point during these investigations, trials, convictions and other proceedings, spanning more than seven years as well as four different governments in Ecuador, did Mexico express any concern whatsoever that they were somehow improper. And although yesterday counsel for Mexico briefly, and hesitantly, said that there might be "persecution" in Ecuador<sup>14</sup>, Mexico has never given an explanation for such a grave accusation.

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<sup>11</sup> Criminal Code of Ecuador, Article 278.

<sup>12</sup> National Court of Justice, Case No. 17721-2019-00033G, decisions of 5 and 7 January 2024.

<sup>13</sup> Investigation No. 170101823101641.

<sup>14</sup> CR 2024/25, p. 16, para. 3 (Pérez Manríquez).

### **III. Mexico's misuse of its Embassy to shelter Mr Glas**

28. Mr President, let me now turn to Mexico's conduct in relation to Mr Glas, which serves as further background for Ecuador's actions on the evening of 5 April 2024.

29. On 17 December 2023, while on temporary release from prison, Mr Glas entered Mexico's Embassy in Quito, with the Embassy's permission. At some point during his stay there, and with a view to leaving Ecuador's territory and evading justice, he requested that Mexico grant him "asylum". Mexico ultimately announced a decision to grant him "asylum" on 5 April 2024.

30. Several diplomatic exchanges took place between Ecuador and Mexico during that period. Ecuador repeatedly requested Mexico to co-operate and to surrender Mr Glas to the competent authorities. Mexico denied all of Ecuador's requests.

31. Exchanges began on 17 December 2023, as soon as Ecuador received news about the presence of Mr Glas in the Embassy. As you can see at tab 1 of your folders, Ecuador's Foreign Ministry immediately requested urgent co-operation on the matter, asking the Embassy to invite Mr Glas to leave the premises so that he would comply with his obligation to appear before the competent judicial authorities. Ecuador also asked to know the reasons why Mr Glas was present in the premises<sup>15</sup>.

32. The Embassy responded the next day confirming that Mr Glas had entered the premises and requested "protection". As you can see at tab 2 of your folders, the Embassy said that Mr Glas was a "guest" and that it would consider a request for asylum by him should he make one. The Embassy also requested information about the legal situation of Mr Glas<sup>16</sup>.

33. Ecuador co-operated swiftly and in good faith. It provided information obtained from the National Court of Justice, the Office of the Prosecutor General and the Ministry of the Interior on 21 and 31 December 2023<sup>17</sup>. Details about Mr Glas' legal situation — including the full text of

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<sup>15</sup> Ministry of Foreign Affairs and Human Mobility of Ecuador, Note Verbale No. MREMH-CGG-2023-0004-N, 17 December 2023 (tab 1).

<sup>16</sup> Embassy of Mexico in Quito, Note No. ecu02431, 18 December 2023 (tab 2).

<sup>17</sup> Ministry of Foreign Affairs and Human Mobility of Ecuador, Note Verbale No. MREMH-CGG-2023-0008-N, 21 December 2023, annexing a communication of the National Court of Justice dated 20 December 2023; Ministry of Foreign Affairs and Human Mobility of Ecuador, Note Verbale No. MREMH-CGG-2023-0006-N, 21 December 2023, annexing a communication from the Office of the Prosecutor General dated 20 December; Ministry of Foreign Affairs and Human Mobility of Ecuador, Note Verbale No. MREMH/MREMH/2023/0044/N, 31 December 2023, annexing a report by the Ministry of Interior dated 30 December 2023 (tab 3).



judgments and other judicial decisions — were also available to Mexico through the public databases of Ecuador's judiciary.

34. Ecuador contacted the Embassy again on 10 January 2024<sup>18</sup>. This time it provided a letter informing that, on 5 January 2024, the National Court of Justice had ordered, as I mentioned earlier, the pre-trial detention of Mr Glas.

35. The Embassy wrote back to Ecuador's Foreign Ministry on 28 January 2024. As you can see at tab 5, the Embassy said that Mr Glas was still in the premises and that it was evaluating an asylum request<sup>19</sup>. This communication coincided with the decision of Ecuador's Constitutional Court that Mr Glas' temporary release from prison, in November 2022, had not been granted in accordance with the law. In other words, at this point in time, Mr Glas was required to return to prison.

36. This was the first time that Ecuador was informed, through official diplomatic channels, that a request for asylum had been made. Ecuador was not informed of the exact date of that request, nor was it provided with a copy of the request. This would have enabled Ecuador to understand the precise grounds for which asylum was being sought and to co-operate further with Mexico.

37. Ecuador responded the next day, on 29 January 2024, recalling that it had already provided information concerning Mr Glas' corruption offences and convictions. Ecuador indicated, as you can see at tab 6, that a grant of asylum would be unlawful. It also requested once more the Embassy's co-operation in returning Mr Glas to Ecuador's competent authorities, with all the guarantees of due process<sup>20</sup>.

38. There was no reply from Mexico for a month. On 29 February 2024, Ecuador reiterated that granting asylum to Mr Glas would be unlawful and reminded the Embassy that there was a warrant for his arrest. Ecuador also requested the Embassy's consent for the police to enter the premises to take custody of Mr Glas<sup>21</sup>. Yet again, Mexico remained indifferent to Ecuador's request for co-operation.

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<sup>18</sup> Ministry of Foreign Affairs and Human Mobility of Ecuador, Note Verbale No. MREMH-DAJIMH-2024-00 09-N, 10 January 2024 (tab 4).

<sup>19</sup> Embassy of Mexico in Quito, Note Verbale No. ecu00182, 28 January 2024 (tab 5).

<sup>20</sup> Ministry of Foreign Affairs and Human Mobility of Ecuador, Note Verbale No. MREMH-DAJIMH-2024-00 42-N, 29 January 2024 (tab 6).

<sup>21</sup> Ministry of Foreign Affairs and Human Mobility of Ecuador, Note Verbale No. MREMH/MREMH/ 2024/0035/N, 29 February 2024 (tab 7).

39. Mexico resumed contact with Ecuador a week later, on 6 March 2024. It said in a Note Verbale, which you can find at tab 8, that it continued studying the request for asylum. It also proposed to send a special mission to Ecuador to discuss the matter further<sup>22</sup>.

40. On 19 and 25 March 2024, Ecuador provided yet more information regarding the legal situation of Mr Glas. It also explained in some detail why a grant of asylum would be contrary to international law. Despite Mexico's unhelpful attitude, Ecuador reaffirmed that it was open to dialogue and, in a spirit of co-operation, agreed to receive a special mission<sup>23</sup>.

41. A meeting between the representatives of the Parties took place in Quito on 21 March 2024. During this meeting, Ecuador emphasized that the crimes for which Mr Glas was prosecuted and convicted were "common offenses" within the meaning of the asylum conventions. It also recalled Mexico's obligations under the Vienna Convention and the anti-corruption conventions. And it also agreed, again in a spirit of co-operation, to provide Mexico further requested information concerning the legal situation of Mr Glas.

#### **IV. The unfolding of events on 3, 4 and 5 April**

42. Mr President, I now turn to what happened on 3, 4 and 5 April 2024. During these three days, the relationship between the Parties deteriorated quickly, to the point that the incident at issue in this case took place. Yesterday Mexico's Agent said in this regard that there was an "inexplicable change of dynamics"<sup>24</sup>. We beg to disagree: any "change of dynamics" can be easily explained by Mexico's conduct at that time.

43. On 3 April 2024, in one of his morning press conferences, the Head of State of Mexico made certain statements that Ecuador found utterly unacceptable. He referred to the recent presidential elections in Ecuador and grossly mischaracterized the murder of a presidential candidate on 9 August 2023. The Mexican Head of State called into question the legitimacy of the elections,

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<sup>22</sup> Embassy of Mexico in Quito, Note Verbale No. ecu00498, 6 March 2024, annexing Note No. SRE/283/2024, 4 March 2024 (tab 8).

<sup>23</sup> Ministry of Foreign Affairs and Human Mobility of Ecuador, Notes Verbales Nos. MREMH/MREMH/2024/0041/N and MREMH/MREMH2/2024/0040/N, 19 March 2024; Note Verbale No. 4-2-53/2024, 25 March 2024 (tab 9).

<sup>24</sup> CR 2024/25, p. 13, para. 6 (Celorio Alcántara).

suggesting that the murder was planned so as to benefit the current President of Ecuador at the ballot<sup>25</sup>.

44. These statements were made in the midst of one of the most violent internal armed conflicts in Ecuador, driven by organized crime groups and narcotraffic. Mexico's Agent acknowledged yesterday the grave security situation in Ecuador<sup>26</sup>.

45. Ecuador most strongly rejected and continues to reject Mexico's false and injurious allegations, which constitute a blatant and unlawful interference in its internal affairs. It can only be regretted that Mexico has neither apologized for nor retracted these statements. Quite the opposite: Mexico's Head of State has continued to make similar statements in recent press conferences<sup>27</sup>.

46. It is because of these statements — which Mexico did not mention at all yesterday — that, on 4 April 2024, Ecuador declared the Ambassador of Mexico *persona non grata* and gave her 72 hours to leave the country<sup>28</sup>.

47. The next day, 5 April 2024, Mexico announced in a press release that, after a “thorough analysis”, it had decided to grant “political asylum” to Mr Glas; moreover, Mexico stated that safe conduct would be requested so that Mexico could remove him from Ecuador's territory<sup>29</sup>. Ecuador immediately condemned the abuse by Mexico of the Vienna Convention, as well as Mexico's breach of the asylum conventions<sup>30</sup>.

48. Mexico's decision to grant “asylum” to Mr Glas and to remove him from Ecuador appears to have been precipitated by the declaration of its Ambassador as *persona non grata* — as some form of political payback. Indeed, this decision was announced abruptly, without any explanation, and before Ecuador could provide the additional information that Mexico had requested during the meeting of 21 March 2024.

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<sup>25</sup> President of Mexico, Press Conference of 3 April 2024 (tab 10); Ministry of Foreign Affairs and Human Mobility of Ecuador, Note Verbale No. MREMH-VRE-2024-0009-N, 3 April 2024 (tab 11).

<sup>26</sup> CR 2024/25, p. 13, para. 6 (Celorio Alcántara).

<sup>27</sup> President of Mexico, Press Conferences of 5 and 25 April 2024 (excerpts) (tab 12).

<sup>28</sup> Ministry of Foreign Affairs and Human Mobility of Ecuador, Notes Verbales Nos. MREMH/MREMH/2024/0045/N and MREMH/MREMH/2024/0044/N, 5 and 4 April 2024; Ministry of Foreign Affairs and Human Mobility of Ecuador, Press Release, 4 April 2024 (tab 13).

<sup>29</sup> Ministry of Foreign Affairs of Mexico, Press Release No. 126, 5 April 2024 (tab 14).

<sup>30</sup> Ministry of Foreign Affairs and Human Mobility of Ecuador, Press Release, 5 April 2024 (tab 15).

49. I should add, Mr President, Members of the Court, that to this date Ecuador has not seen the actual decision to grant asylum; it was announced publicly but never communicated through official diplomatic channels. And we also note that in an interview on CNN on 13 April 2024, the Agent for Mexico astonishingly suggested that Mexico had some “indicia” of political persecution, but that they were not required to justify it before granting asylum.

50. Now, that same day — on 5 April 2024 — when Mexico was making these announcements, including its intention to remove Mr Glas from Ecuador, Mexico made conflicting and suspicious requests, asking Ecuador to co-operate in the departure of its Ambassador from Ecuadorian territory. These requests put Ecuador on high alert: it had become apparent that Mexico was planning to facilitate Mr Glas’ imminent escape.

51. In the afternoon of 5 April 2024, at 4 p.m., Ecuador received a first Note Verbale from the Mexican Embassy requesting authorization for two Mexican air force aircraft to land in Ecuador on 7 April 2024. This Note, at tab 16 of your folders, indicated that the objective of the aircraft was to transport the Mexican Ambassador back to Mexico<sup>31</sup>.

52. Mexico acknowledged this request yesterday<sup>32</sup>. What they did not mention is that the form attached to this request indicated that the Ambassador would be travelling not alone, but together with her “delegation” or “entourage”. Mexico did not specify who exactly was to leave Ecuador’s territory together with the Ambassador. No other diplomat from the Mexican mission had been asked to leave the country. And the Ambassador had no family members accredited to Ecuador.

53. That very same day — on 5 April 2024 — the Embassy made another, quite different request, which our friends opposite did not mention yesterday at all. The Embassy wrote to the Foreign Ministry, at around 5 p.m., one hour later, indicating that the Ambassador would leave Ecuador alone on a commercial flight on 7 April 2024 and requested VIP treatment at Quito’s airport<sup>33</sup>. You may find this request at tab 17 of your folders.

54. These simultaneous and conflicting requests, together with Mexico’s public announcement earlier that day, gave Ecuador more than reasonable grounds to believe that there was an imminent

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<sup>31</sup> Embassy of Mexico in Quito, Note Verbale No. ecu00722, accompanied by permission form over flight permit or landing, 5 April 2024 (tab 16).

<sup>32</sup> CR 2024/25, p. 17, para. 6 (Pérez Manríquez).

<sup>33</sup> Embassy of Mexico in Quito, Note Verbale No. ecu00721, 5 April 2024 (tab 17).

risk of flight by Mr Glas, with the assistance of Mexico. In light of this, the Embassy was requested once more to surrender Mr Glas or to allow the police to enter the premises to arrest him. The request was denied by Mexico. It is at this point, in these extraordinary circumstances, at risk that Mr Glas would succeed in evading justice, that Ecuador's authorities felt compelled to enter the premises of the mission and arrest Mr Glas.

## **V. The aftermath of the 5 April 2024 events**

55. Mr President, Members of the Court, having clarified the background of the dispute before you, let me now address briefly the aftermath of the incident.

56. The day after the events I just described, Ecuador's Foreign Ministry issued a public statement, available at tab 18 of your folders. This statement set out Ecuador's position about what happened that day in some detail and I commend it to your attention<sup>34</sup>.

57. The arrest of Mr Glas gave rise to a protest by Mexico. In a Note Verbale and two press releases dated 6 April 2024, available at tab 19 of your folders, Mexico complained of violations of the Vienna Convention on Diplomatic Relations and broke off diplomatic relations. Mexico also announced that its diplomatic personnel would leave Ecuador and that the Embassy would "remain closed indefinitely"<sup>35</sup>.

58. The matter was brought up at the OAS Permanent Council shortly thereafter, with two extraordinary sessions on 9 and 10 April 2024, convened by Ecuador and Colombia respectively. Quite extraordinarily, Mexico boycotted these two meetings.

59. The Permanent Council in any event adopted a resolution on 10 April 2024, available at tab 20 of your folders<sup>36</sup>. We would respectfully draw the Court's attention to the careful and largely balanced terms employed by the Permanent Council. It refers not only to the need to respect the inviolability of diplomatic premises and personnel, but also to the obligation to respect the laws and regulations of the receiving State; the obligation not to interfere in the internal affairs of the receiving

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<sup>34</sup> Ministry of Foreign Affairs and Human Mobility of Ecuador, Press Release, 6 April 2024 (tab 18).

<sup>35</sup> Ministry of Foreign Affairs of Mexico, Press Release No. 128, 6 April 2024; Ministry of Foreign Affairs of Mexico, Press Release No. 129, 6 April 2024; Ministry of Foreign Affairs of Mexico, Note Verbale No. SRE/423/2024, 6 April 2024 (tab 19).

<sup>36</sup> OAS Permanent Council, resolution 1253 (2494/24), 10 April 2024 (tab 20), eight preambular paragraph and operative paragraphs 3, 5 and 6.

State; and the obligation not to use the premises of a diplomatic mission in a manner incompatible with its functions. The resolution highlights, moreover, the need to respect the asylum conventions in their entirety.

60. The Permanent Council also “urge[d] Ecuador and Mexico to initiate a dialogue and take immediate steps, in accordance with international law, to resolve this serious matter in a constructive manner”<sup>37</sup>. However, rather than pursue such a dialogue, Mexico proceeded, the very next day, to institute the present proceedings before the Court.

61. Ecuador was never given any opportunity to discuss its position with respect to the specific facts or applicable law of which Mexico complains in this case. Had Mexico done so, there would perhaps have been no need for the present request for provisional measures or for the case to be filed at all.

## **VI. Conclusion**

62. Mr President, Members of the Court, what I have described is the context in which the incident of 5 April 2024 took place. It is abundantly clear that Ecuador’s sole concern, the entire time, was to ensure that a person convicted for serious corruption offences be brought back to justice. That has now been done. It is also evident that the incident of 5 April 2024 cannot be fully appreciated without taking into consideration Mexico’s highly regrettable conduct. The request for provisional measures before you must be assessed against this background.

63. Mr President, Members of the Court, this concludes my presentation. I thank you for your attention and kindly ask you, Mr President, to invite Professor Murphy to the podium.

The PRESIDENT: I thank Mr Alfredo Crosato for his statement. I now invite Professor Sean Murphy to take the floor. You have the floor, Sir.

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<sup>37</sup> *Ibid.*, para. 7.

Mr MURPHY:

### **3. LACK OF PRIMA FACIE JURISDICTION OVER MEXICO'S CLAIMS**

1. Thank you, Mr President. It is a great honour to appear again before the Court, and to do so on behalf of the Republic of Ecuador. I will principally be explaining why the Court does not possess prima facie jurisdiction over Mexico's claims in this case and, therefore, why provisional measures should not be ordered by the Court.

#### **I. The requirements for issuance of provisional measures of protection**

2. Before doing so, however, allow me to confirm that there is basic agreement of the Parties as to the requirements when issuing provisional measures. The Court must first decide whether "the provisions relied on by the applicant appear, prima facie, to afford a basis on which its jurisdiction could be founded"<sup>38</sup>. If they do not, then the request should be denied.

3. If prima facie jurisdiction is found to exist, then the Court must assess whether the rights claimed by Mexico, and for which it is seeking protection, are "plausible" and whether the provisional measures requested are "link[ed]" to those rights<sup>39</sup>. Further, "the power of the Court to indicate provisional measures will be exercised only if there is urgency, in the sense that there is a real and imminent risk that irreparable prejudice will be caused before the Court gives its final decision"<sup>40</sup>. Sir Michael Wood will be addressing the absence of those conditions.

4. I now turn to the central part of my presentation, which is that prima facie jurisdiction does not exist in this case. On this, I will have four points.

#### **II. Article II of the Pact of Bogotá requires the existence of a dispute that cannot be settled by direct negotiations**

5. Mr President, my first point concerns the interpretation of Article II of the Pact of Bogotá, as seen through the Court's jurisprudence.

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<sup>38</sup> See, e.g., *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Provisional Measures, Order of 26 January 2024, para. 15.

<sup>39</sup> *Ibid.*, paras. 35-36.

<sup>40</sup> *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.

6. Article II of the Pact — which appears in tab 21 of your judges’ folder — requires the existence of a dispute “which, in the opinion of the parties, cannot be settled by direct negotiations through the usual diplomatic channels”<sup>41</sup>. By its terms, the provision sets forth an essential component of the jurisdictional system of the Pact; indeed, it specifies a precondition for recourse to the Court, as counsel for Mexico acknowledged yesterday<sup>42</sup>. In the case of *Border and Transborder Armed Actions*, the Court recognized as much, saying that Article II “constitutes . . . a condition precedent to recourse to the pacific procedures of the Pact in all cases”<sup>43</sup>.

7. To determine whether, in the opinion of the parties, the dispute cannot be settled by direct negotiations, several considerations from the Court’s jurisprudence are important.

8. *First*, as you recalled in the case of *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea*, “[t]he critical date at which ‘the opinion of the parties’ has to be ascertained for the application of Article II of the Pact is the date on which proceedings are instituted”<sup>44</sup>. For this case, that date is 11 April 2024 when Mexico filed its Application.

9. *Second*, “the parties are expected to provide substantive evidence to demonstrate that they considered in good faith that their dispute could or could not be settled by direct negotiations through the usual diplomatic channels”<sup>45</sup>. To make such a determination, counsel for Mexico yesterday conceded that Article II of the Pact requires evidence that “the two parties previously attempted to resolve their differences by direct negotiations through the usual diplomatic channels”<sup>46</sup>.

10. *Third*, while the parties provide the evidence, the Court, “‘in the exercise of its judicial function, [is] free to make its own determination of that question’”, and it must do so “‘on the basis of such evidence as is available to it’”<sup>47</sup>.

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<sup>41</sup> American Treaty on Pacific Settlement (Pact of Bogotá), April 30, 1948, Art. II (tab 21 of judges’ folders).

<sup>42</sup> CR 2024/25, p. 21, para. 11 (Oliva Bernal).

<sup>43</sup> *Border and Transborder Armed Actions (Nicaragua v. Honduras)*, *Jurisdiction and Admissibility, Judgment*, I.C.J. Reports 1988, p. 94, para. 62.

<sup>44</sup> *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, *Preliminary Objections, Judgment*, I.C.J. Reports 2016 (I), p. 37, para. 93; see also *Border and Transborder Armed Actions (Nicaragua v. Honduras)*, *Jurisdiction and Admissibility, Judgment*, I.C.J. Reports 1988, p. 95, para. 66.

<sup>45</sup> *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, *Preliminary Objections, Judgment*, I.C.J. Reports 2016 (I), p. 37, para. 93.

<sup>46</sup> CR 2024/25, p. 19, para. 5 (Oliva Bernal) (informal translation).

<sup>47</sup> *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, *Preliminary Objections, Judgment*, I.C.J. Reports 2016 (I), p. 37, para. 92 (citing *Border and Transborder Armed Actions (Nicaragua v. Honduras)*, *Jurisdiction and Admissibility, Judgment*, I.C.J. Reports 1988, p. 95, para. 65).



11. *Fourth*, as you noted in the *Border and Transborder Armed Actions* case, when reaching a conclusion based on the evidence available to it, the Court should “analyse the sequence of events in [the] diplomatic relations” of the parties<sup>48</sup>.

12. *Fifth*, and no less significant, the Court has explained that the subject-matter for the negotiations must not be different from the subject-matter of the dispute between the parties<sup>49</sup>.

13. From these considerations, the Court then determines whether it could plausibly be maintained that the dispute between the parties cannot be settled by direct negotiations through the usual diplomatic channels<sup>50</sup>.

### **III. There were no direct negotiations between Mexico and Ecuador with respect to the claims Mexico now places before the Court**

14. Mr President, Members of the Court, my second point is that, when applying these considerations to the facts of this case, there is no basis for concluding that this dispute could not have been settled by direct negotiations through the usual diplomatic channels prior to the filing of Mexico’s Application. The sequence of events, and the evidence before you, can lead to no other conclusion. Indeed, there were no “negotiations”, let alone “direct” negotiations, between Mexico and Ecuador regarding the dispute that is now placed before the Court. As such, Mexico’s Application of 11 April 2024 was simply premature.

15. To understand the dispute placed before the Court by Mexico, it is necessary to review the underlying claims set forth in Mexico’s Application. As you will see at tab 22 of your folders, Mexico claims, as stated in the Application, that these claims fall into three basic categories.

16. At tab 22 you will see that at paragraph 52 (a) (i) of the Application, Mexico in essence claims that by “using force” against the Mexican Embassy, Ecuador has violated its obligation to settle international disputes by peaceful means.

17. At paragraph 52 (b) (i) of the Application, Mexico further claims that by deploying police and military personnel outside and inside of Mexico’s Embassy, by harming the personal integrity

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<sup>48</sup> *Border and Transborder Armed Actions (Nicaragua v. Honduras)*, *Jurisdiction and Admissibility, Judgment*, I.C.J. Reports 1988, p. 95, para. 67.

<sup>49</sup> *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, *Preliminary Objections, Judgment*, I.C.J. Reports 2016 (I), p. 38, para. 98.

<sup>50</sup> *Ibid.*, p. 37, para. 95.

and dignity of Mexican diplomatic personnel, by listening to the private communications of the Embassy, and by forcibly entering the Embassy, Ecuador violated the Vienna Convention on Diplomatic Relations.

18. Beyond that, in miscellaneous subparagraphs that you find at tab 22, Mexico's Application seeks various remedies, including: declaratory relief that Ecuador has persistently violated the UN Charter (paragraph 52 (a) (ii)), that Ecuador shall protect the Embassy, its property and archives (paragraph 52 (b) (ii)) and that Ecuador has harmed Mexico (paragraph 52 (c) (i)); further, that Ecuador should make reparation (paragraph 52 (b) (iii)); and, perhaps most dramatically, that the Court should suspend Ecuador's membership in the United Nations until it apologizes for its conduct, and that the Court should somehow assume the role of expelling UN Members from the Organization (paragraph 52 (c) (ii)-(iv)). Though mentioned yesterday by counsel for Mexico<sup>51</sup>, you will find no claim here relating to the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents.

19. Thus, these claims, and the relief that they seek, concern Ecuador's entry into Mexico's Embassy on 5 April 2024, including the alleged harm to the dignity of several members of the staff of the Embassy during that entry, as well as some other matters relating to deployment of Ecuadorian personnel around the Embassy and alleged listening of communications at the Embassy. Elsewhere, at paragraph 41 of the Application, it expressly identifies the "dispute" as the entry into the Embassy on 5 April 2024<sup>52</sup>, and at paragraph 45 of the Application, it says

"there is a dispute regarding the lawfulness of the acts of the Ecuadorian special forces for the violent break-in of the Mexican diplomatic premises, the harassment and disturbance of the diplomatic personnel, and the acts of violence and other attacks committed against the Deputy Chief of Mission"<sup>53</sup>.

20. The dispute in this case is also readily apparent from the one — and only one — diplomatic Note that Mexico sent on 6 April 2024 to Ecuador after the latter had entered the Embassy. Mexico's Note, which is at tab 19 of your folders (along with a translation), refers to three acts: the 5 April

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<sup>51</sup> CR 2024/25, p. 35, para. 21 (Celorio Alcántara).

<sup>52</sup> Application and Request of Mexico, para. 41.

<sup>53</sup> *Ibid.*, para. 45.

2024 entry into the mission; the alleged “harassment” of the diplomats; and the alleged acts of “violence” against the Deputy Chief of Mission<sup>54</sup>.

21. Counsel for Mexico yesterday repeatedly confirmed this understanding of the “dispute” before the Court, referring to the entry into the Embassy on 5 April 2024 as lying at “the core of this case”<sup>55</sup> and to the principle of inviolability as lying “at the heart of this dispute”<sup>56</sup>. Counsel even defined the dispute for jurisdictional purposes as “the unfortunate events of 5 April” and its aftermath<sup>57</sup>.

22. But here is the important point. At no moment in time did Mexico seek to negotiate with Ecuador this dispute. Mexico never sought to negotiate its claim that Ecuador’s entry into the Embassy violated the UN Charter, violated the Vienna Convention on Diplomatic Relations or violated any other treaty or rule of customary international law. Mexico never sought to negotiate with Ecuador a claim concerning harm to the dignity of the Embassy’s personnel, in violation of international law. And Mexico never sought to negotiate with Ecuador concerning its allegation that Ecuador was listening to the Embassy communications, in violation of international law.

23. Indeed, Mexico sent no diplomatic Notes to Ecuador seeking negotiations on any of these claims. Mexico requested no meetings with Ecuador to discuss these claims. Mexico never sought to sit down with Ecuador so as to explain the facts as Mexico understood them, so as to identify the treaties or customary rules that the alleged conduct purportedly violated, or so as to make demands of any kind upon Ecuador of the type Mexico now presents to the Court.

24. And, for Ecuador’s part, it was never afforded the opportunity through negotiations to listen to Mexico’s position, to ask questions that might clarify their mutual understanding of the facts and of the law regarding the events of 5 April 2024. Ecuador was never afforded the opportunity through negotiations to explain the facts as Ecuador understood them; was never afforded the opportunity through negotiations to explain why it did, or did not, regard its conduct as a violation

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<sup>54</sup> Ministry of Foreign Affairs of Mexico, Note Verbale No. SRE/423/2024, 6 April 2024 (tab 19 of the judges’ folders).

<sup>55</sup> CR 2024/25, p. 13, para. 4 (Celorio Alcántara).

<sup>56</sup> CR 2024/25, p. 25, para. 17 (Ibrahim Nader).

<sup>57</sup> CR 2024/25, p. 19, para. 6 (Oliva Bernal) (informal translation).

of international law; and was never afforded an opportunity through negotiations to consider Mexico's demands for assurances, for compensation or for satisfaction.

25. Instead of direct negotiations — or even exploration of such a possibility — as required by the Pact of Bogotá, Mexico did the exact opposite. As has been noted, on 6 April 2024 — just one day after the events of 5 April — Mexico broke off diplomatic relations with Ecuador. And then, on 11 April 2024 — six days after the events in question — Mexico, having made no effort to negotiate, filed its Application before the Court, declaring quite publicly that it had done so.

26. This rush to the Court was not something Ecuador envisaged. Ecuador was perfectly open to engaging in diplomatic negotiations after the incident at the Embassy. Indeed, on 9 April 2024, Ecuador sent a diplomatic Note to Mexico seeking to assure Mexico as to some of the very things that Mexico has now brought to the Court<sup>58</sup>. On 10 April 2024, Ecuador's Vice-Minister for Foreign Affairs stated at the meeting of the OAS Permanent Council, in response to calls for a diplomatic solution, that: "I want to renew my Government's willingness to advance in that effort. The peaceful, negotiated solution of differences characterizes my country and I am sure Mexico as well. Our brother peoples conceive it this way"<sup>59</sup>. And on 16 April, Ecuador's President stated publicly that he was willing to sit down with Mexico's President and discuss the situation.

27. Moreover, this rush to the Court was not something that the international community at large wanted to see. The OAS Permanent Council, just one day before this case was filed, "urge[d] Ecuador and Mexico to initiate a dialogue and take immediate steps, in accordance with international law, to resolve this serious matter in a constructive manner"<sup>60</sup>. This call for dialogue was consistent with Article II of the Pact of Bogotá, but Mexico did not heed it. Mexico even boycotted the OAS meeting at which this resolution was adopted. Many countries also urged Mexico and Ecuador

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<sup>58</sup> Tab 23 of the judges' folders.

<sup>59</sup> Government of Ecuador, Vice Minister of Foreign Affairs, Remarks at the OAS Permanent Council Meeting, 10 April 2024 (original Spanish available at [https://www.youtube.com/watch?v=aHWpZa78juI&list=PLkh9EPEuEx2svxkhp\\_MWx\\_Q-X0Iwm-3-g&index=12](https://www.youtube.com/watch?v=aHWpZa78juI&list=PLkh9EPEuEx2svxkhp_MWx_Q-X0Iwm-3-g&index=12) (start time at 1 hour 46 min 39 seconds); English translation at tab 24 of the judges' folders).

<sup>60</sup> OAS Permanent Council, resolution 1253 (2484/24), 10 April 2024, eighth preambular paragraph and operative para. 7 (tab 20 of the judges' folders).

to resolve their dispute amicably, calling for negotiations<sup>61</sup>. But none of this made any difference to Mexico; it simply rushed to the Court. It seems that Mexico did so with one aim in mind, to provoke a wholly unnecessary hearing on provisional measures.

28. This sequence of events indicates that Mexico has not even begun to demonstrate that direct negotiations could not have resolved this dispute. Mexico has presented no evidence that negotiations occurred or were not possible. None of the public statements of Ecuador invoked by Mexico are a basis for saying that a request for negotiations would have been rejected by Ecuador, or that, once negotiations commenced, a request by Mexico for reparation or for guarantees of non-repetition would have been rejected by Ecuador. Any such assertions are sheer speculation and inappropriate when considering whether the requirements of Article II of the Pact of Bogotá have been met.

#### **IV. Mexico's theories as to why Article II is satisfied is untenable**

29. Mr President, Members of the Court, this leads me to my third point, which concerns how Mexico attempts to remedy this fatal defect in its claim of jurisdiction.

30. In its Application, Mexico attempts to define the dispute in an unsustainably broad way<sup>62</sup>, by saying that: "A controversy arose between both States when Ecuador requested Mexico's consent to enter its premises and such consent was not granted."<sup>63</sup> Thus, the Application characterizes the dispute essentially as involving Ecuador's *request* to enter the Embassy long before 5 April 2024, which Mexico then denied. Since that was purportedly the "dispute", then negotiations about that dispute took place in the months leading up to 5 April 2024 and, according to Mexico, clearly became futile once Ecuador entered the Embassy<sup>64</sup>. Counsel for Mexico yesterday echoed this approach<sup>65</sup>.

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<sup>61</sup> See, e.g., Canada (<https://www.canada.ca/en/global-affairs/news/2024/04/statement-regarding-ecuadors-unauthorized-entry-into-embassy-of-mexico.html>); India (<https://www.mea.gov.in/media-briefings.htm?dtl/37778/transcript+of+weekly+media+briefing+by+the+official+spokesperson+april+12+2024>); Iran (<https://en.mfa.gov.ir/portal/newsview/742991>); Japan ([https://www.mofa.go.jp/press/release/pressite\\_000001\\_00273.html](https://www.mofa.go.jp/press/release/pressite_000001_00273.html)); and South Africa (<https://dirco.gov.za/violation-of-the-mexican-embassy-in-quito-ecuador/>). See also France (<https://www.diplomatie.gouv.fr/fr/dossiers-pays/mexique/evenements/article/mexique-q-r-extrait-du-point-de-presse-12-04-24>) and the United States of America (<https://usoas.usmission.gov/remarks-by-u-s-ambassador-francisco-o-mora/>).

<sup>62</sup> Application and Request of Mexico, paras. 39-45.

<sup>63</sup> *Ibid.*, para. 42.

<sup>64</sup> *Ibid.*, paras. 46-51.

<sup>65</sup> CR 2024/25, p. 21, para. 12 (Oliva Bernal).

31. But, as I have already explained, that demonstrably is *not* the dispute before the Court. Nowhere in Mexico's Application, whether one looks at the facts, or at the relief requested on the merits, or at the relief requested in this provisional measure phase, does Mexico maintain that international law was violated when Ecuador sought consent to enter the Embassy or when Mexico denied such consent. Rather, the dispute in this case concerned what happened on and about 5 April 2024.

32. Perhaps recognizing the curiosity of arguing that there were negotiations prior to 5 April 2024 for a dispute that only arose on that date, yesterday counsel pointed to the overall posture of the two States in the aftermath of the entry into the Embassy. Specifically, Mexico argued yesterday that, after the events of 5 April 2024, Ecuador announced in both a press release and at the OAS that its arrest of Mr Glas was justified<sup>66</sup>. Further, we are told that Mexico, in the aftermath of 5 April 2024, sought to "clarify" its position on the applicable rules, "notably" in a letter sent to the UN Secretary-General on the day after the Application was filed<sup>67</sup>. From this, we are told that the positions of the Parties are "clearly opposed"<sup>68</sup>.

33. If by such statements we are to believe that negotiations after 5 April 2024 either occurred or were futile, that is a very odd concept of negotiations. Any time two States sit down to discuss a dispute, they come to the table with positions that are opposed; that is why there is a dispute that needs to be negotiated! The whole point in the "direct negotiations" requirement of the Pact of Bogotá is to see if it is possible to bridge those opposed positions which, in many instances, is in fact possible. Indeed, international law is replete with instances where harms to an embassy and diplomatic personnel are resolved by two States through negotiations, often leading to *ex gratia* payments<sup>69</sup>. The dangers of the argument here advanced by Mexico hardly need stressing.

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<sup>66</sup> CR 2024/25, pp. 19-20, para. 6 (Oliva Bernal).

<sup>67</sup> CR 2024/25, p. 20, para. 7 (Oliva Bernal) (informal translation).

<sup>68</sup> CR 2024/25, pp. 20-21, paras. 8-9 (Oliva Bernal) (informal translation).

<sup>69</sup> See, e.g., Eileen Denza, "Inviolability of the Mission Premises", in *Diplomatic Law: Commentary on the Vienna Convention on Diplomatic Relations* (4th Edition), Oxford University Press, 2016, pp. 137-139; "The Clinton Administration — David R. Andrews (1997-2000)", in Michael P. Scharf, Paul R. Williams, *Shaping Foreign Policy in Times of Crisis, The Role of International Law and the State Department Legal Adviser*, Cambridge University Press, 2010, pp. 118-124.

34. In support of its position, Mexico asserts that Ecuador, in a press release of 6 April 2024, “announced that it had exhausted diplomatic channels in respect of the dispute”<sup>70</sup>. Here, too, Mexico is conflating things. It is correct that Ecuador said in that press release that it had “exhausted all diplomatic channels with Mexico regarding this issue”<sup>71</sup>. But “the issue” being referred to in the press statement is not a dispute concerning forcible entry of the Embassy, or associated harm to diplomatic personnel, or consequential claims for reparation. Rather, “the issue” being referred to in that press release is Ecuador’s position that Mexico was unlawfully harbouring Mr Glas in the Embassy. Direct negotiations on *that* issue had indeed failed to resolve that dispute, but *that* dispute is not the dispute before the Court in this case. Rather, that dispute is the subject of the entirely separate case instituted by Ecuador on 29 April 2024. By contrast, today’s case relates to one dispute only: the one relating to Ecuador’s entry into the Embassy on 5 April 2024.

35. So, to summarize my third point, Mexico’s attempt to demonstrate fulfilment of the requirement for “direct negotiations” in Article II of the Pact of Bogotá, with respect to the dispute at issue in this proceeding, is completely untenable.

**V. Finding at this stage in the proceedings that prima facie Article II is not satisfied  
is consistent with the Court’s general jurisprudence**

36. Mr President, I turn now to my fourth and final point. As a legal matter, the question of prima facie jurisdiction turns principally on applying the text of Article II of the Pact of Bogotá, associated jurisprudence and the facts of this case. Even so, aspects of the Court’s jurisdiction unrelated to the Pact of Bogotá are also pertinent to the Court’s decision on prima facie jurisdiction in this case.

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<sup>70</sup> Application and Request of Mexico, para. 48; see CR 2024/25, p. 21, para. 12 (Oliva Bernal) (informal translation).

<sup>71</sup> Ministry of Foreign Affairs and Human Mobility of Ecuador, Press Release, 6 April 2024 (original Spanish available at <https://www.cancilleria.gob.ec/2024/04/06/ecuador-defiende-su-soberania-y-el-cumplimiento-de-las-leyes-y-la-justicia/>; English translation provided at tab 19 of the judges’ folders).

37. *First*, it is to be noted that on several occasions the Court has declined to find *prima facie* jurisdiction at the provisional measure phase<sup>72</sup>. Therefore, denying provisional measures due to a lack of *prima facie* jurisdiction in this case would not be exceptional.

38. *Second*, the Court has often considered what it means to engage in “negotiations”; it means engaging in a “genuine attempt” to negotiate or “meaningful” negotiations. Indeed, the Court has said that “[m]anifestly, in the absence of . . . a genuine attempt to negotiate, the precondition of negotiation is not met”<sup>73</sup>. In the *Interim Accord* case, the Court elaborated further on this by stating that:

“the obligation to negotiate is first of all ‘not only to enter into negotiations, but also to pursue them as far as possible, with a view to concluding agreements’. No doubt this does not imply ‘an obligation to reach an agreement’, or that lengthy negotiations must be pursued of necessity. However, States must conduct themselves so that the ‘negotiations are meaningful’. . . . Negotiations with a view to reaching an agreement also imply that the parties should pay reasonable regard to the interests of the other”<sup>74</sup>.

39. Ecuador submits that Mexico did not enter into negotiations at all, let alone meaningful negotiations that were pursued as far as possible, nor did Mexico pay any reasonable regard in such negotiations to the interests of Ecuador. By any measure, in light of the Court’s jurisprudence, there was no genuine attempt at “negotiations” with respect to the dispute that Mexico has now placed before the Court.

40. *Third*, the Court’s standards when considering compromissory clauses that require negotiations do not ask whether it would have been futile to even attempt negotiations; rather, only after there has been a “genuine attempt” at negotiations does the Court ask whether the negotiations

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<sup>72</sup> See, e.g., *Legality of Use of Force (Yugoslavia v. Belgium)*, Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999 (I), p. 139, para. 45; *Legality of Use of Force (Yugoslavia v. Canada)*, Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999 (I), p. 273, para. 41; *Legality of Use of Force (Yugoslavia v. France)*, Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999 (I), p. 373, para. 32; *Legality of Use of Force (Yugoslavia v. Germany)*, Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999 (I), p. 432, para. 32; *Legality of Use of Force (Yugoslavia v. Italy)*, Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999 (I), p. 492, para. 32; *Legality of Use of Force (Yugoslavia v. Netherlands)*, Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999 (I), p. 557, para. 45; *Legality of Use of Force (Yugoslavia v. Portugal)*, Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999 (II), p. 671, para. 44; *Legality of Use of Force (Yugoslavia v. United Kingdom)*, Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999 (II), p. 839, para. 37; *Armed Activities on the Territory of the Congo (New Application:2002) (Democratic Republic of the Congo v. Rwanda)*, Provisional Measures, Order of 10 July 2002, I.C.J. Reports 2002, p. 219; *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, Provisional Measures, Order of 7 December 2016, I.C.J. Reports 2016 (II), p. 1160, para. 50.

<sup>73</sup> *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, Preliminary Objections, Judgment, I.C.J. Reports 2011 (I), p. 133, para. 159.

<sup>74</sup> *Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v. Greece)*, Judgment, I.C.J. Reports 2011 (II), p. 685, para. 132 (citations omitted).



had become “futile or deadlocked” or had “failed”<sup>75</sup>. In this instance, there is no basis for finding that there was any such futility, failure or deadlock, as Mexico did not even attempt such negotiations.

41. *Fourth*, the Court’s broader jurisprudence confirms that, even where some communications have occurred between the two parties, the subject-matter for the negotiations must not be different from the subject-matter of the dispute between the parties<sup>76</sup>. In this instance, obviously, there were no discussions between Mexico and Ecuador about the entry of the Embassy (and the associated harms of which Mexico now complains), or about the substantive law applicable to such conduct, including the interpretation or application of the treaties that Mexico now invokes before the Court.

42. *Finally*, any decision of the Court interpreting the meaning of the phrase “cannot be settled by direct negotiations” will invariably have consequences not just for disputes arising under the Pact of Bogotá, but for any other compromissory clauses in treaties that contain the same or similar language, such as the Convention against Torture or the Convention on the Elimination of Racial Discrimination<sup>77</sup>. As such, the Court may wish to consider that the ramifications of the Court’s decision in this case will extend well beyond it.

## **VI. Conclusion**

43. Mr President, Members of the Court, that concludes my presentation. I thank you for your attention, and I ask you, if it pleases the Court, to invite Sir Michael Wood to continue Ecuador’s presentation.

The PRESIDENT: I thank Professor Murphy for his statement. I now invite Sir Michael Wood to take the floor. You have the floor, Sir.

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<sup>75</sup> See, e.g., *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, Preliminary Objections, Judgment, I.C.J. Reports 2011 (I), pp. 133-134, paras. 159, 162.

<sup>76</sup> See *ibid.*, p. 133, para. 161; *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda)*, Provisional Measures, Order of 10 July 2002, I.C.J. Reports 2002, pp. 246-247, paras. 76-79.

<sup>77</sup> See, e.g., Article 30, paragraph 1, of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and Article 14, paragraph 1, of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (disputes “which cannot be settled through negotiation”); Article 22 of the International Convention on the Elimination of All Forms of Racial Discrimination and Article 29, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women (dispute “which is not settled by negotiation”).

Sir Michael WOOD:

#### **4. LACK OF PLAUSIBILITY, LINK, OR RISK OF IRREPARABLE HARM AND URGENCY**

##### **1. Introduction**

1. Mr President, Members of the Court, it is an honour to appear before you, and to do so on behalf of the Republic of Ecuador.

2. You have just heard from Professor Murphy that Mexico has failed to show that the Court has *prima facie* jurisdiction.

3. Without prejudice to that submission, I shall address the Court on the lack of plausibility of the rights for which Mexico seeks protection at this provisional measures stage, and the lack of any link between the measures requested and such rights. I shall then address the absence of any real and imminent risk of irreparable harm and urgency.

4. At the outset, I make two preliminary observations.

5. First, the procedure for requesting provisional measures is — indeed, it should be — an exceptional one. Until recently, there were relatively few such requests. And they were reserved for urgent cases of serious and imminent breaches of international law. The procedure was not used routinely for one party — the applicant — to come to this Great Hall of Justice to make political speeches, to appeal to public opinion at home or around the world, to engage in point-scoring against its adversary.

6. My second observation is this. It is a remarkable feature of the present case that Mexico has insisted on pursuing what it claims to be urgent provisional measures when, as was evident yesterday, it can point to nothing concrete to require such measures. Yesterday, Mexico referred to what it claimed was “the environment of distrust . . . , as reasonable indications of a risk upon the rights of Mexico”<sup>78</sup>. I need not go through the random items that Mexico gave yesterday to explain its subjective feelings of distrust: it listed matters ranging over the past seven years or so, almost all of them far removed from the present case<sup>79</sup>. But in any event, subjective assertions of distrust and

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<sup>78</sup> CR 2024/25, p. 30, para. 12 (Reyes Moncayo).

<sup>79</sup> CR 2024/25, pp. 30 and 31, paras. 15-17 (Reyes Moncayo).

concern surely cannot suffice to establish plausibility, urgency or the real and imminent risk of irreparable harm.

7. Mexico has insisted on having this hearing notwithstanding assurances by Ecuador that it will act in line with the specific measures that Mexico itself was requesting. As you have heard, Ecuador initially gave these assurances directly to Mexico in a Note dated 9 April 2024<sup>80</sup>. Not having received any reply, and following Mexico's precipitous institution of proceedings on 11 April 2024, Ecuador set out its assurances in a letter to the Court dated 19 April 2024, assurances that were fully responsive to Mexico's apparent concerns (unjustified though these concerns were).

8. That letter to the Court is at tab 25 in your folders. It was intended as a measure of goodwill. It was sent in the interest of the good administration of justice and in order to avoid an unnecessary hearing. To this end, Ecuador suggested that the Court might take note of our assurances in an eventual order, though of course that suggestion was expressly made entirely without prejudice to our position as to matters of jurisdiction, admissibility and the merits. Invited by the Court to respond, Mexico did not agree to withdraw its Request for provisional measure.

9. Mr President, it is against this background that I now turn to the legal hurdles that Mexico would have to overcome, in addition to establishing *prima facie* jurisdiction, if it is to obtain such measures from the Court.

## **2. Absence of plausibility**

10. Mr President, Members of the Court, I begin by considering the plausibility of the rights whose protection is sought, as well as the requirement that there be a link between such rights and the measures requested.

11. The condition of plausibility focuses on the rights claimed in the case and for which a party is seeking protection by way of provisional measures, and asks whether those rights, when considered in context, are "plausible". Mexico's Application as a whole is not at issue at the present stage, only the rights identified in Mexico's request for four provisional measures. That request is at paragraph 66 of the Application. For convenience, paragraph 66 may be found at tab 26 in your folders.

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<sup>80</sup> Note No. MREMH-MREMH-2024-0033-NV from the Ministry of Foreign Affairs and Human Mobility of the Republic of Ecuador to the Secretariat of Foreign Relations of the United Mexican States dated 9 April 2024 (tab 23).

12. So what “plausible” rights are at issue in paragraph 66?

13. In subparagraph (a), Mexico asks you to indicate “[t]hat 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”. This measure is sought in the context of the protection due to diplomatic premises, property and archives following the breach of diplomatic relations. As counsel yesterday noted<sup>81</sup>, Article 45 (a) of the Vienna Convention on Diplomatic Relations states that “[t]he receiving State must . . . respect and protect the premises of the mission, together with its property and archives”.

14. By contrast, the measure requested in subparagraph (b) is less easy to locate within the Vienna Convention: it invites Ecuador, in rather loose terms, to allow “the Mexican Government to clear diplomatic premises and the private residence of diplomatic agents”. On this, counsel yesterday had little to say. The alleged right at issue here may be another reference to Article 45 (a) of the Vienna Convention, or to Article 44, under which “[t]he receiving State must . . . grant facilities in order to enable persons enjoying privileges and immunities . . . and members of the families of such persons . . . to leave at the earliest possible moment”. In fact, the existence of a right associated with measure (b) has not been explained by Mexico with any clarity and the measure could be denied on that basis alone.

15. In any event, Mexico has said nothing in its Application, or yesterday, to establish that, as of today, there is any reason to believe that Ecuador will breach its obligations under the provisions of the Vienna Convention. Yesterday, Mexico asserted that what happened on 5 April 2024 itself established that there was now a real and imminent risk of breaches of its rights. That claim does not withstand scrutiny. As you have already heard, the action on 5 April 2024 had a very specific purpose; it took place in a wholly exceptional situation, when a fugitive was being illegally withheld from Ecuadorian justice and there were grounds to fear his escape beyond the borders of Ecuador.

16. Mr President, Members of the Court, under your case law, it is not enough simply to refer to rights under a treaty; rather, the Court also enquires into the “facts and circumstances” to determine whether the rights for which protection is sought are plausible.

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<sup>81</sup> CR 2024/25, p. 25, paras. 13 and 16 (Ibrahim Nader).

17. For example, in the *South Africa v. Israel* Order of 26 January 2024, the Court held that the rights were plausible because of “facts and circumstances” that the Court enumerated at some length. It was only after doing so that the Court concluded that “the facts and circumstances mentioned above are sufficient to conclude that at least some of the rights claimed by South Africa and for which it is seeking protection are plausible”<sup>82</sup>. That is assuredly not so in the case before you today.

18. Mr President, even to the extent that the rights advanced in measures (a) and (b) fall within the provisions of the Vienna Convention, the “facts and circumstances” as they stand now are insufficient to draw a conclusion that these rights are at issue in the case now before the Court. The rights that Mexico seeks to protect by its Request are thus not “plausible” for the purposes of indicating provisional measures.

19. Other aspects of Mexico’s Request fare no better. Mexico complained in its Application of 11 April 2024 that Ecuador was still stationing police near its Embassy<sup>83</sup>, but yesterday it argued that “since the breaking-off of diplomatic relations” on 6 April 2024, “the building . . . , along with the archives, documents and other property of the former Embassy, remain unprotected”<sup>84</sup>. This is not so. In fact, there are police guarding the building day and night. This is consistent with the request made by Ecuador’s Minister for Foreign Affairs to Ecuador’s Minister of the Interior, by a letter dated 9 April 2024, for protection of the premises, property and archives of the mission in accordance with Article 45 (a) of the Vienna Convention. That letter is at tab 27 of your folders. That letter was followed by an urgent request sent the next day from the Ministry of the Interior to the Commander General of the National Police to provide such protection. This is at tab 28. Of course, for the receiving State to locate police officers near embassies is common practice, especially in times of crisis, bilateral or other. It may be done for a whole range of reasons, not least for the protection of the premises and staff of the embassy. There is no evidence whatsoever that the presence of such police is for anything other than protection.

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<sup>82</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Provisional Measures, Order of 26 January 2024, para. 54 and preceding paragraphs.

<sup>83</sup> Application and Request of Mexico, para. 3.

<sup>84</sup> CR 2024/25, p. 32, para. 22 (Reyes Moncayo).

20. In paragraph 66, subparagraph (c), Mexico asks the Court to indicate “[t]hat 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”.

21. There is no specific right identified here — the Request refers globally to “the rights of Mexico” — and hence there is no basis for finding specific plausible rights. Indeed, it is no more than a general request for provisional measures, which is entirely inappropriate in the present case. Mexico has pointed to nothing that suggests that Ecuador would seek to frustrate an eventual judgment of this Court. It hardly said anything yesterday about this requested measure.

### **3. Risk of irreparable harm and urgency**

22. Mr President, Members of the Court, I now turn to the final condition for provisional measures established in your case law: the requirement for a real and imminent risk of irreparable harm. As you have said, the Court “has the power to indicate provisional measures when irreparable prejudice could be caused to rights which are the subject of judicial proceedings”; this power, however, “will be exercised only if there is urgency, in the sense that there is a real and imminent risk that irreparable prejudice will be caused to the rights claimed before the Court gives its final decision”<sup>85</sup>. The assessment of whether this condition is met is straightforward in the present case, and is, we submit, dispositive.

23. First, consider the measure requested in paragraph 66 (a) of Mexico’s Application, “[t]hat 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”.

24. Mr President, Members of the Court, Mexico has not produced any evidence to indicate that there is a real and imminent risk that Ecuador will do other than provide full protection and security for the diplomatic premises, property and archives. Nothing — nothing — in Ecuador’s conduct gives ground to believe that Ecuador might not take the steps referred to in this requested measure. As we have already said, what happened on 5 April 2024, serious though it was in many respects, was wholly exceptional: nothing of the sort had happened prior to then and nothing of the

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<sup>85</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Provisional Measures, Order of 26 January 2024*, paras. 60 and 61.

sort has happened since. There is simply no reason to suppose that a comparable situation will recur. The exchanges preceding 5 April 2024, recounted by Dr Crosato, show that the sole aim was to ensure that Mr Glas did not escape justice.

25. In addition, in its Note of 9 April 2024 Ecuador gave direct assurances to Mexico covering all the matters requested by Mexico<sup>86</sup>, assurances that were repeated in its letter to the Court of 19 April 2024<sup>87</sup>, and again this morning by the Agent of Ecuador before the Court. As the Court said in its provisional measures Order of 3 March 2014 in the *Certain Documents and Data* case between Timor-Leste and Australia: “The Court has no reason to believe that the written undertaking . . . will not be implemented . . . Once a State has made such a commitment concerning its conduct, its good faith in complying with that commitment is to be presumed.”<sup>88</sup> Counsel for Mexico referred to this case yesterday, pointing out that the Court held that Australia’s assurances did not remove the risk entirely<sup>89</sup>. But that, Mr President, turned on the particular wording of the assurances in that case. It does not in any way detract from the importance that the Court attaches to solemn assurances.

26. Similarly, in the Court’s provisional measures Order in *Belgium v. Senegal*, the Court noted that Senegal, both *proprio motu* and in response to a question put by a Member of the Court, had given a formal assurance on several occasions during the hearings that it would not allow Mr Habré to leave the territory before the Court had given its final decision. The Court then recalled that “the indication of provisional measures is only justified if there is urgency”. The Court went on to find that “taking note of the assurances given by Senegal . . ., the risk of irreparable prejudice to the rights claimed by Belgium is not apparent on the date of this Order”<sup>90</sup>.

27. Bearing these words in mind, and also Ecuador’s conduct since 5 April 2024 and its repeated assurances, it is our submission that it cannot reasonably be suggested that there is a real and imminent risk that irreparable prejudice will be caused in relation to the measure requested in paragraph 66 (a).

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<sup>86</sup> *Supra* note 80.

<sup>87</sup> Tab 25.

<sup>88</sup> *Questions relating to the Seizure and Detention of Certain Documents and Data (Timor-Leste v. Australia), Provisional Measures, Order of 3 March 2014, I.C.J. Reports 2014*, p. 158, para. 44.

<sup>89</sup> CR 2024/25, p. 33, para. 30 (Reyes Moncayo).

<sup>90</sup> *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), Provisional Measures, Order of 28 May 2009, I.C.J. Reports 2009*, p. 155, paras. 71-72.

28. Mr President, Mexico's various arguments yesterday for not accepting the assurances were thoroughly unconvincing. Remarkably, Mexico argued that the assurances were insufficient in scope. When doing so, Mr Reyes Moncayo cited the obligation in Article 45 (a) of the Vienna Convention<sup>91</sup>. Yet our assurances cover precisely the same ground as Article 45 (a). And they track the language of Mexico's Request for provisional measures. Mexico complains that our assurances do not expressly address inviolability. Mexico itself did not refer expressly to inviolability in its provisional measures Request. But in so far as Article 45 of the Vienna Convention requires inviolability, Ecuador's assurances extend to inviolability. Mexico's argument is not made any stronger by reference to its ownership of the building or by invoking the *Equatorial Guinea v. France* case<sup>92</sup>, which was not a case where diplomatic relations had been broken off. Indeed that case was quite different; it raised the question whether the building was an embassy at all.

29. I have already referred to Mexico's argument based on what it terms "an environment of distrust" and explained that this could give no basis for a finding of a real and imminent risk of irreparable harm. The same goes for what Mexico alleges to be a "continuous" disregard of privileges and immunities, which it says "might [I emphasize, "might"] be indicative of further law enforcement operations into the premises"<sup>93</sup>. The citations Mexico gives do not begin to establish "continuous disregard". There is nothing remarkable about politicians raising questions about the present suitability of long-standing treaties. That happens all the time. Indeed, it happened years ago in the United Kingdom with respect to the Vienna Convention itself when a shot was fired from within an embassy building in London, killing a policewoman on duty outside.

30. Mexico suggested yesterday that Ecuadorian authorities might enter and search the former Embassy because of judicial proceedings initiated by Mr Glas or otherwise involving him. This, Mr President, is pure speculation. Moreover, the Ecuadorian courts have very recently shown their commitment to the inviolability of diplomatic premises. In a judgment handed down as recently as 17 April 2024, a chamber of the National Court of Justice stated that under Ecuadorian law, entry into a diplomatic mission requires, in all cases, the consent of the head of mission. It also stated that

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<sup>91</sup> CR 2024/25, p. 28, para. 2 (Reyes Moncayo).

<sup>92</sup> CR 2024/25, pp. 28 and 29, paras. 5 and 6 (Reyes Moncayo).

<sup>93</sup> CR 2024/25, p. 31, para. 18 (Reyes Moncayo).



the current state of emergency in the country creates no exception to this legal requirement. You can find this judgment at tab 29 of your folder.

31. Mexico even suggested yesterday that the assurances given in a diplomatic letter could not be given credence because of something that had been said at a press conference, and because, in its words, “other government agencies or departments might act on their own”<sup>94</sup>. That is clearly wrong. When a Foreign Minister speaks on the international plane, as one of the so-called “troika”, that binds the State.

32. Mr President, Members of the Court, all that I have just said applies equally to the measure requested in subparagraph *(b)* of paragraph 66. Here again, Mexico has shown nothing to suggest that Ecuador might not take the steps referred to in this request. And once again Ecuador has given assurances in writing, and assurances that were solemnly repeated at the outset of this morning’s hearing by the Agent of Ecuador.

33. I do not think I need return to the measure requested in subparagraph *(c)*, the inappropriateness of which I have already explained.

34. Finally, in subparagraph *(d)* of paragraph 66, Mexico urges you to indicate “[t]hat the Government of Ecuador refrains from any act or conduct likely to aggravate or widen the dispute of which the Court is seized”. Such a “measure” has sometimes been included in provisional measures orders, though always with a purpose, not just as a pro forma matter. In the present case, however, the request again has nothing to do with the facts and circumstances before you. There is no reason at all to think that Ecuador is likely to aggravate the situation. For this reason, this requested measure, too, should be denied.

35. In fact, if one compares the conduct of the Parties since 5 April 2024, any such order of non-aggravation should be directed at Mexico, not Ecuador, given Ecuador’s position, including its repeated assurances to Mexico and the Court. In stark contrast, it is Mexico that severed diplomatic relations, that failed to attend the OAS meeting convened to discuss the matter, and that issued highly provocative statements. It is Mexico that threatens aggravation, given its record of intervention in Ecuador’s politics and internal affairs.

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<sup>94</sup> CR 2024/25, p. 34, para. 32 (Reyes Moncayo).

#### **4. Conclusion**

36. To summarize, Mr President, Members of the Court: Mexico has failed to show that any of the conditions for the indication of provisional measures are met. It has failed to establish that there is *prima facie* jurisdiction. It has failed to show the plausibility of the rights it seeks to protect with its request for provisional measures, or a link between such measures and those rights.

37. Mexico has not begun to show urgency in the sense of a real risk of irreparable damage to such rights. This is clear on the facts. It is beyond doubt when account is taken of the assurances given on 9 April 2024, on 19 April 2024 and again this morning. This is the case with Mexico's requested measures *(a)* and *(b)*. And there is nothing to show the need for any such general measures, or complementary measures as our friends opposite put it, that are requested in *(c)* and *(d)*.

38. Mr President, Members of the Court, that concludes my presentation. I thank you for your attention. I request that you call upon the Agent of Ecuador, Ambassador Terán Parral, to read Ecuador's final submissions. Thank you.

The PRESIDENT: I thank Sir Michael Wood for his statement. I now give the floor to the Agent of Ecuador, His Excellency Mr Andrés Terán Parral. You have the floor, Excellency.

Mr TERÁN PARRAL: Thank you, Mr President.

#### **5. AGENT'S CONCLUDING STATEMENT**

1. Mr President, Members of the Court, you have now heard Ecuador's position on the request for provisional measures. Once again, we regret Mexico's insistence upon the present oral hearing. The terms of the assurances given in our diplomatic Note to Mexico dated 9 April 2024 were recalled in our letter to the Court of 19 April 2024 and restated by me this morning. Those assurances, given as a measure of our goodwill, should have been more than enough to make it clear to Mexico that there was no point in a hearing. Moreover, as I have said earlier this morning, Ecuador remains open to meeting with Mexico to discuss this matter, in a hope for amicable resolution through negotiation.

2. Our counsel today have shown that the Court did not have jurisdiction, even *prima facie*, on the date of the Application, under the one basis for jurisdiction invoked by Mexico, the Pact of Bogotá. They have also shown the absence of plausibility in respect of the rights that Mexico seeks

to protect. And they have shown that Mexico has failed to demonstrate any urgency for the indication of provisional measures, in that there is no real and immediate risk of irreparable harm to those rights.

3. Mr President, Members of the Court, on this basis and in accordance with Article 60, paragraph 2, of the Rules of Court, I now proceed to read Ecuador's final submission:

“The Republic of Ecuador requests the Court to reject the request for the indication of provisional measures submitted by the United Mexican States.”

4. Mr President, on behalf of our whole delegation, I thank the Court for your attention. We are also grateful to the Registrar and all his staff; to the very skilful interpreters; and to those who prepare the *comptes rendus*.

5. Mr President, Members of the Court, that concludes the Republic of Ecuador's presentation.

The PRESIDENT: I thank the Agent of Ecuador, His Excellency Mr Andrés Terán Parral, whose statement brings to an end the oral proceedings on the Request for the indication of provisional measures submitted by Mexico in the case concerning *Embassy of Mexico in Quito (Mexico v. Ecuador)*. It remains for me to thank the Agents, counsel and advocates of the Applicant and the Respondent for their statements in the course of these hearings.

Conformément à la pratique habituelle, je prierai les agents de demeurer à la disposition de la Cour pour tous renseignements complémentaires dont celle-ci pourrait avoir besoin. La Cour rendra son ordonnance sur la demande en indication de mesures conservatoires dès que possible. Les Parties seront avisées en temps utile de la date à laquelle elle en donnera lecture en audience publique.

La Cour n'étant saisie d'aucune autre question aujourd'hui, l'audience est levée.

*L'audience est levée à 11 h 45.*

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