

INTERNATIONAL COURT OF JUSTICE

APPLICATION
INSTITUTING PROCEEDINGS

containing a

REQUEST
FOR THE INDICATION OF PROVISIONAL MEASURES

filed in the Registry of the Court
on 11 April 2024

EMBASSY OF MEXICO IN QUITO

(MEXICO v. ECUADOR)

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* Original English text as filed by the United Mexican States.

**THE MINISTER OF FOREIGN AFFAIRS OF THE UNITED MEXICAN STATES
TO THE REGISTRAR OF THE INTERNATIONAL COURT OF JUSTICE****MEXICO**

The Hague, 11th April 2024

Mr. Philippe Gautier,
Registrar of the International Court of Justice,
Peace Palace,
The Hague, The Netherlands.


Mexico has today instituted proceedings before the Court by filing an Application and a Request for Provisional Measures. This case relates to legal questions concerning the settlement of international disputes by peaceful means and diplomatic relations and the inviolability of a diplomatic mission and its members.

Mexico hereby designates Mr. Alejandro Celorio Alcántara, Legal Adviser to the Mexican Ministry of Foreign Affairs, Mrs. Carmen Moreno Toscano, Ambassador of Mexico to the Kingdom of the Netherlands, Mr. Miguel Angel Reyes Moncayo, Deputy Legal Adviser to the Mexican Ministry of Foreign Affairs, and Mrs. Natalia Jiménez Alegría, Legal Counsel in the Permanent Mission of Mexico to the United Nations as Agents of the United Mexican States in this case.

Mexico further designates as Advocates-Counselors from the Legal Adviser Office to the Mexican Ministry of Foreign Affairs: Mr. Alfredo Uriel Pérez Manriquez, Director for International Tribunals and Organizations; Mrs. Gabriela Moreno Hidalgo, Director of Treaties of the Global South; Mrs. Fadia Ibrahim Nader, Director for the Settlement of Disputes regarding Privileges and Immunities; Mr. Max Orlando Benítez Rubio, Director for the Defense of Territory and Sovereignty; Mr. Rubén Darío Álvarez Ángeles, Deputy Director for International Tribunals and Organizations; Mr. Eduardo Fragoso Jacobo, Attorney at Law; and Mr. Leonardo David Lima Valdés, Attorney at Law. It also designates as Advocates-Counselors from the Embassy of Mexico to the Kingdom of the Netherlands, to the Czech Republic and to the Republic of Austria, Mr. Alfonso Ascencio Herrera, Deputy Head of Mission; Mrs. Alicia Patricia Pérez Galeana, Multilateral Legal Affairs; Mrs. Fabiola Jiménez Morán Sotomayor, International Legal Counsel; Mr. Salvador Tinajero Esquivel, International Legal Counsel; and Mrs. Liliana Oliva Bernal, International Legal Counsel.

Pursuant to Article 40, paragraph 1, of the Rules of Court, is requested that all communications relating to this case be sent to the Embassy of the United Mexican States to the Kingdom of the Netherlands, Nassauplein 28, Den Haag, 2585 EC, Netherlands.

May I take this opportunity to provide the assurance of my highest esteem.



**Alicia Isabel Adriana Bárcena Ibarra,
Minister of Foreign Affairs.**



PBA1011/24

The Embassy of Mexico in the Kingdom of the Netherlands presents its compliments to the Registry of the International Court of Justice and has the honor to submit a dispute to the International Court of Justice, pursuant to article 36, paragraphs 1 and 2, of the Statute of the International Court of Justice and article 38 of the Rules of Court, against the Republic of Ecuador.

In this regard, and on behalf of the Government of Mexico, the Embassy submits an original copy of the Application and a Request for Provisional Measures, as well as 30 plain paper copies of it, and a USB drive containing the Word version and the PDF version of the Application.

In addition, and in order to facilitate further correspondence with the Registry, the Embassy provides the following email addresses: embamexpba@sre.gob.mx; alfonsoa@sre.gob.mx; pperez@sre.gob.mx; fjimenezmoran@sre.gob.mx; juridicospba@sre.gob.mx.

The Embassy of Mexico in the Kingdom of the Netherlands avails itself of this opportunity to renew to the Registry of the International Court of Justice the assurances of its highest consideration.

The Hague, 11 April 2024

**To the Registry of the
International Court of Justice
The Hague**



EMBAJADA DE MÉXICO
LA HAYA, PAÍSES BAJOS

**APPLICATION INSTITUTING PROCEEDINGS BY THE UNITED MEXICAN
STATES AGAINST THE REPUBLIC OF ECUADOR**

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Mr. Philippe Gautier,
Registrar of the International Court of Justice,
Peace Palace,
The Hague, The Netherlands.

Excellency,

The United Mexican States has the honor to submit a dispute to the International Court of Justice, pursuant to Article 36, paragraphs 1 and 2, of the Statute of the International Court of Justice (“*Statute*”) and Article 38 of the Rules of Court, against the Republic of Ecuador. The dispute between the United Mexican States (“*Mexico*”) and the Republic of Ecuador (“*Ecuador*”), hereinafter jointly referred to as the “*Parties*”, relates to legal questions concerning the settlement of international disputes by peaceful means and diplomatic relations, and the inviolability of a diplomatic mission.

I. THE FACTS

1. On April 5th, 2024, around 10:00 p.m., the Government of Ecuador deployed agents around the premises of the Mexican Embassy. Around 15 special operations agents and two vehicles broke into the premises, by forcible means and without authorization. The Deputy Chief of Mission, Mr. Roberto Canseco Martínez, tried to stop these special operations agents when he saw them inside the Embassy. In his attempt to stop the storming Ecuadorian agents, Mr. Canseco was violently assaulted at the Embassy library. The agents then took Jorge David Glas Espinel (Mr. Glas), former Vice-president of the Republic of Ecuador, placing him inside one of the vehicles and leaving the premises.

2. The above-mentioned assault is not an isolated event. It follows a series of continued acts of intimidation and harassment described as follows.

3. On December 17th, 2023, Mr. Glas arrived at the Mexican Embassy asking for protection due to his fear regarding his personal integrity. After stating his request, Mr. Glas stayed in the premises of the Mexican Embassy to Ecuador with the purpose of receiving Mexico’s protection for his personal security and integrity, in accordance with the Mexican legal framework relating to international protection of persons. His request for asylum was formally filed on December 20th, and updated on December 26th, 2023, and January 3rd, 2024. It should be noted that, since December 17th, 2023, there has been a constant police presence around the Mexican Embassy.

4. On January 16th, 2024, the Mexican Minister of Foreign Affairs, Mrs. Alicia Bárcena Ibarra, met with the Minister of Foreign Affairs of Ecuador, Mrs. Gabriela Sommerfeld, to discuss the situation of Mr. Glas and his request for asylum. A follow up meeting took place on February 8th, 2024, in which Mrs. Gabriela Sommerfeld discussed the topic with Mexico’s Undersecretary for Latin America, Laura Elena Carrillo. This demonstrates the good will of Mexico to negotiate through diplomatic channels any possible disagreement between both States.

5. Mr. Glas’s request for asylum was assessed by the Mexican Embassy and other Mexican authorities in accordance with international standards and with the legal process laid out in the

Mexican legal framework on refugees, complementary protection and political asylum. This regulation, in line with the 1954 Convention on Diplomatic Asylum, establishes that Mexican authorities must take all the measures at its disposal to provide protection to the petitioner, even before a determination has been made regarding the granting of asylum.

6. The Mexican Embassy and other Mexican authorities had to perform an assessment regarding Mr. Glas's request for protection, considering the information provided by him and by the Ecuadorian authorities. Naturally, a determination of such nature cannot be made immediately, in the meantime, physical protection had to be granted to the petitioner. Ecuador itself, in a landmark case that occurred in 2012, took almost two months to grant asylum to Mr. Julian Assange.

7. On February 17th, 2024, the Ministry of Foreign Affairs of Ecuador issued a diplomatic note, asking the Government of Mexico if Mr. Glas was still present in the premises of the Mexican Embassy. Furthermore, on February 29th, the same Ministry issued another diplomatic note, requesting the Mexican diplomatic mission consent for the access of Ecuadorian law enforcement agencies into the premises of the Mexican Embassy to execute a warrant issued upon Mr. Glas. Only the Head of Mission could have granted that consent.

8. On March 4th, 2024, the Mexican Ministry of Foreign Affairs replied that the consent for the entry of law enforcement agencies into the premises of the Mexican Embassy would not be granted. The Ministry of Foreign Affairs of Ecuador was reminded that, in accordance with article 22 of the Vienna Convention on Diplomatic Relations, the premises of the mission shall be inviolable, and requested to take all appropriate measures to protect the integrity and inviolability of the diplomatic premises of Mexico in Ecuador, and to prevent any authorities, people or media from interfering with the functions and activities of the Embassy and its staff.

9. Following these communications, in a matter of a couple of days (April 4th and 5th), the situation and actions by Ecuador escalated drastically, taking unilateral coercive measures that showed little to none disposition to further advance towards a peaceful solution by means of negotiation.

10. A clear example of this is that on April 4th, 2024, the Ministry of Foreign Affairs of Ecuador declared Ambassador Raquel Serur Smerke, Head of the Mexican Embassy, as *persona non grata*. In consequence, on April 5th, the Mexican Ministry of Foreign Affairs instructed Ambassador Serur to return to Mexican soil, in order to protect her personal security and integrity.

11. From this moment, the presence of Ecuadorian law enforcement elements surrounding the Mexican Embassy was increased (Annex 1), and consequently the surveillance and harassment towards members of the mission was enhanced. On April 4th, the Deputy Chief of Mission departed from the diplomatic premises in his vehicle and observed a suspicious vehicle was following him. To elude this vehicle, he executed several strategic maneuvers; however, the suspicious vehicle mirrored every turn. Ultimately, the Deputy Chief of Mission exited his vehicle to confront the followers, prompting the suspicious vehicle to hastily depart. That same day, Mr. Canseco noticed that a tactical military vehicle was parked outside the Mexican Embassy. When he shared his concerns and a photograph of the vehicle to members of the Embassy, they mentioned that it was a military vehicle used to intervene cellphone communications.

12. The aforementioned incidents clearly illustrate the repeated manner in which Ecuadorian State agents harassed members of the Mexican Embassy. Finally, another event of such harassment occurred on the evening of April 5, 2024, when Mrs. Eva Martha Balbuena Reyes, Head of Administration at the Embassy, was finishing her workday. She was followed by police officers while driving her vehicle, which led her to return to the diplomatic premises due to fears for her personal safety.

13. This event occurred as consequence of Mexico's press release informing that the national Government had granted asylum to Mr. Glas after a thorough analysis of all information at hand. In parallel, and in light of the extraordinary presence of law enforcement agents around the diplomatic mission, Mexico urged Ecuador to respect its sovereignty, to not harm the right to asylum, to guarantee the inviolability of the diplomatic premises and to cease the policy of harassment towards the Mexican diplomatic building and personnel. Soon after, Ecuador issued a press release stating they would not grant any safe-conduct on behalf of Mr. Glas.

14. Later that day, around 10:00 p.m., the Government of Ecuador carried out the special operation described in paragraph 1 (Annex 2). By deploying 15 special operations agents and two vehicles, Ecuador resorted to means of coercion and infringed upon Mexico's rights, mainly the inviolability of the premises, the obligation to take all appropriate steps to prevent any attack on the person, freedom and dignity of all diplomatic agents.

15. Regarding these events, Mexico emphasizes that Mr. Canseco was subjected to various degrading treatments (Annex 3) by Ecuador's special forces personnel. Mr. Canseco attempted to explain the situation and the violation their acts would be causing to the Mexican Embassy to the Ecuadorian agents; however, he was assaulted on several occasions, and was even aimed at with a weapon. This resulted in injuries to his arms, legs, face, back, and neck, as well as psychological harm.

16. The Deputy Chief of Mission ran after the vehicles in an attempt to stop the law enforcement authorities from taking Mr. Glas. Mr. Canseco was once again subdued by agents while on his knees with his face to the ground, violating his dignity (Annex 3 and 4). This flagrant breach of diplomatic inviolability caused not only physical injuries to the Mexican diplomat, but also psychological harm and a clear undermining to his dignity.

17. It should be noted that, during the operation, Mr. Canseco and Mrs. Balbuena realized that: (a) the signal in their cellphones did not work, probably due to the interference of the abovementioned tactical military vehicle (Annex 5), and (b) that the fixed-line telephone of the security guard of the Embassy was not working, because Ecuadorian agents pulled out the telephone cables.

18. Under the American Treaty on Pacific Settlement, to which both Ecuador and Mexico are Parties, States have the obligation to recourse at all times to pacific procedures for the settlement of their controversies. However, the law enforcement operation that concluded with the abduction of Mr. Glas, the blatant violation of the diplomatic premises, and the physical and psychological harm against members of the Mexican Embassy was executed *in absentia* of any effort to peacefully settle any dispute that was available to Ecuador.

19. As it is clear from the facts of this case, at no time did Ecuador take the necessary steps to settle what they perceived to be a legal dispute by pacific means, either under the mechanisms set out by the Charter of the United Nations, or any of the international instruments that it may argue were breached. The American Treaty on Pacific Settlement, the Charter of the United Nations, and the Charter of the Organization of the American States clearly enshrine the obligation to resort to peaceful mechanisms, which Ecuador did not, as it will be further developed in the present Application.

20. Because of these reasons, and in light of the seriousness of the actions performed by Ecuador against the diplomatic premises, personnel and functions of the Mexican Embassy, on April 6th, 2024, Mexico notified through a note verbale the termination of diplomatic and consular relations between the two States.

21. Later that day, during a press conference (Annex 6), the Minister of Foreign Affairs from Ecuador stated that their President ordered the execution of the warrant issued upon Mr. Glas, in response to an alleged failure of Mexico to comply with international law.

22. Despite the persistent violations of Ecuadorian authorities to international law, Mexico continues to provide legal guarantees and certainties to Ecuador regarding its diplomats, premises, property and archives, with due regard to its obligations under articles 44 and 45 of the Vienna Convention on Diplomatic Relations.

II. GROUNDS OF THE CLAIM

23. Mexico claims that by intervening and hearing private communications of the Embassy of Mexico and its members, by deploying police, special forces and military personnel outside the Embassy, by constantly harassing and disturbing the members of its diplomatic mission, by the forcible and violently breaking-in into the Mexican Embassy by Ecuadorian special forces on the night of Friday, April 5th, 2024, including the acts of violence committed against the Deputy Chief of Mission and harassment committed to one of the members of the diplomatic personnel, and by abducting the former Vice President Jorge David Glas Espinel, who was in the Embassy and had been granted asylum, Ecuador has violated Mexico's rights under customary and conventional international law, as well as fundamental principles upon which the international legal system is based. The main grounds on which Mexico's claims are based:

- a) The persistent violations to the Principles contained in the Charter of the United Nations;
- b) The violation of the obligation to settle international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered;
- c) The violation of Mexico's diplomatic premises and personnel inviolability;
- d) The violation of the duty to ensure the efficient performance of the functions of the Mexican diplomatic mission;
- e) The violation of the duty to take all appropriate steps to protect the premises of the mission against any intrusion and to prevent any disturbance of the peace of the mission or impairment of its dignity, as well as to prevent any attack on its personnel's freedom and dignity; and

- f) The violation of the obligation to permit and protect free communication on the part of the mission for all official purposes.

24. The acts performed by Ecuador in regards to the inviolability of the premises of the Mexican Embassy; the inviolability, personal security and dignity of the diplomatic personnel; the decision to dismiss the diplomatic channels and peaceful mechanisms at hand, and to resort to an illegal display of force, among others, violate conventional and customary rules of international law and principles contained in the Charter of the United Nations.

25. Article 4 of the Charter of the United Nations clearly sets out that membership in the UN is open to States which accept, are able and willing to carry out the obligations contained in the treaty. Naturally, particular importance is to be given to the Principles enshrined in Article 2 of the Charter, for example "to settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered".

26. However, the facts of the case at issue not only show that Ecuador has openly disregarded its obligations vis-à-vis Mexico under the Vienna Convention of Diplomatic Relations, the Pact of Bogota and the Charter of the Organization of American States, but also the aforesaid obligations it owes to the entire United Nations membership in terms in terms of the Charter.

27. It is Mexico's position that the violations to international law conducted by Ecuador, and for which judgment from the Court is sought, are serious breaches to the international legal order, more specifically to the Principles upon which the United Nations system is based.

28. In Mexico's view, the violations committed by Ecuador in the present case would lead to a dangerous precedent in the fulfillment of the most basic obligations of states in conducting diplomatic relations and to one of the principles set out in the Charter.

29. As set out in Article 6 of the Charter, a member of the United Nations which has persistently violated the Principles contained therein may be expelled from the Organization. This International Court of Justice, insofar as it has competence to adjudge legal disputes placed before it, may determine that the breaches by Ecuador to the Principles of the United Nations, along with the other violations to conventional and customary norms set out in the present Application, entail consequences to its status as a Member of the United Nations, that may amount to its expulsion under Article 6.

30. Furthermore, it is important to underscore that, as it will be explained further in the proceedings, no acts of authority can be enforced within the premises of the Embassy without the consent of the Head of the Mission. Without such consent there is no exception to the inviolability of diplomatic premises. The international diplomatic system strongly relies on the protection of property and persons.

31. The raid executed by Ecuadorian agents constitutes additional grounds for breach of the Vienna Convention on Diplomatic Relations, in the intelligence that the archives and documents of the Mission also enjoy inviolability at any time and wherever they may be. Given the conditions that

unfolded since the intrusion in the premises, Mexico's diplomatic personnel have not been able to fully assess the damages that might have been caused by the intervention.

III. JURISDICTION OF THE COURT

32. According to Article II of the American Treaty on Pacific Settlement ("Pact of Bogota") of 30 April 1948:

"The High Contracting Parties recognize the obligation to settle international controversies by regional procedures before referring them to the Security Council of the United Nations.

Consequently, in the event that a controversy arises between two or more signatory states which, in the opinion of the parties, cannot be settled by direct negotiations through the usual diplomatic channels, the parties bind themselves to use the procedures established in the present Treaty, in the manner and under the conditions provided for in the following articles, or, alternatively, such special procedures as, in their opinion, will permit them to arrive at a solution."

33. The Court has held that article II of the Pact constitutes "a condition precedent to recourse to the pacific procedures of the Pact in all cases".¹

34. The Pact establishes procedures of different nature, including negotiation, conciliation, and judicial procedures, without fixing any order of preference. In conformity with article III, the parties have the recourse to the procedure which they consider the most appropriate in each case.

35. In the present case, in conformity with articles II and III of the Pact of Bogota, Mexico appears before the International Court of Justice. The jurisdiction of the Court is based on Article XXXI of the Pact of Bogota, which provides:

"In conformity with Article 36, paragraph 2, of the Statute of the International Court of Justice, the High Contracting Parties declare that they recognize, in relation to any other American State, the jurisdiction of the Court as compulsory ipso facto, without the necessity of any special agreement so long as the present Treaty is in force, in all disputes of a juridical nature that arise among them concerning:

- (a) The interpretation of a treaty;
- (b) Any question of international law;
- (c) The existence of any fact which, if established, would constitute the breach of an international obligation;
- (d) The nature or extent of the reparation to be made for the breach of an international obligation."

¹ *Border and Transborder Armed Actions (Nicaragua v. Honduras), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1988, p. 69, at p. 94, para. 62.*

36. Both Mexico and Ecuador are parties to the Pact of Bogota. Mexico ratified it on 23 November 1948 and Ecuador on 3 March 2008. No applicable reservation made by either Party is in force at the present date.

37. The two States, Mexico and Ecuador, are *ipso iure* parties to the Statute of the Court by virtue of their membership to the United Nations Organization. The conditions laid down in the Statute and Rules of Court concerning admissibility of the present Application are satisfied.

38. From the provisions mentioned above it must be determined the existence of: (A) a dispute with Ecuador, and (B) that the dispute cannot be settled by direct negotiations through the usual diplomatic channels.

a) There is a dispute with Ecuador in the present case

39. In the *Alleged Violation of Sovereign Rights and Maritime Space in the Caribbean Sea (Nicaragua v. Colombia)* case, the Court held that:

“... by virtue of Article XXXI of the Pact of Bogota, the States parties agreed to accept the compulsory jurisdiction of the Court, in conformity with Article 36, paragraph 2, of the Statute, for “all disputes of a juridical nature that arise among them”. Thus, the existence of a dispute between the parties is a condition of its jurisdiction. Therefore the Court, for the purposes of determining whether it has jurisdiction under this instrument in a given case, must establish the existence of a dispute between the parties ...”

40. In this vein, according to the Court, a dispute is “a disagreement on a point of law or fact, a conflict of legal views or of interests between [parties]”.² Additionally, “a dispute exists when it is demonstrated, on the basis of the evidence, that the respondent was aware, or could not have been unaware, that its views were ‘positively opposed’ by the applicant”.³

41. In the present case, Ecuador has accepted publicly that Ecuadorian special forces forcibly entered the Embassy of Mexico to abduct Mr. Glas in violation of international law, justified on Mexico’s alleged failure to comply with its obligations under international law.⁴ In this regard, in the present case, Mexico maintains that there is a dispute with Ecuador based on the aforementioned facts.

42. A controversy arose between both States when Ecuador requested Mexico’s consent to enter its premises and such consent was not granted. Afterwards, Ecuadorian authorities increased their

² *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, Counter-Claims, Order of 15 November 2017, *I.C.J. Reports 2017*, p. 289, at p. 311, para. 70.

³ *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom)*, Preliminary Objections, Judgment, *I.C.J. Reports 2016*, p. 850, para. 41.

⁴ Ministry of Foreign Affairs of Ecuador, “Ecuador Defiende su Soberanía y el Cumplimiento de las Leyes y la Justicia” (April 6, 2024), <https://www.cancilleria.gob.ec/2024/04/06/ecuador-defiende-su-soberania-y-el-cumplimiento-de-las-leyes-y-la-justicia/>; and Cancillería de Ecuador, “Declaraciones de prensa de la Canciller Gabriela Sommerfeld”, on April 6, 2024, <https://www.youtube.com/watch?v=WrYZtAT9kC4>

presence surrounding the Embassy, which culminated with the forceful entrance into the premises.⁵ Ecuador declared that this was a consequence of Mexico's refusal. However, in Mexico's view, there were other peaceful means available, which Ecuador failed to resort to.

43. On the other hand, in the face of the violent incursion of Ecuadorian government forces, Mexico protested through diplomatic note SRE/423/2024, referring that the invasion to the Mexican diplomatic premises, the harassment and disturbing of the members of its diplomatic mission, and the acts of violence committed against the Deputy Chief of Mission were in breach of the Vienna Convention of Diplomatic Relations.

44. On April 6th, 2024, Ecuador stated through the Ministry of Foreign Affairs, that the entrance of its agents to the diplomatic premises was justified due to the alleged failure of Mexico to comply with international law.⁶

45. In this sense, 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.

b) The dispute cannot be settled by direct negotiations through the usual diplomatic channels

46. It is not clear if agreement from both sides is necessary to decide that discussions would not lead to a resolution, or if just one party's view is enough to determine this. This ambiguity arises from the fact that the language used in various versions of the Pact suggests differing interpretations.⁷ In this sense, the Court "must determine whether the evidence demonstrates that neither of the Parties could plausibly maintain that the dispute between them could be settled by direct negotiations through the usual diplomatic channels".⁸ Additionally, the Parties to the Pact of Bogota "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".⁹

⁵ Ministry of Foreign Affairs of Ecuador, "Ecuador Defiende su Soberanía y el Cumplimiento de las Leyes y la Justicia" (April 6, 2024), <https://www.cancilleria.gob.ec/2024/04/06/ecuador-defiende-su-soberania-y-el-cumplimiento-de-las-leyes-y-la-justicia/>; and Cancillería de Ecuador, "Declaraciones de prensa de la Canciller Gabriela Sommerfeld on 6 April 2024, <https://www.youtube.com/watch?v=WfYZtAT9kC4>

⁶ Ministry of Foreign Affairs of Ecuador, "Ecuador Defiende su Soberanía y el Cumplimiento de las Leyes y la Justicia" (April 6, 2024), <https://www.cancilleria.gob.ec/2024/04/06/ecuador-defiende-su-soberania-y-el-cumplimiento-de-las-leyes-y-la-justicia/>.

⁷ *Border and Transborder Armed Actions (Nicaragua v. Honduras)*, Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1988, p. 69, at p. 94, para. 64.

⁸ *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, Counter-Claims, Order of 15 November 2017, I.C.J. Reports 2017, p. 289, at p. 312, para. 74.

⁹ *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.

47. According to this Court, “the precondition of negotiation is met only when there has been a failure of negotiations, or when negotiations have become futile or deadlocked”.¹⁰ This requirement that the dispute cannot be settled through negotiation implies that “no reasonable probability exists that further negotiations would lead to a settlement”¹¹.

48. After Mexico refused consent to enter the premises, the Ecuadorian authorities deployed an operation to storm the Mexican Embassy and abduct Mr. Glas, instead of engaging in negotiations regarding the matter. Ecuador announced that it had exhausted diplomatic channels in respect of the dispute.

49. On this basis, it is clear that the parties consider that they cannot settle the dispute by direct negotiations, since the stance posture adopted by both parties is clearly opposed.

50. For the aforementioned reasons, Mexico requests that the Court considers the present case for violations of international law committed by Ecuador, because there is a dispute that cannot be settled by direct negotiations through the usual diplomatic channels on the basis of the Pact of Bogota.

51. Finally, Mexico recognizes that this Court has the power to decide over its own jurisdiction, which encompasses the authority to make whatever findings may be necessary for the purposes of ensuring its exercise of jurisdiction over the merits, and that it will not be frustrated.¹²

IV. THE JUDGMENT REQUESTED

52. For the foregoing reasons, Mexico respectfully requests the Court to adjudge and declare as follows:

- a) With regard to the obligation to settle international disputes by peaceful means,
 - i. To adjudge and declare that, by employing the use of force to break into the premises of the Mexican Embassy, Ecuador is in breach of its obligations under international law, notably article 2(3) of the Charter of the United Nations, article 3(i) of the Charter of the Organization of American States, and article 2 of the Pact of Bogota;
 - ii. To adjudge and declare that Ecuador has persistently violated the principles contained in the Charter of the United Nations;
- b) With regard to the premises of Mexico’s Embassy to Ecuador and its diplomatic personnel,
 - i. To adjudge and declare that, by deploying special forces of the police and military personnel outside and inside Mexico’s diplomatic premises in Ecuador, harming the personal integrity and dignity of Mexican diplomatic personnel, intervening and

¹⁰ *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, I.C.J. Reports 2012, p. 422, at p. 445, para. 57.

¹¹ *Ibid.*

¹² *Nuclear Tests (New Zealand v. France)*, Judgment, I.C.J. Reports 1974, p. 45, at para. 23.

- hearing private communication of the Embassy, and forcibly entering to it, Ecuador is in breach of its obligations under international law, notably articles 22, 25, 27(1), and 29 of the Vienna Convention on Diplomatic Relations, and its subsequent practice;
- ii. To order Ecuador to undertake all appropriate and immediate measures in order to respect and protect the premises of the mission, together with its property and archives, in conformity with article 45(a) of the Vienna Convention on Diplomatic Relations; and
 - iii. To order Ecuador to make full reparation to Mexico for the harm suffered.
- c) In view of all the violations by Ecuador of international obligations owed to Mexico,
- i. To adjudge and declare that Ecuador is responsible of the harm that the violations of its international obligations have caused and are still causing to Mexico;
 - ii. To suspend Ecuador as member of the United Nations, until it does not issue a public apology recognizing its violations to the fundamental principles and norms of international law, to guarantee the reparation to the moral harm inflicted upon the United Mexican States and its affected nationals;
 - iii. To adjudge and declare that, in case of a violation to the Principles established in the United Nations Charter similar to the ones committed by Ecuador in the present case, the Court is the appropriate judicial body to determine the responsibility of a State, in order to initiate the process of expulsion under article 6 of the United Nations Charter; and
 - iv. To set a precedent stating that a State or nation that acts as Ecuador did in the present case will ultimately be expelled from the United Nations in accordance with the procedure foreseen under article 6 of the United Nations Charter.

V. RESERVATION OF RIGHTS

53. Mexico reserves the right to supplement, amend and extend the terms of this Application, as well as the grounds invoked.

VI. PROVISIONAL MEASURES

54. This Court has the undoubted authority to issue provisional measures to ensure the *status quo* pending resolution of the dispute before it. Article 41(1) of the Statute of the Court vests the Court with the “power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party” pending a final judgment in the case.¹³ In this regard, “the Court may exercise this power if it is satisfied that the rights asserted by the party requesting such measures are at least plausible”.¹⁴

¹³ *LaGrand (Germany v. United States of America), Merits, Judgment of 27 June 2001, para. 109.*

¹⁴ *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America), Provisional Measures, Order of 3 October 2018, I.C.J. Reports 2018, paras. 68–70.*

a) Compelling circumstances require the indication of provisional measures

55. Mexico claims that the conduct performed by Ecuador already breached the inviolability of Mexican diplomatic premises and its agents, which constitutes a precedent that exposes the risk of further serious threats to the premises. As a consequence, Mexico decided to break off diplomatic relations with Ecuador. Altogether, this shows that the Mexican Embassy in Ecuador, along with its property and archives, faces the risk of not being protected or further being violated again. In this sense, it is important to bear in consideration that article 45(a) of the Vienna Convention on Diplomatic Relations dictates that, when diplomatic relations are broken off, the receiving State must, even in case of armed conflict, respect and protect the premises of the mission, together with its property and archives.

56. In 1980, the Court stated that “in the case of a breach in diplomatic relations those provisions [articles 44 and 45] require that both the inviolability of the members of a diplomatic mission and of the premises, property and archives of the mission must be respected by the receiving State”.¹⁵ Thereafter, the Court decided unanimously that the Islamic Republic of Iran had to ensure the necessary means of leaving for all the United States diplomatic and consular staff. Another example occurred after the United Kingdom broke relations with Libya in 1984, where the premises were treated as inviolable after the rupture of the diplomatic relations.

57. Accordingly, since diplomatic relations between Mexico and Ecuador have ceased, the latter has the responsibility to act in conformity with articles 44 and 45 of the Vienna Convention on Diplomatic Relations. This includes the corresponding obligation to protect and respect the premises of the missions, together with their property and archives.

58. It is plausible to consider that the rights above-mentioned under the Vienna Convention on Diplomatic Relations must be preserved through the indication of provisional measures, since they are currently at stake and may subsequently be adjudged by the Court.¹⁶

59. Thus, this Court should act pursuant to article 41 of its Statute to preserve the rights here to ensure that Mexico is not deprived of the opportunity to vindicate its rights in this dispute, and to provide measures preventing any irreparable damage against Mexican diplomatic premises, property and archives.

b) The rights that Mexico seeks to protect and the urgency of the Request

60. Mexico requests provisional measures to protect the enjoyment of its rights granted in articles 44 and 45 in the Vienna Convention on Diplomatic Relations, in relation to articles 22, 24 and 30, namely: inviolability of its diplomatic mission premises in Quito; altogether with its property and archives, and the private residence of diplomatic agents, including in the event of breaking off diplomatic relations.

¹⁵ *Case Concerning United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran)*, Judgment of 24 May 1980, para 86.

¹⁶ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Order of 26 January 2024, General List 192, para 35.

61. Through the institution of proceedings, Mexico primarily requests the Court to order Ecuador to fulfill its obligations, declare Ecuador to have violated its international commitments, and to adequately repair the harm caused to Mexico. These requests have an urgent character due to: (i) the fact that Mexico is the legal owner of the building in which the Embassy is established; (ii) the possibility that the Government of Ecuador might use domestic legal measures to forcibly enter again into the building and probably take property, documents or archives that belong to the Government of Mexico and that can be used as evidence in the present case; (iii) the need to protect and ensure that no violation of the residence, or property within, of Mexican diplomatic personnel formerly accredited in Ecuador may take place.

62. The conduct deployed by the Republic of Ecuador caused serious prejudice to Mexico and to its diplomatic mission and personnel in Ecuador and continues to pose a serious threat of further violations to its rights under the Vienna Convention on Diplomatic Relations. Hence, the urgency of the measures is fully supported by recent actions by Ecuadorian security forces.

63. Considering the priority of requests for provisional measures over all other cases and the Court's authority to indicate these measures without conducting oral hearings in situations of extreme urgency, Mexico respectfully urges the Court to exercise such power in light of the extreme urgency of the present case.¹⁷

64. In particular, Mexico considers that the criterion of extreme urgency is satisfied since it is not inconceivable that the searches could occur again because of the possibility of an authority requesting them.¹⁸

65. Provisional measures are therefore clearly justified in order to protect Mexico's paramount interest in the inviolability and respect of the diplomatic premises, their property and archives, including the residence of its diplomatic personnel formerly accredited in Ecuador, and to ensure the Court's ability to order the relief Mexico seeks.

c) The order requested.

66. In view of the considerations referred to in the foregoing paragraphs, I respectfully request, on behalf of the Government of Mexico, that pending final judgment in this suit, the Court indicate the following provisional measures:

- a) That the Government of Ecuador takes appropriate and immediate steps to provide full protection and security of diplomatic premises, their property, and archives, preventing any form of intrusion against them.
- b) That the Government of Ecuador allows the Mexican Government to clear diplomatic premises and the private residence of diplomatic agents.

¹⁷ *LaGrand (Germany v. United States of America), Merits, Order of 3 March 1999, para. 21.*

¹⁸ *Immunities and Criminal Proceedings (Equatorial Guinea v. France), Provisional Measures, Order of 7 December 2016, I.C.J. Reports 2016, paras. 89–90.*

- c) That the Government of Ecuador ensures that no action is taken which might prejudice the rights of Mexico in respect of any decision which the Court may render on the merits.
- d) That the Government of Ecuador refrains from any act or conduct likely to aggravate or widen the dispute of which the Court is seized.

VII. APPOINTMENT OF AGENT

67. The United Mexican States appoints Mr. Alejandro Celorio Alcántara, Legal Adviser to the Mexican Ministry of Foreign Affairs, Mrs. Carmen Moreno Toscano, Ambassador of Mexico to the Kingdom of the Netherlands, Mr. Miguel Angel Reyes Moncayo, Deputy Legal Adviser to the Mexican Ministry of Foreign Affairs, and Mrs. Natalia Jiménez Alegria, Legal Counsel in the Permanent Mission of Mexico to the United Nations as Agents of the United Mexican States in the present proceedings.

68. Pursuant to Article 40, paragraph 1, of the Rules of Court, is requested that all communications relating to this case be sent to the Embassy of the United Mexican States to the Kingdom of the Netherlands, Nassauplein 28, Den Haag, 2585 EC, Netherlands.

I have the honor to reassure the Court of my highest esteem and consideration.

The undersigned, pursuant to Article 38, paragraph 3, of the Rules of the Court.

The Hague, Netherlands, April 11th, 2024.



Carmen Moreno Toscano,
Agent of the Government of the United Mexican States

CERTIFICATION

The Agent of the United Mexican States certifies that the documents listed below and annexed to the Application and Request for Provisional Measures of the United Mexican States are true and accurate copies of the originals of these documents or excerpts thereof.



Carmen Moreno Toscano,
Agent of the Government of the United Mexican States

The Hague, April 11th, 2024.

LIST OF ANNEXES

Annex 1. Photographic evidence of the presence of military and law enforcement personnel in the surroundings of the premises of the Mexican Embassy.

Annex 2. Photographic evidence of the forcible entrance of law enforcement personnel in the premises of the Mexican Embassy.

Annex 3. Video excerpts of the closed-circuit security cameras of the Embassy of Mexico, showing evidence of physical violence against the Deputy Chief of Mission of Mexico in Ecuador, Mr. Roberto Canseco, inside the premises of the Mexican Embassy and in its vicinity.

Annex 4. Photographic evidence of the use of physical force by the Ecuadorian law enforcement personnel against the Deputy Chief of Mission of Mexico in Ecuador, Mr. Roberto Canseco.

Annex 5. Photographic evidence of the presence of tactical military vehicle with communications disrupting equipment outside the Mexican Embassy.

Annex 6. Video excerpt of the press conference held on April 6th, 2024, by the Minister of Foreign Affairs of Ecuador, Mrs. Gabriela Sommerfeld.

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