

23 MAY 2024

ORDER

EMBASSY OF MEXICO IN QUITO

(MEXICO v. ECUADOR)

AMBASSADE DU MEXIQUE À QUITO

(MEXIQUE c. ÉQUATEUR)

23 MAI 2024

ORDONNANCE

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INTERNATIONAL COURT OF JUSTICE

YEAR 2024

**2024
23 May
General List
No. 194**

23 May 2024

EMBASSY OF MEXICO IN QUITO

(MEXICO v. ECUADOR)

REQUEST FOR THE INDICATION OF PROVISIONAL MEASURES

ORDER

Present: *President* SALAM; *Vice-President* SEBUTINDE; *Judges* TOMKA, ABRAHAM, XUE, BHANDARI, IWASAWA, NOLTE, CHARLESWORTH, BRANT, GÓMEZ ROBLEDO, CLEVELAND, AURESCU, TLADI; *Judge ad hoc* MCRAE; *Registrar* GAUTIER.

The International Court of Justice,

Composed as above,

After deliberation,

Having regard to Articles 41 and 48 of the Statute of the Court and Articles 73, 74 and 75 of the Rules of Court,

Makes the following Order:

1. On 11 April 2024, the United Mexican States (hereinafter “Mexico”) filed in the Registry of the Court an Application instituting proceedings against the Republic of Ecuador (hereinafter “Ecuador”) regarding “legal questions concerning the settlement of international disputes by peaceful means and diplomatic relations, and the inviolability of a diplomatic mission”.

2. At the end of its Application, 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 Bogotá;
 - (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, intercepting and [listening to] private communication[s] of the Embassy, and forcibly entering 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 [for] the harm that the violations of its international obligations have caused and are still causing to Mexico;
 - (ii) To suspend Ecuador as [a] member of the United Nations, until it [issues] a public apology recognizing its violations to the fundamental principles and norms of international law, to guarantee reparation [for] 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”.

3. In its Application, Mexico seeks to found the Court’s jurisdiction in this case on Article 36, paragraphs 1 and 2, of the Statute of the Court and Article XXXI of the American Treaty on Pacific Settlement signed at Bogotá on 30 April 1948 and officially designated, according to Article LX thereof, as the “Pact of Bogotá”.

4. The Application contained a Request for the indication of provisional measures pursuant to Article 41 of the Statute of the Court.

5. At the end of its Request, Mexico asked the Court to indicate the following provisional measures:

- “(a) That the Government of Ecuador takes appropriate and immediate steps to provide full protection and security of [the] 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 [its] diplomatic premises and the private residence[s] of [its] diplomatic agents.
- (c) That the Government of Ecuador ensures that no action is taken which might prejudice the rights of Mexico in respect of any decision which the Court may render on the merits.
- (d) That the Government of Ecuador refrains from any act or conduct likely to aggravate or widen the dispute of which the Court is seized.”

6. The Registrar immediately communicated to the Government of Ecuador the Application containing the Request for the indication of provisional measures, in accordance with Article 40, paragraph 2, of the Statute of the Court and Article 73, paragraph 2, of the Rules of Court. He also notified the Secretary-General of the United Nations of the filing by Mexico of the Application and the Request for the indication of provisional measures.

7. Pending the notification provided for by Article 40, paragraph 3, of the Statute of the Court, the Deputy-Registrar informed all States entitled to appear before the Court of the filing of the Application and the Request for the indication of provisional measures by a letter dated 12 April 2024.

8. Since the Court included upon the Bench no judge of Ecuadorian nationality, Ecuador proceeded to exercise the right conferred upon it by Article 31, paragraph 2, of the Statute of the Court to choose a judge *ad hoc* to sit in the case; it chose Mr Donald McRae.

9. By letters dated 12 April 2024, the Deputy-Registrar informed the Parties that, pursuant to Article 74, paragraph 3, of its Rules, the Court had fixed 30 April and 1 May 2024 as the dates for the oral proceedings on the request for the indication of provisional measures.

10. By a letter dated 19 April 2024, the Agent of Ecuador indicated that his Government had notified Mexico by way of a Note Verbale dated 9 April 2024 that it would respect and protect the premises, property and archives of the Mexican Embassy in Quito. In his letter, the Agent stated that there was thus no basis for the provisional measures requested by Mexico, but nevertheless provided assurances on Ecuador's behalf, "as a measure of goodwill", regarding, *inter alia*, the treatment of the premises, property and archives of the diplomatic mission and the private residences in question (these assurances are reproduced in paragraph 30 below). He further indicated that Ecuador was willing to have these assurances recorded in an order of the Court.

11. By a letter dated 22 April 2024, the Applicant reiterated its request for the indication of provisional measures in the same terms as set out in the Request filed on 11 April 2024. In Mexico's view, the assurances provided by Ecuador were insufficient and only an order of the Court indicating provisional measures could provide the necessary guarantees that the Applicant's rights would be protected.

12. At the public hearings held on 30 April and 1 May 2024, oral observations on the request for the indication of provisional measures were presented by:

On behalf of Mexico: HE Ms Carmen Moreno Toscano,
Mr Alejandro Celorio Alcántara,
Mr Alfredo Uriel Pérez Manríquez,
Ms Liliana Oliva Bernal,
Ms Fadia Ibrahim Nader,
Mr Miguel Ángel Reyes Moncayo.

On behalf of Ecuador: HE Mr Andrés Terán Parral,
Mr Alfredo Crosato Neumann,
Mr Sean Murphy,
Sir Michael Wood.

13. At the end of its oral observations, Mexico asked the Court to indicate the following provisional measures:

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

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

14. At the end of its oral observations, Ecuador requested the Court to “reject the request for the indication of provisional measures submitted by the United Mexican States”.

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I. FACTUAL BACKGROUND

15. On 17 December 2023, Mr Jorge David Glas Espinel, former Vice-President of Ecuador, arrived at the Embassy of Mexico in Quito, where, according to Mexico, he asked for protection, expressing concerns regarding his personal safety. Mr Glas Espinel then remained in the premises of the Mexican Embassy and subsequently filed a formal request for asylum with the Mexican authorities. According to Ecuador, at the time of his arrival at the Mexican Embassy, Mr Glas Espinel was on temporary release from prison on health-related grounds, following two final convictions against him for illicit association and bribery. He was also subject to ongoing criminal proceedings in Ecuador for alleged embezzlement of public funds (for which a pre-trial detention order was issued on 5 January 2024), and under investigation for alleged intimidation and psychological violence.

16. Over the course of the following months, the Parties held meetings and exchanged diplomatic Notes with regard to the situation of Mr Glas Espinel and the legal proceedings against him. In particular, on 29 February 2024, the Ministry of Foreign Affairs and Human Mobility (hereinafter the “Ministry of Foreign Affairs”) of Ecuador issued a diplomatic Note seeking the consent of the head of the Mexican diplomatic mission for Ecuadorian agents to access the premises of the mission in order to execute an arrest warrant against Mr Glas Espinel. By a Note Verbale dated 4 March 2024, the Mexican Ministry of Foreign Affairs replied that such consent would not be granted and reminded the Government of Ecuador of “the inviolability of diplomatic premises enjoyed by the Embassy and Official Residence of Mexico in Quito, in accordance with Article 22 of the Vienna Convention on Diplomatic Relations [of 18 April 1961]” (hereinafter the “Vienna Convention”). Meetings and diplomatic exchanges between the Parties aimed at addressing the situation of Mr Glas Espinel continued over the following weeks.

17. On 4 April 2024, the Ministry of Foreign Affairs of Ecuador informed the Mexican Embassy in Quito that, “in accordance with Article 9 of the Vienna Convention on Diplomatic Relations, the Government of the Republic of Ecuador ha[d] decided to declare Mrs Raquel Serur Smeke, Ambassador of the United Mexican States in Ecuador, *persona non grata*”. The Respondent announced that this decision was motivated by certain public statements made by the President of Mexico the previous day regarding the presidential elections recently held in Ecuador.

18. On 5 April 2024, the Mexican Ministry of Foreign Affairs issued a press release expressing regret about the decision to declare Ambassador Serur Smeke *persona non grata* and announcing that the Government of Mexico had decided to grant political asylum to Mr Glas Espinel. The Government of Mexico also announced, in that press release, that it intended to request safe conduct for Mr Glas Espinel and demanded that Ecuador “respect [Mexico’s] sovereignty, . . . comply with its international obligations, [and] guarantee the inviolability of diplomatic missions”.

19. In a press release issued later that day, the Ecuadorian Ministry of Foreign Affairs announced that Ecuador regarded the granting of diplomatic asylum to Mr Glas Espinel as “unlawful” under the 1954 Convention on Diplomatic Asylum and the 1933 Convention on Political Asylum, and that it would not accord him safe conduct. The Ministry further stated that, “in strict compliance with the norms of the Vienna Convention, [Ecuador] will continue to provide protection to the premises of the Mexican Embassy in Quito”.

20. At around 10 p.m. that same day, 5 April 2024, armed members of the Ecuadorian security forces entered the Mexican Embassy without the authorization of the Head of Mission, restrained the Deputy Chief of Mission and forcibly removed Mr Glas Espinel from the premises.

21. On 6 April 2024, the Government of Mexico notified Ecuador by way of a Note Verbale of its decision to terminate the diplomatic and consular relations between the two States with immediate effect. In press releases issued over the course of that day, the Mexican Foreign Minister announced that Mexico’s diplomatic personnel would leave Ecuador immediately, that the Embassy would remain closed indefinitely and that her Government intended to resort to the International Court of Justice to denounce violations of international law by Ecuador.

22. On the same day, the Minister for Foreign Affairs of Ecuador stated to the press, as later reflected in a press release, that the granting of diplomatic asylum to Mr Glas Espinel by Mexico was unlawful and that the decision of the President of Ecuador to authorize the forced entry into the premises of the Mexican Embassy was taken in the face of a real and imminent flight risk of Mr Glas Espinel.

II. EXAMINATION OF THE REQUEST

23. Mexico requests that, pending a final decision in the present proceedings, the Court indicate provisional measures as set out in paragraph 13 above.

24. Mexico contends that Ecuador’s past conduct in breach of the inviolability of its diplomatic premises and agents constitutes a precedent that exposes the risk of further serious threats. In Mexico’s view, the “environment of distrust” created as a result of those events has been aggravated by subsequent public statements by high-ranking Ecuadorian officials reflecting their “continuous disregard . . . for the privileges and immunities of Mexico in accordance with the Vienna Convention”. The Applicant states that the Mexican diplomatic premises and private residences in Quito, which contain property and confidential documents, are currently vacant and thus vulnerable to possible damage, confiscation or inspection from national authorities or even from private

individuals. It also refers to the possibility that the Ecuadorian authorities may try to enter and conduct searches of those premises, archives and documents as part of the pending judicial proceedings concerning Mr Glas Espinel. Mexico submits that provisional measures are thus required to address the real and imminent risk of irreparable prejudice to its rights.

25. Mexico asserts that no credible and reliable assurance has been provided by the Respondent to prevent further violations. It recalls that, in a press release issued only a few hours before the security forces undertook the operation of 5 April 2024 at the Mexican Embassy, the Ecuadorian Ministry of Foreign Affairs had stated that it would provide protection to the premises of the mission in strict compliance with the Vienna Convention (see paragraph 19 above). Mexico also argues that the Note Verbale sent by Ecuador on 9 April 2024 and the letter to the Court of 19 April 2024 (see paragraph 10 above) do not provide appropriate assurances because they do not include a credible and specific commitment by Ecuador to respect the inviolability of the Mexican mission, its property and archives and because they were issued by the Ministry of Foreign Affairs, which “only has informative and advisory functions within the [Ecuadorian] Government”.

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26. Ecuador argues that Mexico has not produced any evidence of the existence of a real and imminent risk of irreparable prejudice to its rights. The Respondent asserts that it is providing full protection to the premises of the Mexican mission and diplomatic residences, that there are no threats to the relevant properties or archives and that Mexico is free to remove such property and archives whenever it wishes. Ecuador further states that the events of 5 April 2024 constituted an isolated incident which took place in very exceptional circumstances and had the single objective of bringing Mr Glas Espinel to justice. Accordingly, Ecuador claims that there is no reason to suppose that a comparable situation will recur.

27. The Respondent also underscores that it has already provided assurances to Mexico that it will respect and protect the relevant premises, property and archives in full accordance with international law, assurances that it reiterated before the Court. Ecuador states that its assurances are fully responsive, in form and in language, to the provisional measures sought by Mexico and that “in so far as Article 45 of the Vienna Convention requires inviolability, Ecuador’s assurances extend to inviolability”. According to the Respondent, after the severance of diplomatic relations, the Minister for Foreign Affairs of Ecuador made a request to the competent authorities of her country to provide protection to the premises, property and archives of Mexico’s diplomatic mission in Ecuador, in accordance with Article 45, paragraph (a), of the Vienna Convention. Ecuador notes that the national police executed such request. Moreover, Ecuador maintains that the possibility of further entry and searches affecting the premises of the Mexican Embassy because of judicial proceedings involving Mr Glas Espinel is “pure speculation”, particularly in light of a recent judgment handed down by the National Court of Justice of Ecuador on 17 April 2024 holding that, under Ecuadorian law, “entry into a diplomatic mission requires, in all cases, the consent of the head of the mission”. Ecuador also argues that the statements of a foreign minister at international level “bind[] the State”.

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28. The Court recalls that, pursuant to Article 41, paragraph 1, of its Statute, it has “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 decision in the case. The Court may, in particular, exercise this power 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 which are the subject of the judicial proceedings or that the alleged disregard of such rights will entail irreparable consequences before the Court gives its final decision (see, for example, *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, paras. 64-65). The Court must therefore consider whether such a risk exists at this stage of the proceedings.

29. The Court notes that, by a Note Verbale sent on 9 April 2024 (see paragraph 10 above), the Ministry of Foreign Affairs of Ecuador informed the Ministry of Foreign Affairs of Mexico that “the respect and protection of the premises, property and archives of the Mexican Embassy in Quito will be guaranteed in accordance with Article 45 (a) of the Vienna Convention on Diplomatic Relations”.

30. The Court further notes that, by a letter addressed to the Court and dated 19 April 2024 (see paragraph 10 above), the Agent of Ecuador stated:

“As a measure of goodwill . . . and without prejudice to its position as to matters of jurisdiction, admissibility, and the merits of the present case, Ecuador assures the Court 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 seized, and instead to pursue the peaceful settlement of disputes.

Moreover, Ecuador is willing for these assurances, which are responsive to Mexico’s request for the indication of provisional measures, to be recorded in an Order of the Court.”

31. Finally, at the public hearing that took place on 1 May 2024, the Agent of Ecuador provided the following assurances on behalf of his country:

“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.”

32. The Court considers that the assurances given by the Agent of Ecuador encompass the concerns expressed by Mexico in its Request. They include, *inter alia*, commitments to provide full protection and security to the premises, property and archives of the diplomatic mission of Mexico in Quito, as well as to allow the clearing of such mission and of the private residences of Mexican diplomatic agents. In addition, the Respondent clarified at the hearing that these assurances were intended to cover “precisely the same ground as Article 45 (a) [of the Vienna Convention]” and to extend to inviolability, in so far as Article 45 so requires.

33. The Court reiterates that unilateral declarations can give rise to legal obligations. Interested States may take cognizance of unilateral declarations and place confidence in them, and are entitled to require that the obligation thus created be respected (see *Nuclear Tests (Australia v. France)*, Judgment, *I.C.J. Reports 1974*, p. 268, para. 46; *Nuclear Tests (New Zealand v. France)*, Judgment, *I.C.J. Reports 1974*, p. 473, para. 49). The Court further reiterates that, “[o]nce a State has made such a commitment concerning its conduct, its good faith in complying with that commitment is to be presumed” (*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). These assurances are especially important throughout the period necessary for Mexico to empty the premises of its Embassy in Quito as well as the private residences of its diplomatic agents. The Court is of the view that the assurances by the Agent of Ecuador on behalf of his Government, which were given publicly before the Court and were formulated in an unconditional manner, are binding and create legal obligations for the Respondent (see *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)*, Provisional Measures, Order of 17 November 2023, para. 62).

34. In light of all of the above, the Court considers that there is at present no urgency, in the sense that there is no real and imminent risk of irreparable prejudice to the rights claimed by the Applicant.

35. The Court observes that the conditions for the indication of provisional measures identified in its jurisprudence are cumulative. Therefore, having found that one such condition has not been met, the Court is not required to examine whether the other conditions are satisfied.

III. CONCLUSION

36. The Court concludes that the circumstances, as they now present themselves to it, are not such as to require the exercise of its power under Article 41 of the Statute to indicate provisional measures.

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37. The Court nonetheless deems it necessary to emphasize the fundamental importance of the principles enshrined in the Vienna Convention on Diplomatic Relations. As the Court has previously noted,

“there is no more fundamental prerequisite for the conduct of relations between States than the inviolability of diplomatic envoys and embassies, so that throughout history nations of all creeds and cultures have observed reciprocal obligations for that purpose” (*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, p. 19, para. 38*).

In particular,

“the institution of diplomacy, with its concomitant privileges and immunities, has withstood the test of centuries and proved to be an instrument essential for effective co-operation in the international community, and for enabling States, irrespective of their differing constitutional and social systems, to achieve mutual understanding and to resolve their differences by peaceful means” (*ibid.*, para. 39).

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38. The Court reaffirms that the decision given in the present proceedings in no way prejudices the question of the jurisdiction of the Court to deal with the merits of the case or any questions relating to the admissibility of the Application or to the merits themselves. It leaves unaffected the right of the Governments of Mexico and Ecuador to submit arguments in respect of those questions.

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39. For these reasons,

THE COURT,

Unanimously,

Finds that the circumstances, as they now present themselves to the Court, are not such as to require the exercise of its power under Article 41 of the Statute to indicate provisional measures.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this twenty-third day of May, two thousand and twenty-four, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the United Mexican States and the Government of the Republic of Ecuador, respectively.

(Signed) Nawaf SALAM,
President.

(Signed) Philippe GAUTIER,
Registrar.

Judges BHANDARI, NOLTE, GÓMEZ ROBLEDO, CLEVELAND and AURESCU append declarations to the Order of the Court.

(Initialed) N.S.

(Initialed) Ph.G.
