

## DECLARATION OF JUDGE GÓMEZ ROBLEDO

[Translation]

1. I voted in favour of the Order on the indication of provisional measures because I recognize the importance of the assurances provided by Ecuador to Mexico. These unilaterally expressed assurances are binding on Ecuador and create legal obligations, as stated in paragraph 33 of the Order. In that same paragraph, the Court further noted that the assurances were “formulated in an unconditional manner” and that Ecuador’s “good faith in complying with [them]” is to be presumed.

2. In light of the foregoing, it seems to me essential to state that Ecuador must make every effort to allow Mexico to do what is needed to close its Embassy in Quito, while fully respecting the immunity and inviolability of the premises, property and archives of the diplomatic mission and of Mexican diplomatic agents. In other words, the assurances given by Ecuador must be upheld in full.

3. Implementing these assurances calls for co-operation on the part of Ecuador as the receiving State. This involves various steps and requires absolute respect for the privileges and immunities provided for in the Vienna Convention on Diplomatic Relations (hereinafter the “Vienna Convention”). The question then arises as to how long the receiving State — in this case Ecuador — is bound by the obligations arising from the Vienna Convention.

4. State practice shows that the immunities provided for in Article 22 of the Vienna Convention cease after a certain interval following the severance of diplomatic relations (see E. Denza, “Breach of Relations and Protection of Interest”, in *Commentary on the Vienna Convention on Diplomatic Relations*, Oxford Public International Law, 2016, 4th edition). The cessation of immunities is the logical consequence of terminating diplomatic relations. If premises are no longer used to house a diplomatic mission, they lose their status as “premises of the mission” and thus their inviolability.

5. However, the length of this interval varies from one State to another. The protection of the premises, property and archives of a mission, provided for in Article 45 (a) of the same Convention, will cease at some point, and, failing an agreement between the receiving State and the sending State, it is the former which decides when.

6. Indeed, it is ultimately for Ecuador to determine when the premises will lose their diplomatic status and the diplomatic agents will cease to enjoy any privileges or immunities.

7. In this regard, it is possible to draw an analogy with Article 39, paragraph 2, of the Vienna Convention and conclude that protection could not be ensured indefinitely and that, in any event, it would be limited to “a reasonable period”.

8. In addition, and regarding a head of mission who is declared *persona non grata*, or any other member of the diplomatic staff of a mission who is not acceptable, the International Law Commission stated in its commentary to the final draft of Article 8, paragraph 2, which subsequently became Article 9, paragraph 2, of the Vienna Convention, that

“[w]hen a person who has already taken up his duties is declared *persona non grata*, the normal consequence is . . . that the sending State recalls him or declares his functions

terminated . . . But, if the sending State fails to do this within a reasonable time, the receiving State is authorized to take action of its own accord. It may declare that the functions of the person concerned are terminated, that he is no longer recognized as a member of the mission, and that he has ceased to enjoy diplomatic privileges.” (Draft Articles on Diplomatic Intercourse and Immunities with commentaries, 1958, p. 91.)

9. That being so, Mexico needed to have confidence in Ecuador’s full co-operation during the period following the severance of diplomatic relations between the two States. The Court alluded to this in acknowledging that “[t]hese 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” (Order, para. 33). Mexico is thus entitled to require Ecuador to give effect to its assurances “throughout the period necessary” for the corresponding process to be completed.

10. Although urgency in the sense of the existence of a real and imminent risk of irreparable prejudice to the rights claimed by Mexico was not demonstrated at this stage, the Court still wished to call attention to the fundamental importance of respecting the principle of the inviolability of embassies and diplomats and the privileges and immunities attaching to them (Order, para. 37).

11. It must also be recalled that the Court’s decision not to exercise, for now, its power under Article 41 of the Statute to indicate provisional measures leaves unaffected the right of Mexico to submit in the future a fresh request for the indication of provisional measures, under Article 75, paragraph 3, of the Rules of Court, based on new facts.

*(Signed)* Juan Manuel GÓMEZ ROBLEDÓ.

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