

DECLARATION OF JUDGE CLEVELAND

1. In today's Order, the Court states that "[i]n 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" (para. 34). The Court does not elaborate on what "all of the above" entails, and in the immediately preceding paragraphs (paras. 28-33), it examines expressly only the assurances presented by Ecuador. I therefore write separately to elaborate briefly on the circumstances before the Court demonstrating that there is, at present, no urgency requiring the exercise of its power to indicate provisional measures (para. 36).

2. The formal assurances provided by Ecuador, first presented to the Court in a letter of 19 April 2024, and subsequently reiterated during the public hearings, are a decisive element in today's decision (paras. 32 and 33). In this regard, the Court underscores that Ecuador's assurances are unconditional and create legal obligations for the Respondent (para. 33). This approach is consistent with the Court's decision in *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. 72-73).

3. However, assurances are not always sufficient to remove a real and imminent risk of irreparable prejudice, even if they contribute towards mitigating the risk (*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. 64). This particularly may be the case if a State previously offered diplomatic assurances, through bilateral communications or otherwise, that it then failed to respect, or if a State has failed to observe prior Orders of the Court (see *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, *Provisional Measures, Order of 22 November 2013, I.C.J. Reports 2013*, p. 366, para. 50).

4. In the present case, considerations in addition to Ecuador's assurances inform the Court's decision. As the Court details in paragraph 26 of the Order, Ecuador contends that it has no reason to enter Mexico's diplomatic premises again, as the purpose of its operation on 5 April 2024 was to secure custody over Mr Glas Espinel. Furthermore, on 9 April 2024, the Minister of Foreign Affairs of Ecuador requested that Mexico's diplomatic premises be placed under protection in accordance with Article 45 (a) of the Vienna Convention on Diplomatic Relations. This request then was communicated by the Ministry of Interior to the special police forces of Ecuador. Finally, the Respondent explained that in a judgment of 17 April 2024, a Chamber of the National Court of Justice declared that the arrest of Mr Glas Espinel, carried out without the consent of the Mexican authorities, was in breach of domestic law. According to Ecuador, its National Court held that entry into a diplomatic mission requires, in all cases, the consent of the head of the mission, and that a state of emergency creates no exception to this requirement.

5. Mexico has not presented contrary evidence to the Court that would establish a future real and imminent risk of irreparable harm to its rights under the Vienna Convention on Diplomatic Relations, including to the protection of its diplomatic premises, property and archives.

6. The above circumstances form an important backdrop to the formal assurances provided by Ecuador, and cumulatively allow the Court to conclude that at present there is no urgency. Accordingly, the circumstances, as they now present themselves, are not such as to require the exercise of the Court's power to indicate provisional measures.

(Signed) Sarah H. CLEVELAND.
