



INTERNATIONAL COURT OF JUSTICE

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Summary

Unofficial

Summary 2024/5

23 May 2024

Embassy of Mexico in Quito (Mexico v. Ecuador)

Request for the indication of provisional measures

The Court begins by recalling that, on 11 April 2024, Mexico filed in the Registry of the Court an Application instituting proceedings against Ecuador regarding “legal questions concerning the settlement of international disputes by peaceful means and diplomatic relations, and the inviolability of a diplomatic mission”. The Application contained a Request for the indication of provisional measures. At the end of its oral observations on that Request, 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.”

I. FACTUAL BACKGROUND (PARAS. 15-22)

The Court recalls that, 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.

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, Ecuador sought 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, which was refused.

On 4 April 2024, Ecuador declared *persona non grata* the Ambassador of Mexico in Ecuador, announcing that its decision was motivated by certain public statements made by the President of Mexico the previous day regarding the presidential elections recently held in Ecuador. On 5 April 2024, Mexico expressed regret about the decision to declare its Ambassador *persona non grata* and announced that it had decided to grant political asylum to Mr Glas Espinel. Mexico also made known that it intended to request safe conduct for Mr Glas Espinel and demanded that Ecuador guarantee the inviolability of its diplomatic mission. Ecuador responded on the same day that it regarded the granting of diplomatic asylum to Mr Glas Espinel as unlawful, and that it would not accord him safe conduct. Ecuador added that, in strict compliance with the norms of the Vienna Convention on Diplomatic Relations, it would continue to provide protection to the premises of the Mexican Embassy in Quito. 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.

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. On the same day, Ecuador reiterated 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 (PARAS. 23-35)

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. The Court therefore considers whether such a risk exists at this stage of the proceedings.

The Court notes that Ecuador has provided certain assurances to Mexico by Note Verbale dated 9 April 2024, by letter dated 19 April 2024 and during the hearing held on 1 May 2024. On that latter occasion, the Agent of Ecuador gave 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.”

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.

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. The Court further reiterates that once a State has made such a commitment concerning its conduct, its good faith in complying with that commitment is to be presumed. 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.

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.

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 (PARA. 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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The Court nonetheless deems it necessary to emphasize the fundamental importance of the principles enshrined in the Vienna Convention on Diplomatic Relations. It recalls in particular that there is no more fundamental prerequisite for the conduct of relations between States than the inviolability of diplomatic envoys and embassies.

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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.

OPERATIVE CLAUSE (PARA. 39)

The full text of the operative clause of the Order reads as follows:

“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.”

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

Declaration of Judge Bhandari

In his declaration, Judge Bhandari notes that the Court must make a distinction between an ordinary application for the indication of provisional measures and an application for the indication of provisional measures where the opposing party offers legally binding assurances or undertakings substantively in the terms of the requested measures.

Judge Bhandari states that, in dealing with applications involving binding assurances and undertakings, the Court is required to examine only one element of the test, i.e. prima facie jurisdiction, and that the Court need not examine other elements of the test. The application can be disposed of on the basis of the assurances and undertakings.

He explains that the Court in its Order took the undertakings in those proceedings into account under the heading of risk of irreparable prejudice. According to Judge Bhandari, however, it is unnecessary to analyze such assurances under this heading.

Declaration of Judge Nolte

In his declaration, Judge Nolte agrees with the Court's decision. However, he expresses his discomfort with the Court's method of reasoning which, in his view, could constitute a significant change in its jurisprudential approach to the rejection of requests for the indication of provisional measures. According to Judge Nolte, although the conditions for the indication of provisional measures are certainly cumulative, this does not mean that the Court need only ever find that any one of them has not been fulfilled in order to reject a request for the indication of provisional measures. In particular, the precondition of prima facie jurisdiction cannot be superseded by a finding that there is no urgency. This is because, for the Court to exercise jurisdiction under Article 41 — which entails summarily examining allegations of the parties —, there must be a prima facie possibility that the case will go to the merits, even if the Court ultimately finds that the circumstances are not such as to require the indication of provisional measures. In the present case, Judge Nolte observes that the Court could have easily explained that it had prima facie jurisdiction under the Pact of Bogotá.

Judge Nolte notes that the increased recourse by States to requests for the indication of provisional measures in recent years may justify a less elaborate style of reasoning, but not a flexibility permitting the Court to skip over conditions which have a logical and substantive priority, even when the request is rejected.

Declaration of Judge Cleveland

In her declaration, Judge Cleveland concurs with the Court's Order. She explains that while the assurances given by Ecuador were a vital element in reaching this conclusion, the Court's decision was also informed by the specific factual circumstances of this case. These circumstances cumulatively establish that there is no urgency and thus that the circumstances, as they now present themselves, are not such as to require the exercise of the Court's power to indicate provisional measures.

Declaration of Judge Aurescu

Judge Aurescu supports the decision of the Court not to indicate provisional measures in this case and provides some additional remarks.

First, Judge Aurescu welcomes that the Court has emphasized in its Order the importance it attaches to the Vienna Convention on Diplomatic Relations. In his view, it is of paramount

importance that the principles and norms of the Convention, including inviolability, which allow for the smooth unfolding of interactions between States through stable, safe and secure diplomatic relations, should be upheld and strongly defended.

Second, Judge Aurescu offers some remarks about how the Court treats unilateral undertakings and raises the idea that periodical reporting could, in certain circumstances, be indicated as an independent measure. In his view, there is no difference between unilateral undertakings made directly to a party to the case or before the Court. As long as they are made publicly and with the intention to be binding, such undertakings have the same legal force and produce the same legal effects. At the same time, the presumption of good faith is an important concept of international law on which compliance with unilateral undertakings is also based. In the present case, Ecuador has made promises to protect the premises of the Mexican Embassy in Quito, however it entered those premises without the consent of Mexico on the very same day. Judge Aurescu believes that in the special circumstances of this case, the Court had an opportunity to develop its jurisprudence and request Ecuador, by way of an independent measure, to report regularly on the fulfilment of its undertakings.
