



INTERNATIONAL COURT OF JUSTICE

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Press Release

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Immunities and Criminal Proceedings (Equatorial Guinea v. France)

The Court finds that France must guarantee the protection of the premises presented as housing the diplomatic mission of Equatorial Guinea in France

THE HAGUE, 7 December 2016. The International Court of Justice (ICJ), the principal judicial organ of the United Nations, has today delivered its Order on the request for the indication of provisional measures submitted by Equatorial Guinea in the case concerning Immunities and Criminal Proceedings (Equatorial Guinea v. France).

The Court first recalls that, on 13 June 2016, Equatorial Guinea instituted proceedings against France with regard to a dispute concerning the immunity from criminal jurisdiction of the Vice-President of the Republic of Equatorial Guinea, Mr. Teodoro Nguema Obiang Mangue, and the legal status of the building which “houses the Embassy of Equatorial Guinea”, located at 42 avenue Foch in Paris. On 29 September 2016, Equatorial Guinea submitted a Request for the indication of provisional measures, asking the Court, *inter alia*, to order that France suspend all the criminal proceedings brought against the Vice-President of Equatorial Guinea; that France ensure that the building located at 42 avenue Foch in Paris is treated as premises of Equatorial Guinea’s diplomatic mission in France and, in particular, assure its inviolability; and that France refrain from taking any other measure that might aggravate or extend the dispute submitted to the Court.

In its Order,

- The Court indicates, unanimously, that France shall, pending a final decision in the case, take all measures at its disposal to ensure that the premises presented as housing the diplomatic mission of Equatorial Guinea at 42 avenue Foch in Paris enjoy treatment equivalent to that required by Article 22 of the Vienna Convention on Diplomatic Relations, in order to ensure their inviolability.
- The Court also unanimously rejects the request of France to remove the case from the General List.

Reasoning of the Court

1. Prima facie jurisdiction

The Court notes that Equatorial Guinea seeks to found the Court's jurisdiction, first, on the United Nations Convention against Transnational Organized Crime, in respect of its claim relating to the immunity of Mr. Teodoro Nguema Obiang Mangue, and, second, on the Optional Protocol concerning the Compulsory Settlement of Disputes to the Vienna Convention on Diplomatic Relations, in respect of its claim relating to the inviolability of the premises located at 42 avenue Foch in Paris. The Court therefore addresses whether the jurisdictional clauses contained in these instruments confer upon it prima facie jurisdiction to rule on the merits, enabling it — if the other necessary conditions are fulfilled — to indicate provisional measures.

It observes in this regard that both Article 35, paragraph 2, of the Convention against Transnational Organized Crime and Article I of the Optional Protocol make the Court's jurisdiction conditional on the existence of a dispute arising out of the interpretation or application of the Convention to which they relate. It therefore seeks to establish whether, prima facie, such a dispute existed on the date the Application was filed.

(1) The Convention against Transnational Organized Crime

The Court notes that Equatorial Guinea asserts that a dispute exists between the Parties concerning the application of Article 4 of the Convention against Transnational Organized Crime, on which provision it relies to claim the immunity of the Vice-President of Equatorial Guinea.

The Court indicates that the purpose of Article 4 of the Convention is to ensure that the States parties to that Convention perform their obligations in accordance with the principles of sovereign equality, territorial integrity of States and non-intervention in the domestic affairs of other States. In its view, the provision does not appear to create new rules concerning the immunities of holders of high-ranking office in the State or incorporate rules of customary international law concerning those immunities. Any dispute which might arise with regard to “the interpretation or application” of Article 4 of the Convention could relate only to the manner in which the States parties perform their obligations under that Convention. It appears to the Court, however, that the alleged dispute does not relate to the manner in which France performed its obligations under the articles of the Convention invoked by Equatorial Guinea. The alleged dispute, rather, appears to concern a distinct issue, namely whether the Vice-President of Equatorial Guinea enjoys immunity ratione personae under customary international law and, if so, whether France has violated that immunity by instituting proceedings against him. Consequently, the Court considers that, prima facie, a dispute capable of falling within the provisions of the Convention against Transnational Organized Crime and therefore concerning the interpretation or the application of Article 4 of that Convention does not exist between the Parties. Thus, it does not have prima facie jurisdiction under Article 35, paragraph 2, of that instrument to entertain Equatorial Guinea's request relating to the immunity of Mr. Teodoro Nguema Obiang Mangue.

(2) The Optional Protocol to the Vienna Convention on Diplomatic Relations

The Court recalls that Equatorial Guinea claims that a dispute exists between the Parties regarding the application of Article 22 of the Vienna Convention on Diplomatic Relations, which guarantees the inviolability of diplomatic premises. It further recalls that Article I of the Optional Protocol provides that the Court has jurisdiction over disputes relating to the interpretation or application of that Convention. Accordingly, it seeks to ascertain whether, on the date the Application was filed, such a dispute appeared to exist between the Parties as to the legal status of

the building located at 42 avenue Foch in Paris. While Equatorial Guinea has maintained at various times that the building houses the premises of its diplomatic mission and must therefore enjoy the immunities afforded under Article 22 of the Vienna Convention, France has consistently refused to recognize that this is the case, and claims that the property has never legally acquired the status of “premises of the mission”. In the view of the Court, there is therefore every indication that, on the date the Application was filed, a dispute existed between the Parties.

However, the Court must also ascertain whether such a dispute is one over which it might have jurisdiction *ratione materiae* on the basis of Article I of the Optional Protocol. In this regard, the Court notes that the rights apparently at issue may fall within the scope of Article 22 of the Vienna Convention, which guarantees the inviolability of diplomatic premises, and that the acts alleged by the Applicant in respect of the building on avenue Foch (searches, attachment, etc.) appear to be capable of contravening such rights. It therefore considers that there exists, *prima facie*, a dispute between the Parties capable of falling within the provisions of the Vienna Convention and concerning the interpretation or application of Article 22 thereof.

Consequently, the Court considers that it has *prima facie* jurisdiction under Article I of the Optional Protocol to the Vienna Convention to entertain this dispute. It is of the view that it may, on this basis, examine Equatorial Guinea’s request for the indication of provisional measures, in so far as it concerns the inviolability of the building located at 42 avenue Foch in Paris. It adds that, there being no manifest lack of jurisdiction, the Court cannot accede to France’s request that the case be removed from the List.

2. The rights whose protection is sought and the measures requested

Having found that it does not have *prima facie* jurisdiction to entertain the alleged violations of the Convention against Transnational Organized Crime, the Court addresses only Equatorial Guinea’s alleged right to “the inviolability of the premises of its diplomatic mission”, in respect of which Article 22 of the Vienna Convention is invoked.

It first considers whether the right claimed by Equatorial Guinea on the merits, and for which it is seeking protection, is plausible. It is of the view that, given that the right to the inviolability of diplomatic premises is a right contained in Article 22 of the Vienna Convention, that Equatorial Guinea claims that it has used the building in question as premises of its diplomatic mission in France since 4 October 2011, and that France acknowledges that, from the summer of 2012, certain services of the Embassy of Equatorial Guinea appear to have been transferred to 42 avenue Foch, it appears that Equatorial Guinea has a plausible right to ensure that the premises which it claims are used for the purposes of its mission are accorded the protections required by Article 22 of the Vienna Convention. The Court then turns to the issue of the link between the rights claimed and the provisional measures requested. In this regard, it considers that, by their very nature, these measures are aimed at protecting the right to the inviolability of the building which Equatorial Guinea presents as housing the premises of its diplomatic mission in France. It concludes that a link exists between the right claimed by Equatorial Guinea and the provisional measures being sought.

3. Risk of irreparable prejudice and urgency

The Court is of the view that the record before it shows that France does not accept that the building forms part of the premises of Equatorial Guinea’s diplomatic mission in France, and refuses to grant it the immunity — and thus the corresponding protection — afforded to such premises under the Vienna Convention. Consequently, there is a continuous risk of intrusion. It notes that while the Parties disagree as to whether any searches have been conducted recently, they recognize that such acts did indeed occur in 2011 and 2012. And, given that it is possible that, during the hearing on the merits, the *Tribunal correctionnel* may, of its own initiative or at the request of a party, request further investigation or an expert opinion, it is not inconceivable that the

building on avenue Foch will be searched again. If that were to happen, and if it were established that the building houses the premises of Equatorial Guinea's diplomatic mission, the daily activities of that mission — the representation of a sovereign State — would risk being seriously impeded, as a result, for example, of the presence of police officers or the seizure of documents, some of which might be highly confidential.

The Court considers that it follows from the foregoing that there is a real risk of irreparable prejudice to the right to inviolability of the premises that Equatorial Guinea presents as being used as the premises of its diplomatic mission in France. Indeed, any infringement of the inviolability of the premises may not be capable of remedy, since it might not be possible to restore the situation to the status quo ante. Furthermore, that risk is imminent, in so far as the acts likely to cause such a prejudice to the rights claimed by Equatorial Guinea could occur at any moment. The criterion of urgency is therefore also satisfied in the present case.

The Court concludes from all the above considerations that the conditions required by its Statute for it to indicate provisional measures in respect of the building located at 42 avenue Foch in Paris have been met.

Composition of the Court

The Court was composed as follows: Vice-President Yusuf, Acting President; President Abraham; Judges Owada, Tomka, Bennouna, Cançado Trindade, Greenwood, Xue, Donoghue, Gaja, Sebutinde, Bhandari, Robinson, Crawford, Gevorgian; Judge ad hoc Kateka; Registrar Couvreur.

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Judge XUE appends a separate opinion to the Order of the Court; Judges GAJA and GEVORGIAN append declarations to the Order of the Court; Judge ad hoc KATEKA appends a separate opinion to the Order of the Court.

A summary of the Order appears in the document entitled “Summary No. 2016/6”, to which summaries of the separate opinions and declarations are annexed. This press release, the summary and the full text of the Order are available on the Court's website (www.icj-cij.org), under the heading “Cases”.

Note: The Court's press releases do not constitute official documents.

The International Court of Justice (ICJ) is the principal judicial organ of the United Nations. It was established by the United Nations Charter in June 1945 and began its activities in April 1946. The seat of the Court is at the Peace Palace in The Hague (Netherlands). Of the six principal organs of the United Nations, it is the only one not located in New York. The Court has a twofold role: first, to settle, in accordance with international law, legal disputes submitted to it by States (its judgments have binding force and are without appeal for the parties concerned); and, second, to give advisory opinions on legal questions referred to it by duly authorized

United Nations organs and agencies of the system. The Court is composed of 15 judges elected for a nine-year term by the General Assembly and the Security Council of the United Nations. Independent of the United Nations Secretariat, it is assisted by a Registry, its own international secretariat, whose activities are both judicial and diplomatic, as well as administrative. The official languages of the Court are French and English. Also known as the “World Court”, it is the only court of a universal character with general jurisdiction.

The ICJ, a court open only to States for contentious proceedings, and to certain organs and institutions of the United Nations system for advisory proceedings, should not be confused with the other — mostly criminal — judicial institutions based in The Hague and adjacent areas, such as the International Criminal Tribunal for the former Yugoslavia (ICTY, an ad hoc court created by the Security Council), the International Criminal Court (ICC, the first permanent international criminal court, established by treaty, which does not belong to the United Nations system), the Special Tribunal for Lebanon (STL, an international judicial body with an independent legal personality, established by the United Nations Security Council upon the request of the Lebanese Government and composed of Lebanese and international judges), or the Permanent Court of Arbitration (PCA, an independent institution which assists in the establishment of arbitral tribunals and facilitates their work, in accordance with the Hague Convention of 1899).

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