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Note to the Secretary-General

Through Mr. Mulet

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*Proceedings in the International Court of Justice — Equatorial Guinea v. France —
Court indicates provisional measures to ensure immunity of official premises*

07/12/16

1. The purpose of this Note is to inform the Secretary-General of the Order of provisional measures that was issued by the Court on 7 December 2016 in the case concerning *Immunities and Criminal Proceedings* (Equatorial Guinea v. France).

Background

2. Equatorial Guinea's claims in this case stem from a series of criminal proceedings that have been instituted in France since 2007 by associations and private individuals against a number of African Heads of State and their relatives. In one of those proceedings, Mr. Teodoro Nguema Obiang Mangue, a Second Vice-President of Equatorial Guinea in charge of State Defence and Security and son of the President, is charged with acts of misappropriation of public funds in Equatorial Guinea — funds that he is alleged subsequently to have invested in France. The French authorities issued an international arrest warrant for Mr. Obiang Mangue in 2012 and placed him under judicial examination in 2014. In May 2016, the prosecution filed their final submissions in the case, asserting that Mr. Obiang Mangue "enjoys no immunity that may bar prosecution".
3. A further matter relates to a building, located in Paris, which originally belonged to Mr. Obiang Mangue and which he later sold to Equatorial Guinea. Notwithstanding the assertions of Equatorial Guinea that this building is used for diplomatic purposes, France seized it in the course of its investigations into Mr. Obiang Mangue as allegedly having been purchased with proceeds from his illegal activities. In May 2016, the French prosecution asserted that this building was "not protected by immunity in so far as it did not form part of the diplomatic mission of the Republic of Equatorial Guinea in France".
4. With regard to these two issues, Equatorial Guinea claims that France is in violation of an obligation under general international law to recognise and respect the immunity from criminal jurisdiction that, it says, is enjoyed by its Second Vice-President as a State representative, as well as its obligation to respect and ensure the immunity that is accorded to diplomatic premises under international law.

The request for provisional measures

5. In response to the orders of the French courts for Mr. Obiang Mangue to appear in court and to certain searches conducted in the building in Paris, Equatorial Guinea requested the Court to indicate provisional measures. Equatorial Guinea contended that "[t]he pursuit of criminal proceedings in France against the Vice-President and the property of Equatorial Guinea, and France's refusal to respect the building located at 42 avenue Foch in Paris as premises of Equatorial Guinea's diplomatic mission in France, create a real and imminent risk of irreparable prejudice to the rights of Equatorial Guinea". Equatorial Guinea asked the Court to instruct France to suspend the criminal proceedings and to ensure the inviolability of its diplomatic premises.

no action required

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The Court's Order

6. In order to decide on the provisional measures, the Court had to establish that it has *prima facie* jurisdiction to entertain the case brought by Equatorial Guinea.
7. Equatorial Guinea sought to base the Court's jurisdiction on two instruments. In respect of the alleged diplomatic immunity of Mr. Obiang Mangué, it sought to rely on the United Nations Convention against Transnational Organized Crime. In respect of the inviolability of the alleged diplomatic premises, it sought to rely on the Optional Protocol concerning the Compulsory Settlement of Disputes to the 1961 Vienna Convention on Diplomatic Relations.
8. The Court concluded that it does not have *prima facie* jurisdiction under the first of these instruments, but that it does under the second. The Court was accordingly satisfied that it enjoys *prima facie* jurisdiction to entertain the case in so far as it relates to the status of the building in Paris.
9. The Court proceeded to determine that the court proceedings and related possible searches of that building created a real and imminent risk of irreparable prejudice to the inviolability of the premises, if such inviolability in fact exists.
10. The Court therefore unanimously ordered that, until the Court has handed down its final decision in the case, France must take all measures at its disposal to ensure that the building is treated in a manner similar to other diplomatic premises. It noted in this regard that there was a risk that the building might be confiscated before the Court could hand down its decision on the merits of the case and that France was accordingly required to stay the execution of any such measure until that time.
11. Equatorial Guinea and France are expected to file their written pleadings on the merits of the case in January and July 2017 respectively.



Miguel de Serpa Soares
7 December 2016

cc: Mr. Feltman



To:
Cc:
Bcc:

Fw: Note from Mr. Miguel de Serpa Soares, USG/OLA, to the SG through CdC Mulet re: ICJ
Subject: Order of provisional measures in the case concerning Immunities and Criminal Proceedings
(Equatorial Guinea v. France)

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Date: 07/12/2016 05:54 PM
Subject: Note from Mr. Miguel de Serpa Soares, USG/OLA, to the SG through CdC Mulet re: ICJ Order of provisional measures in the case concerning Immunities and Criminal Proceedings (Equatorial Guinea v. France)

Dear Mr. Mulet,

On behalf of Mr. Serpa Soares, please find attached his Note to the Secretary-General through you on the above subject with Mr. Feltman in copy.

Thank you very much and wishing you a good evening.

Best regards,



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