

DECLARATION OF JUDGE GEVORGIAN

Clarification on paragraph 49 of the Order — Relation between Article 4 of the Palermo Convention and the principles of international law referred to therein — Immunities ratione personae derive from the principle of sovereign equality of States.

1. I concur with the conclusions and reasoning of the Order. At the same time, I find it necessary to clarify my views on the relation between Article 4 of the Palermo Convention and the principles of international law referred to therein.

2. According to the first paragraph of this provision, “States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.” Paragraph 49 of the Order indicates that this 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”. In my understanding, this statement does not mean that rules of immunity of State officials from foreign criminal jurisdiction do not derive from the principles mentioned in Article 4 of the Palermo Convention. In fact, the opposite is true: such immunities are deeply entrenched in the principle of sovereign equality. As the International Law Commission has indicated in its commentary to Article 4 of the Draft Articles on Immunity of State Officials from Foreign Criminal Jurisdiction (dealing with the scope of immunity *ratione personae*), “the purpose of immunity *ratione personae* . . . relates . . . to protection of the sovereign equality of the State” (ILC Commentary on Draft Article 4, provisionally adopted by the Commission at the Sixty-Fifth Session, UN doc. A/68/10, p. 69, para. 6 of the Commentary). A similar finding has been made by this Court with regard to State immunities¹.

¹ “The Court considers that the rule of State immunity occupies an important place in international law and international relations. It derives from the principle of sovereign equality of States, which, as Article 2, paragraph 1, of the Charter of the United Nations makes clear, is one of the fundamental principles of the international legal order. This principle has to be viewed together with the principle that each State possesses sovereignty over its own territory and that there flows from that sovereignty the jurisdiction of the State over events and persons within that territory. Exceptions to the immunity of the State represent a departure from the principle of sovereign equality. Immunity may represent a departure from the principle of territorial sovereignty and the jurisdiction which flows from it.” (*Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)*, Judgment, I.C.J. Reports 2012 (I), pp. 123-124, para. 57.)

3. Thus, in my understanding, the above-mentioned statement made in paragraph 49 does not refer to the link between immunities and sovereign equality, but rather to the link between the principles of international law mentioned in Article 4 of the Palermo Convention and the Convention itself. So from this perspective, in the present case I share the finding made in paragraph 49 that the alleged dispute brought by Equatorial Guinea “does not relate to the manner in which France performed its obligations under Articles 6, 12, 14 and 18” of the Palermo Convention.

(Signed) Kirill GEVORGIAN.
