

**INTERNATIONAL COURT OF JUSTICE**

**YEAR 2018**

**2018  
6 June  
General List  
No. 163**

**6 June 2018**

**IMMUNITIES AND CRIMINAL PROCEEDINGS**

**(EQUATORIAL GUINEA v. FRANCE)**

**PRELIMINARY OBJECTIONS**

*Factual background.*

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*Bases of jurisdiction invoked — Article 35 of the Palermo Convention — Article I of the Optional Protocol to the Vienna Convention.*

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*Subject-matter of the dispute.*

*Aspect of dispute for which Equatorial Guinea invokes Palermo Convention — Disagreement on whether Mr. Obiang Mangue is immune from jurisdiction as consequence of principles referred to in Article 4 of Convention — Differing views on whether building at 42 Avenue Foch in Paris is immune from measures of constraint as consequence of principles referred to in Article 4 of Convention — Disagreement on whether France breached Article 4 read in conjunction with Articles 6 and 15 by establishing jurisdiction over predicate offences.*

*Aspect of dispute for which Equatorial Guinea invokes Optional Protocol — Disagreement on whether building at 42 Avenue Foch in Paris constitutes part of premises of mission of Equatorial Guinea in France and is thus entitled to protection under Article 22 of the Vienna Convention — Disagreement on whether France’s actions in relation to building breached Article 22.*

*Assertions by Equatorial Guinea under Palermo Convention concerning obligations to consult and co-operate — Not included in submissions in Memorial — Considered by Court as additional arguments, not distinct claims under Palermo Convention.*

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*The first preliminary objection: Jurisdiction under the Palermo Convention.*

*Procedural requirements set out in Article 35 of the Convention — Requirements satisfied.*

*The alleged breach by France of the rules on immunities of States and State officials — Interpretation of Article 4 of Palermo Convention — Purpose of Article 4 — Ordinary meaning of Article 4 (1) — Context of Article 4 (1) — Article 4 (1) read in light of object and purpose of the Convention — Court concludes that Article 4 does not incorporate customary international rules on immunities of States and State officials — Interpretation confirmed by travaux préparatoires — Aspect of dispute concerning asserted immunity of Vice-President and immunity claimed for building from measures of constraint as State property does not concern interpretation or application of Palermo Convention — Court lacks jurisdiction in relation to this aspect of dispute.*

*The alleged overextension of jurisdiction by France — Question whether criminalization of money laundering by France and its establishment of jurisdiction over that offence concerns the interpretation or application of the Palermo Convention — Definition of “predicate offence” in Article 2 (h) of the Convention — Obligation in Article 6 (2) that States seek to establish criminal offences in relation to the widest range of predicate offences, including offences committed outside jurisdiction of the State party — Obligation in Article 15 to adopt such measures as may be necessary to establish jurisdiction over Convention offences — Violations complained of by Equatorial Guinea not capable of falling within Articles 6 and 15 of Palermo Convention — Court lacks jurisdiction in relation to this aspect of dispute.*

*Court lacks jurisdiction pursuant to Palermo Convention to entertain Equatorial Guinea’s Application — First preliminary objection upheld.*

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*The second preliminary objection: Jurisdiction under the Optional Protocol to the Vienna Convention.*

*Proposal by Equatorial Guinea to have recourse to conciliation or arbitration not pursued by France — Articles II and III of Optional Protocol do not affect any jurisdiction under Article I.*

*Question whether this aspect of the dispute arises out of interpretation or application of Vienna Convention, as required by Article I of Optional Protocol — Definition of “premises of the mission” in Article I (i) of the Vienna Convention — Régime of inviolability, protection and immunity for such premises in Article 22 of the Vienna Convention — Difference of opinion exists as to whether building at 42 Avenue Foch in Paris qualifies as “premises of the mission” and whether it should be accorded protection under Article 22 — Such aspect of the dispute arises out of the interpretation or application of the Vienna Convention within meaning of Article I of the Optional Protocol and falls within scope of Vienna Convention — Movable property present in the building — Court has jurisdiction to entertain the dispute relating to the status of the building at 42 Avenue Foch in Paris as diplomatic premises, including any claims relating to the furnishings and other property present on the premises — Second preliminary objection dismissed.*

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*The third preliminary objection: Abuse of process and abuse of rights.*

*Objection properly characterized as relating to admissibility.*

*Abuse of process — Procedural question that can be considered at preliminary phase — Clear evidence required — Such evidence has not been presented — Abuse of process only bars proceedings in exceptional circumstances — No exceptional circumstances in the present case.*

*Abuse of rights — Cannot be invoked as a ground of inadmissibility when the establishment of the right in question is a matter for the merits — Any argument in relation to abuse of rights to be considered at the merits phase.*

*Third preliminary objection dismissed.*

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*General conclusions.*

## JUDGMENT

*Present: President YUSUF; Vice-President XUE; Judges OWADA, ABRAHAM, BENNOUNA, CANÇADO TRINDADE, DONOGHUE, GAJA, SEBUTINDE, BHANDARI, ROBINSON, CRAWFORD, GEVORGIAN, SALAM; Judge ad hoc KATEKA; Registrar COUVREUR.*

In the case concerning immunities and criminal proceedings,

*between*

the Republic of Equatorial Guinea,

represented by

H.E. Mr. Carmelo Nvono Nca, Ambassador of the Republic of Equatorial Guinea to the Kingdom of Belgium and the Kingdom of the Netherlands,

as Agent;

Mr. Juan Olo Mba, Minister Delegate for Justice of the Republic of Equatorial Guinea,

Ms Rimme Bosio Riokale, State Secretary of the Republic of Equatorial Guinea,

H.E. Mr. Miguel Oyono Ndong, Ambassador of the Republic of Equatorial Guinea to France,

H.E. Mr. Lázaro Ekua, Ambassador of the Republic of Equatorial Guinea to Switzerland and Permanent Representative to the United Nations Office and other international organizations in Geneva,

Mr. Sergio Abeso Tomo, former President of the Supreme Court of Justice of the Republic of Equatorial Guinea,

as Members of the Delegation;

Mr. Maurice Kamto, Professor at the University of Yaoundé II (Cameroon), member of the Paris Bar, member and former chairman of the International Law Commission,

Mr. Jean-Charles Tchikaya, member of the Bordeaux Bar,

Sir Michael Wood, K.C.M.G., member of the International Law Commission, member of the English Bar,

as Counsel and Advocates;

Mr. Alfredo Crosato Neumann, Graduate Institute of International and Development Studies of Geneva,

Mr. Francisco Evuy Nguema Mikue, *avocat* of the Republic of Equatorial Guinea,

Mr. Francisco Moro Nve Obono, *avocat* of the Republic of Equatorial Guinea,

Mr. Didier Rebut, Professor at the University Paris 2 Panthéon-Assas,

Mr. Omri Sender, George Washington University Law School, member of the Israel Bar,

Mr. Alain-Guy Tachou-Sipowo, lecturer at McGill University and Université Laval,

as Counsel;

Ms Emilia Ndoho, secretary at the Embassy of Equatorial Guinea to the Kingdom of Belgium and the Kingdom of the Netherlands,

as Assistant,

*and*

the French Republic,

represented by

Mr. François Alabrune, Director of Legal Affairs, Ministry for Europe and Foreign Affairs,

as Agent;

Mr. Pierre Boussaroque, Deputy-Director of Legal Affairs, Ministry for Europe and Foreign Affairs,

as Deputy-Agent;

Mr. Alain Pellet, Emeritus Professor at the University Paris Nanterre, former member and former Chairman of the International Law Commission, member of the Institut de droit international,

Mr. Hervé Ascensio, Professor at the University Paris 1 Panthéon-Sorbonne,

Mr. Pierre Bodeau-Livinec, Professor at the University Paris Nanterre,

Mr. Mathias Forteau, Professor at the University Paris Nanterre,

Ms Maryline Grange, lecturer in Public Law at the Jean Monnet University in Saint Etienne, University of Lyon,

as Counsel;

Mr. Ludovic Legrand, Legal Consultant, Directorate of Legal Affairs, Ministry for Europe and Foreign Affairs,

Mr. Julien Boissise, Legal Consultant, Directorate of Legal Affairs, Ministry for Europe and Foreign Affairs,

as Assistant Counsel;

Ms Flavie Le Sueur, Head of the Office of Economic, Financial and Social Law, the Environment and Public Health, Directorate of Criminal Affairs and Pardons, Ministry of Justice,

Ms Diarra Dime Labille, Legal Counsellor, Embassy of France in the Netherlands,  
as Advisers,

THE COURT,

composed as above,

after deliberation,

*delivers the following Judgment:*

1. On 13 June 2016, the Government of the Republic of Equatorial Guinea (hereinafter “Equatorial Guinea”) filed in the Registry of the Court an Application instituting proceedings against the French Republic (hereinafter “France”) with regard to a dispute concerning

“the immunity from criminal jurisdiction of the Second Vice-President of the Republic of Equatorial Guinea in charge of Defence and State Security [Mr. Teodoro Nguema Obiang Mangue], and the legal status of the building which houses the Embassy of Equatorial Guinea, both as premises of the diplomatic mission and as State property”.

2. In its Application, Equatorial Guinea seeks to found the Court’s jurisdiction, first, on Article 35 of the United Nations Convention against Transnational Organized Crime of 15 November 2000 (hereinafter the “Palermo Convention”), and, second, on Article I of the Optional Protocol to the Vienna Convention on Diplomatic Relations concerning the Compulsory Settlement of Disputes, of 18 April 1961 (hereinafter the “Optional Protocol to the Vienna Convention”).

3. Pursuant to Article 40, paragraph 2, of the Statute of the Court, the Application was immediately communicated to the French Government; and, in accordance with paragraph 3 of that Article, all States entitled to appear before the Court were notified of the filing of the Application.

4. Since the Court included upon the Bench no judge of the nationality of Equatorial Guinea, the latter proceeded to exercise the right conferred upon it by Article 31, paragraph 2, of the Statute to choose a judge *ad hoc* to sit in the case; it chose Mr. James Kateka.

5. By an Order dated 1 July 2016, the Court fixed 3 January 2017 and 3 July 2017 as the respective time-limits for the filing of a Memorial by Equatorial Guinea and a Counter-Memorial by France. The Memorial of Equatorial Guinea was filed within the time-limit thus prescribed.

6. On 29 September 2016, referring to Article 41 of the Statute and to Articles 73, 74 and 75 of the Rules of Court, Equatorial Guinea submitted a Request for the indication of provisional measures, asking 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.

7. Equatorial Guinea also requested that "the President of the Court, as provided for in Article 74, paragraph 4, of the Rules of Court . . . call upon France to act in such a way as will enable any order the Court may make on the request for provisional measures to have its appropriate effect".

8. The Registrar immediately transmitted a copy of the Request for the indication of provisional measures to the French Government, in accordance with Article 73, paragraph 2, of the Rules of Court. He also notified the Secretary-General of the United Nations of this filing.

9. By a letter dated 3 October 2016, the Vice-President of the Court, acting as President in the case, and referring to Article 74, paragraph 4, of the Rules of Court, drew the attention of France "to the need to act in such a way as will enable any order the Court may make on the request for provisional measures to have its appropriate effects".

10. By an Order of 7 December 2016, the Court, having heard the Parties, indicated the following provisional measures:

"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."

11. In accordance with Article 43, paragraph 1, of the Rules of Court, the Registrar addressed to States parties to the Palermo Convention the notification provided for in Article 63, paragraph 1, of the Statute; he also addressed to the European Union, as party to that Convention, the notification provided for in Article 43, paragraph 2, of the Rules. In addition, in accordance with Article 69, paragraph 3, of the Rules of Court, the Registrar addressed to the United Nations, through its Secretary-General, the notification provided for in Article 34, paragraph 3, of the Statute.

By a letter dated 28 April 2017, the Director-General of the European Commission's Legal Service informed the Court that the European Union did not intend to submit observations under Article 43, paragraph 2, of the Rules of Court concerning the construction of the Palermo Convention.

12. Pursuant to Article 43, paragraph 1, of the Rules of Court, the Registrar also addressed to States parties to the Vienna Convention on Diplomatic Relations (hereinafter the “Vienna Convention”), and to States parties to the Optional Protocol to the Vienna Convention, the notification provided for in Article 63, paragraph 1, of the Statute.

13. On 31 March 2017, within the time-limit prescribed by Article 79, paragraph 1, of the Rules of Court, France raised preliminary objections to the jurisdiction of the Court. Consequently, by an Order of 5 April 2017, the Court, noting that, by virtue of Article 79, paragraph 5, of the Rules, the proceedings on the merits were suspended, fixed 31 July 2017 as the time-limit within which Equatorial Guinea could present a written statement of its observations and submissions on the preliminary objections raised by France. Equatorial Guinea filed such a statement within the time-limit so prescribed, and the case thus became ready for hearing in respect of the preliminary objections.

14. By a letter dated 9 February 2018, the Agent of France, relying on Article 56 of the Rules of Court, transmitted to the Court a certified copy of a judgment rendered by the *Tribunal correctionnel de Paris*, dated 27 October 2017. As provided for in paragraph 1 of that Article, the document was communicated to Equatorial Guinea. By a Note Verbale dated 14 February 2018, the Embassy of Equatorial Guinea to the Kingdom of the Netherlands informed the Court that Equatorial Guinea had no objection to the document being produced in the case. The Court took note of the agreement of the Parties and the Registrar, by letters dated 19 February 2018, informed the Parties that the said document could be produced.

15. Pursuant to Article 53, paragraph 2, of the Rules of Court, the Court, after ascertaining the views of the Parties, decided that copies of the written pleadings, including the Memorial of Equatorial Guinea, and the documents annexed would be made accessible to the public on the opening of the oral proceedings.

16. Public hearings on the preliminary objections raised by France were held from Monday 19 February to Friday 23 February 2018, at which the Court heard the oral arguments and replies of:

*For France:* Mr. François Alabrune,  
Mr. Hervé Ascensio,  
Mr. Pierre Bodeau-Livinec,  
Mr. Alain Pellet.

*For Equatorial Guinea:* H.E. Mr. Carmelo Nvono Nca,  
Sir Michael Wood,  
Mr. Jean-Charles Tchikaya,  
Mr. Maurice Kamto.

17. At the hearings, a Member of the Court put a question to France, to which a reply and comments on that reply were given orally.



18. In the Application, the following claims were made by the Republic of Equatorial Guinea:

“In light of the foregoing, Equatorial Guinea respectfully requests the Court:

- (a) With regard to the French Republic’s failure to respect the sovereignty of the Republic of Equatorial Guinea,
  - (i) to adjudge and declare that the French Republic has breached its obligation to respect the principles of the sovereign equality of States and non-interference in the internal affairs of another State, owed to the Republic of Equatorial Guinea in accordance with international law, by permitting its courts to initiate criminal legal proceedings against the Second Vice-President of Equatorial Guinea for alleged offences which, even if they were established, *quod non*, would fall solely within the jurisdiction of the courts of Equatorial Guinea, and by allowing its courts to order the attachment of a building belonging to the Republic of Equatorial Guinea and used for the purposes of that country’s diplomatic mission in France;
- (b) With regard to the Second Vice-President of the Republic of Equatorial Guinea in charge of Defence and State Security,
  - (i) to adjudge and declare that, by initiating criminal proceedings against the Second Vice-President of the Republic of Equatorial Guinea in charge of Defence and State Security, His Excellency Mr. Teodoro Nguema Obiang Mangue, the French Republic has acted and is continuing to act in violation of its obligations under international law, notably the United Nations Convention against Transnational Organized Crime and general international law;
  - (ii) to order the French Republic to take all necessary measures to put an end to any ongoing proceedings against the Second Vice-President of the Republic of Equatorial Guinea in charge of Defence and State Security;
  - (iii) to order the French Republic to take all necessary measures to prevent further violations of the immunity of the Second Vice-President of Equatorial Guinea in charge of Defence and State Security and to ensure, in particular, that its courts do not initiate any criminal proceedings against the Second Vice-President of the Republic of Equatorial Guinea in the future;
- (c) With regard to the building located at 42 Avenue Foch in Paris,
  - (i) to adjudge and declare that, by attaching the building located at 42 Avenue Foch in Paris, the property of the Republic of Equatorial Guinea and used for the purposes of that country’s diplomatic mission in France, the French Republic is in breach of its obligations under international law, notably the Vienna Convention on Diplomatic Relations and the United Nations Convention, as well as general international law;

- (ii) to order the French Republic to recognize the status of the building located at 42 Avenue Foch in Paris as the property of the Republic of Equatorial Guinea, and as the premises of its diplomatic mission in Paris, and, accordingly, to ensure its protection as required by international law;
- (d) In view of all the violations by the French Republic of international obligations owed to the Republic of Equatorial Guinea,
- (i) to adjudge and declare that the responsibility of the French Republic is engaged on account of the harm that the violations of its international obligations have caused and are continuing to cause to the Republic of Equatorial Guinea;
  - (ii) to order the French Republic to make full reparation to the Republic of Equatorial Guinea for the harm suffered, the amount of which shall be determined at a later stage.”

19. In the written proceedings on the merits, the following submissions were presented on behalf of the Government of Equatorial Guinea in its Memorial:

“For the reasons set out in this Memorial, the Republic of Equatorial Guinea respectfully requests the International Court of Justice:

- (a) With regard to French Republic’s failure to respect the sovereignty of the Republic of Equatorial Guinea,
- (i) to adjudge and declare that the French Republic has breached its obligation to respect the principles of the sovereign equality of States and non-interference in the internal affairs of another State, owed to the Republic of Equatorial Guinea, in accordance with the United Nations Convention against Transnational Organized Crime and general international law, by permitting its courts to initiate criminal legal proceedings against the Vice-President of Equatorial Guinea for alleged offences which, even if they were established, *quod non*, would fall solely within the jurisdiction of the courts of Equatorial Guinea, and by allowing its courts to order the attachment of a building belonging to the Republic of Equatorial Guinea and used for the purposes of that country’s diplomatic mission in France;
- (b) With regard to the Vice-President of the Republic of Equatorial Guinea in charge of National Defence and State Security,
- (i) to adjudge and declare that, by initiating criminal proceedings against the Vice-President of the Republic of Equatorial Guinea in charge of National Defence and State Security, His Excellency Mr. Teodoro Nguema Obiang Mangue, the French Republic has acted and is continuing to act in violation of its obligations under international law, notably the United Nations Convention against Transnational Organized Crime and general international law;
  - (ii) to order the French Republic to take all necessary measures to put an end to any ongoing proceedings against the Vice-President of the Republic of Equatorial Guinea in charge of National Defence and State Security;

- (iii) to order the French Republic to take all necessary measures to prevent further violations of the immunity of the Vice-President of the Republic of Equatorial Guinea in charge of National Defence and State Security and, in particular, to ensure that its courts do not initiate any criminal proceedings against him in the future;
- (c) With regard to the building located at 42 Avenue Foch in Paris,
- (i) to adjudge and declare that, by attaching the building located at 42 Avenue Foch in Paris, the property of the Republic of Equatorial Guinea and used for the purposes of that country's diplomatic mission in France, the French Republic is in breach of its obligations under international law, notably the Vienna Convention on Diplomatic Relations and the United Nations Convention against Transnational Organized Crime, as well as general international law;
  - (ii) to order the French Republic to recognize the status of the building located at 42 Avenue Foch in Paris as the property of the Republic of Equatorial Guinea, and as the premises of its diplomatic mission in Paris, and, accordingly, to ensure its protection as required by international law;
- (d) In view of all the violations by the French Republic of international obligations owed to the Republic of Equatorial Guinea,
- (i) to adjudge and declare that the responsibility of the French Republic is engaged on account of the harm that the violations of its international obligations have caused and are continuing to cause to the Republic of Equatorial Guinea;
  - (ii) to order the French Republic to make full reparation to the Republic of Equatorial Guinea for the harm suffered, the amount of which shall be determined at a later stage."

20. In the Preliminary Objections, the following submissions were presented on behalf of the Government of the French Republic:

"For the reasons set out in these preliminary objections, and for any such others as might be put forward in the subsequent proceedings or raised *proprio motu*, the French Republic respectfully requests the International Court of Justice to decide that it lacks jurisdiction to rule on the Application filed by the Republic of Equatorial Guinea on 13 June 2016."

21. In the Written Statement of its Observations and Submissions on the Preliminary Objections, the following submissions were presented on behalf of the Government of the Republic of Equatorial Guinea:

"For the reasons set out above, the Republic of Equatorial Guinea respectfully requests the Court:

- (1) to reject the preliminary objections of France; and
- (2) to declare that it has jurisdiction to rule on the Application of Equatorial Guinea."

22. At the oral proceedings on the preliminary objections, the following submissions were presented by the Parties:

*On behalf of the Government of the French Republic,*

at the hearing of 21 February 2018:

“For the reasons developed in its preliminary objections and set out by its representatives at the hearings on the preliminary objections in the case concerning *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, the French Republic respectfully requests the Court to decide:

- (i) that it lacks jurisdiction to rule on the Application filed by the Republic of Equatorial Guinea on 13 June 2016; and
- (ii) that the Application is inadmissible.”

*On behalf of the Government of the Republic of Equatorial Guinea,*

at the hearing of 23 February 2018:

“On the basis of the facts and law set out in our observations on the preliminary objections raised by the French Republic, and in the course of the present hearing, Equatorial Guinea respectfully requests the Court:

- (i) to reject the preliminary objections of France; and
- (ii) to declare that it has jurisdiction to rule on the Application of Equatorial Guinea.”

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## **I. FACTUAL BACKGROUND**

23. Beginning in 2007, a number of associations and private individuals lodged complaints with the Paris public prosecutor against certain African Heads of State and members of their families in respect of allegations of misappropriation of public funds in their country of origin, the proceeds of which had allegedly been invested in France.

24. One of these complaints, filed on 2 December 2008 by the association Transparency International France, was declared admissible by the French courts, and a judicial investigation was opened in respect of “handling misappropriated public funds”, “complicity in handling misappropriated public funds, complicity in the misappropriation of public funds, money laundering, complicity in money laundering, misuse of corporate assets, complicity in misuse of

corporate assets, breach of trust, complicity in breach of trust and concealment of each of these offences”. Two investigating judges of the *Tribunal de grande instance de Paris* were assigned on 1 December 2010 to conduct the investigation. The investigation focused, in particular, on the methods used to finance the acquisition of movable and immovable assets in France by several individuals, including Mr. Teodoro Nguema Obiang Mangue, the son of the President of Equatorial Guinea, who was at the time *Ministre d’Etat* for Agriculture and Forestry of Equatorial Guinea.

25. The investigation more specifically concerned the way in which Mr. Teodoro Nguema Obiang Mangue acquired various objects of considerable value and a building located at 42 Avenue Foch in Paris. On 28 September 2011, investigators conducted an initial on-site inspection at 42 Avenue Foch in Paris and seized luxury vehicles, which belonged to Mr. Teodoro Nguema Obiang Mangue and were parked on the premises. While they were there, the Ambassador of Equatorial Guinea and a French lawyer representing that State arrived to protest the operations under way, invoking the sovereignty of Equatorial Guinea. On 3 October 2011, the investigators seized additional luxury vehicles belonging to Mr. Teodoro Nguema Obiang Mangue in neighbouring parking lots. On 4 October 2011, the Embassy of Equatorial Guinea in France sent a Note Verbale to the French Ministry of Foreign and European Affairs (hereinafter “Ministry of Foreign Affairs”<sup>1</sup>) stating that Equatorial Guinea had previously acquired the building located at 42 Avenue Foch in Paris, which was being used for its diplomatic mission. On 5 October 2011, the investigators returned to 42 Avenue Foch in Paris, where they noted the presence of two signs marked “Republic of Equatorial Guinea — Embassy premises”, which, according to the investigators, had been posted on the front door of the building the day before. By Notes Verbales dated 11 October 2011, the French Ministry of Foreign Affairs indicated to the Embassy of Equatorial Guinea and to the investigating judges that it considered that the building at 42 Avenue Foch in Paris did not form part of the premises of Equatorial Guinea’s diplomatic mission, a position France maintained thereafter despite the repeated protestations of Equatorial Guinea.

26. By a Note Verbale dated 17 October 2011, the Embassy of Equatorial Guinea informed the French Ministry of Foreign Affairs that the “official residence of [Equatorial Guinea’s] Permanent Delegate to UNESCO [wa]s on the premises of the diplomatic mission located at 40-42 avenue Foch, 75016, Paris”. By a Note Verbale to the Embassy of Equatorial Guinea dated 31 October 2011, the French Ministry of Foreign Affairs reiterated that the building at 42 Avenue Foch in Paris was “not a part of the mission’s premises, ha[d] never been recognized as such, and accordingly [wa]s subject to ordinary law”.

27. From 14 to 23 February 2012, further searches of the building at 42 Avenue Foch in Paris were conducted, during which additional items were seized and removed. These actions were again contested by Equatorial Guinea, in particular in a Note Verbale dated 14 February 2012 invoking protection under the Vienna Convention for the official residence of the Permanent Delegate to UNESCO. By a Note Verbale dated 12 March 2012, Equatorial Guinea asserted that the premises at 42 Avenue Foch in Paris were used for the performance of the functions of its diplomatic mission in France. The French Ministry of Foreign Affairs responded on 28 March 2012, referring to its “constant practice” with respect to the recognition of the status of “premises of the mission” and reiterating that the building located at 42 Avenue Foch in Paris could not be considered part of the diplomatic mission of Equatorial Guinea.

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<sup>1</sup> The relevant ministry was successively named “Ministry of Foreign and European Affairs” (2007-2012), “Ministry of Foreign Affairs and International Development” (2012-2017) and “Ministry of Europe and Foreign Affairs” (since 2017). For the purposes of the present Judgment, “Ministry of Foreign Affairs” will be used.

28. An investigating judge assigned to the case found, *inter alia*, that the building at 42 Avenue Foch in Paris had been wholly or partly paid for out of the proceeds of the offences under investigation and that its real owner was Mr. Teodoro Nguema Obiang Mangue. He consequently ordered the attachment of the building (*saisie pénale immobilière*) on 19 July 2012. This decision was subsequently upheld by the *Chambre de l'instruction de la Cour d'appel de Paris*, before which Mr. Teodoro Nguema Obiang Mangue had lodged an appeal. By a Note Verbale dated 27 July 2012, the Embassy of Equatorial Guinea in France informed the Protocol Department of the French Ministry of Foreign Affairs that "as from Friday 27 July 2012, the Embassy's offices are located at 42 avenue Foch, Paris (16th arr.), a building which it is henceforth using for the performance of the functions of its diplomatic mission in France".

29. As part of the investigation, the police questioned a number of individuals. In particular, they sought to question Mr. Teodoro Nguema Obiang Mangue on two occasions in 2012. Mr. Teodoro Nguema Obiang Mangue, who became Second Vice-President of Equatorial Guinea in charge of Defence and State Security on 21 May 2012, maintained that he was entitled to immunity from jurisdiction and declined to appear before the French courts.

30. An arrest warrant was issued against Mr. Teodoro Nguema Obiang Mangue on 13 July 2012. He challenged this measure before the *Chambre de l'instruction de la Cour d'appel de Paris*, but that court took the view that he was not entitled to any form of immunity from criminal jurisdiction in respect of acts allegedly committed by him in France in his private capacity. It further noted that he had refused to appear or to respond to the summonses sent to him.

31. Since they were unable to question him, the French judicial authorities, by a request dated 14 November 2013, sought mutual legal assistance in criminal matters, under the Palermo Convention, from the Equatorial Guinean judicial authorities, asking them to transmit to Mr. Teodoro Nguema Obiang Mangue a summons of first appearance.

32. The judicial authorities of Equatorial Guinea accepted the request for mutual legal assistance on 4 March 2014. They then executed that request. On 18 March 2014, a hearing was held in Malabo, Equatorial Guinea, in which the French investigating judges participated by video link. Subsequently, Mr. Teodoro Nguema Obiang Mangue was indicted by the French judiciary

"for having in Paris and on national territory during 1997 and until October 2011 . . . assisted in making hidden investments or in converting the direct or indirect proceeds of a felony or misdemeanour . . . by acquiring a number of movable and immovable assets and paying for a number of services".

On 19 March 2014, a notice cancelling the search (*avis de cessation de recherches*) for Mr. Teodoro Nguema Obiang Mangue was issued by one of the French investigating judges.

33. On 31 July 2014, Mr. Teodoro Nguema Obiang Mangue applied to the *Chambre de l'instruction de la Cour d'appel de Paris* to annul the indictment, on the ground that he was entitled to immunity from jurisdiction in his capacity as Second Vice-President of Equatorial Guinea in charge of Defence and State Security. However, the *Cour d'appel* rejected his application by a judgment of 11 August 2015. Mr. Teodoro Nguema Obiang Mangue having seised the *Cour de cassation*, that court, by a judgment of 15 December 2015, rejected the argument that he was entitled to immunity and upheld the indictment.

34. The investigation was declared to be completed and, on 23 May 2016, the Financial Prosecutor filed final submissions seeking in particular that Mr. Teodoro Nguema Obiang Mangue be tried for money laundering offences. On 13 June 2016, Equatorial Guinea filed its Application before this Court (see paragraph 1 above). On 5 September 2016, the investigating judges of the *Tribunal de grande instance de Paris* ordered the referral of Mr. Teodoro Nguema Obiang Mangue — who, by a presidential decree of 21 June 2016, had been appointed as the Vice-President of Equatorial Guinea in charge of National Defence and State Security — for trial before the *Tribunal correctionnel de Paris* for alleged offences committed in France between 1997 and October 2011. On 21 September 2016, the Financial Prosecutor issued a summons ordering Mr. Teodoro Nguema Obiang Mangue to appear before the *Tribunal correctionnel de Paris* on 24 October 2016 for a “hearing on the merits”.

35. The Assistant Financial Prosecutor subsequently informed Mr. Teodoro Nguema Obiang Mangue’s counsel, in an e-mail dated 26 September 2016, that the hearing was merely intended to “raise a procedural issue”. He explained that, having noted an irregularity (namely, that the operative part of the referral order did not mention the relevant provisions setting out the criminalization and punishment of offences), the Public Prosecutor’s Office was of the view that the *Tribunal correctionnel de Paris* should settle that issue before addressing the merits of the case.

36. As stated above (see paragraph 6), Equatorial Guinea submitted to the Court a request for the indication of provisional measures on 29 September 2016.

37. On 24 October 2016, the *Tribunal correctionnel de Paris* sent the proceedings back to the Public Prosecutor’s Office so that it could return the case to the investigating judges for the purpose of regularizing the referral order; it also stated that the trial hearings would be held from 2 to 12 January 2017.

38. By an Order of 7 December 2016, the Court indicated provisional measures (see paragraph 10 above).

39. On 2 January 2017, a hearing on the merits took place before the *Tribunal correctionnel de Paris*, in the absence of Mr. Teodoro Nguema Obiang Mangue, who was represented by his counsel. The President of the tribunal noted, *inter alia*, that, pursuant to the Court’s Order of 7 December 2016, any confiscation measure that might be directed against the building located at 42 Avenue Foch in Paris could not be executed until the conclusion of the international judicial proceedings. At the request of the defence lawyers, the tribunal also decided to defer the start of the trial to 19 June 2017.

40. The hearings on the merits of the case before the *Tribunal correctionnel de Paris* were held from 19 June to 6 July 2017. The tribunal delivered its judgment on 27 October 2017, in which it found Mr. Teodoro Nguema Obiang Mangue guilty of money laundering offences committed in France between 1997 and October 2011. He was sentenced to a three-year suspended prison term and a suspended fine of €30 million. The tribunal also ordered the confiscation of all the assets seized during the judicial investigation and of the attached building at 42 Avenue Foch in Paris. Regarding the confiscation of this building, the tribunal, referring to the Court's Order of 7 December 2016 indicating provisional measures, stated that "the . . . proceedings [pending before the International Court of Justice] make the execution of any measure of confiscation by the French State impossible, but not the imposition of that penalty".

41. Following delivery of the judgment, Mr. Teodoro Nguema Obiang Mangue lodged an appeal against his conviction with the *Cour d'appel de Paris*. This appeal having a suspensive effect, no steps have been taken to enforce the sentences handed down to Mr. Teodoro Nguema Obiang Mangue.

## II. BASES OF JURISDICTION INVOKED

42. The Court recalls that its jurisdiction is based on the consent of the parties and is confined to the extent accepted by them (*Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda)*, *Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2006*, p. 32, para. 65 and p. 39, para. 88).

43. Equatorial Guinea invokes two bases for the Court's jurisdiction. The first of these is the Palermo Convention, which entered into force on 29 September 2003 and was ratified by France on 29 October 2002 and by Equatorial Guinea on 7 February 2003. The second of these is the Optional Protocol to the Vienna Convention, which entered into force on 24 April 1964 and was ratified by France on 31 December 1970 and acceded to by Equatorial Guinea on 4 November 2014. Both States are also party to the Vienna Convention, which entered into force on 24 April 1964, and which France ratified on 31 December 1970 and Equatorial Guinea acceded to on 30 August 1976.

44. Article 35 of the Palermo Convention provides in its relevant part:

"1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Convention through negotiation.

2. Any dispute between two or more States Parties concerning the interpretation or application of this Convention that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court."

45. Article I of the Optional Protocol to the Vienna Convention provides:

"Disputes arising out of the interpretation or application of the Convention shall lie within the compulsory jurisdiction of the International Court of Justice and may



accordingly be brought before the Court by an application made by any party to the dispute being a Party to the present Protocol.”

46. The Court recalls that, in order for it to determine whether a dispute is one concerning the interpretation or application of a given treaty, it

“cannot limit itself to noting that one of the Parties maintains that such a dispute exists, and the other denies it. It must ascertain whether the violations [alleged] . . . do or do not fall within the provisions of the Treaty and whether, as a consequence, the dispute is one which the Court has jurisdiction *ratione materiae* to entertain” (*Oil Platforms (Islamic Republic of Iran v. United States of America)*, *Preliminary Objection, Judgment, I.C.J. Reports 1996 (II)*, p. 810, para. 16).

47. Before addressing the preliminary objections of France, it is necessary for the Court to determine the subject-matter of the dispute.

### III. SUBJECT-MATTER OF THE DISPUTE

48. Article 40, paragraph 1, of the Statute and Article 38, paragraph 1, of the Rules of Court require an applicant to indicate the “subject of the dispute” in the application. Furthermore, the Rules of Court require that the application “specify the precise nature of the claim, together with a succinct statement of the facts and grounds on which the claim is based” (Article 38, paragraph 2, of the Rules) and that the memorial include a statement of the “relevant facts” (Article 49, paragraph 1, of the Rules). However, it is for the Court itself to determine on an objective basis the subject-matter of the dispute between the parties, by isolating the real issue in the case and identifying the object of the claim. In doing so, the Court examines the application as well as the written and oral pleadings of the parties, while giving particular attention to the formulation of the dispute chosen by the applicant (*Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile)*, *Preliminary Objection, Judgment, I.C.J. Reports 2015 (II)*, p. 602, para. 26; *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, *Preliminary Objections, Judgment, I.C.J. Reports 2007 (II)*, p. 848, para. 38). It takes account of the facts that the applicant presents as the basis for its claim. The matter is one of substance, not of form.

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49. The Court recalls that, in its Application filed on 13 June 2016, Equatorial Guinea states that the dispute between the Parties arises from certain ongoing criminal proceedings in France and concerns

“the immunity from criminal jurisdiction of the Second Vice-President of the Republic of Equatorial Guinea in charge of Defence and State Security, and the legal status of the building which houses the Embassy of Equatorial Guinea in France, both as premises of the diplomatic mission and as State property.

The criminal proceedings against the Second Vice-President constitute a violation of the immunity to which he is entitled under international law and interfere with the exercise of his official functions as a holder of high-ranking office in the State of Equatorial Guinea. To date, these proceedings have also resulted, *inter alia*, in the attachment of the building located at 42 Avenue Foch in Paris, which is the property of Equatorial Guinea and used for the purposes of its diplomatic mission in France. These proceedings violate the Vienna Convention on Diplomatic Relations of 18 April 1961, the United Nations Convention against Transnational Organized Crime of 15 November 2000, and general international law.”

50. The Application also states that

“the French Republic has breached its obligation to respect the principles of the sovereign equality of States and non-interference in the internal affairs of another State, owed to the Republic of Equatorial Guinea in accordance with international law, by permitting its courts to initiate criminal legal proceedings against the Second Vice-President of Equatorial Guinea for alleged offences which, even if they were established, *quod non*, would fall solely within the jurisdiction of the courts of Equatorial Guinea”.

51. Furthermore, Equatorial Guinea states in its Memorial that

“[t]he dispute between Equatorial Guinea and France arose from certain criminal proceedings initiated in France against Mr. Teodoro Nguema Obiang Mangue, Vice-President of Equatorial Guinea in charge of National Defence and State Security. In these proceedings, the French Courts have seen fit to ignore a number of acts and decisions falling within the sole sovereignty and exclusive purview of Equatorial Guinea, extend their criminal jurisdiction to its territory, deny immunity from foreign criminal jurisdiction to the Vice-President in charge of National Defence and State Security, and disregard the legal status of the building located at 42 Avenue Foch in Paris, both as the property of the State of Equatorial Guinea and as premises of its diplomatic mission in France.”

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52. Equatorial Guinea’s claims based on the Palermo Convention concern, first, France’s alleged violation of the immunity from foreign criminal jurisdiction of Mr. Teodoro Nguema Obiang Mangue, who is currently Vice-President of the Republic of Equatorial Guinea in charge of National Defence and State Security. Secondly, the claims relate to France’s alleged overextension of its criminal jurisdiction over predicate offences associated with the crime of money laundering. Thirdly, the claims pertain to France’s alleged failure to respect the immunity of the building at 42 Avenue Foch in Paris as State property of Equatorial Guinea.

53. Equatorial Guinea's claim based on the Vienna Convention concerns France's alleged failure to respect the inviolability of the building at 42 Avenue Foch in Paris as premises of Equatorial Guinea's diplomatic mission. Equatorial Guinea makes the following arguments in support of its claims.

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54. Regarding Mr. Teodoro Nguema Obiang Mangue, Equatorial Guinea states that, although he was that country's *Ministre d'Etat* for Agriculture and Forestry when criminal proceedings were first initiated before the French courts, he has assumed new responsibilities since his appointment to the high-ranking office of Second Vice-President of Equatorial Guinea in charge of Defence and State Security on 21 May 2012, and of Vice-President of Equatorial Guinea in charge of National Defence and State Security on 21 June 2016. According to Equatorial Guinea, the nature of his new functions requires France to respect his personal immunity in conformity with customary international law, in particular as he is called upon to travel abroad on behalf of his Government in order to perform those functions effectively. Equatorial Guinea argues that the conduct of criminal proceedings against Mr. Teodoro Nguema Obiang Mangue in France "constitute[s] a violation of the immunity [*ratione personae*] to which he is entitled under international law and interfere[s] with the exercise of his official functions as a holder of high-ranking office in the State of Equatorial Guinea". It further contends that France's conduct in this regard amounts to a violation of "the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States" to which Article 4 of the Palermo Convention refers.

55. Regarding its claim that the Respondent has overextended its criminal jurisdiction, Equatorial Guinea argues that France has

"unilaterally gone beyond the bounds of its criminal jurisdiction to entertain and characterize alleged criminal offences (the predicate offences associated with money laundering) which are said to have been committed in the territory of Equatorial Guinea, by nationals of Equatorial Guinea, and whose victims are Equatorial Guineans or the State of Equatorial Guinea".

The Applicant considers that the predicate offences in question are, by their nature, offences whose sole victim would be the State of Equatorial Guinea, and that consequently, "only the State of Equatorial Guinea is competent to take cognizance of them and in a position to determine whether they have been committed". Equatorial Guinea states further that its Public Prosecutor investigated the alleged predicate offences and found that there were no such offences committed in the territory of Equatorial Guinea. According to Equatorial Guinea, Article 4 of the Palermo Convention requires that any characterization of predicate offences must be carried out in a manner consistent with the principles of sovereign equality and non-intervention in the internal affairs of another State. Consequently, it contends, France's unilateral determination that the alleged predicate offences of misuse of corporate assets, misappropriation of public funds, breach of trust and corruption were in fact committed in Equatorial Guinea amounts to a violation of the principles of sovereign equality and non-intervention in the internal affairs of another State reflected in Article 4 of the Palermo Convention.

56. Regarding its claim concerning the status of the building at 42 Avenue Foch in Paris as State property, Equatorial Guinea asserts that Mr. Teodoro Nguema Obiang Mangue previously owned that building in his private capacity, having been since 18 December 2004 the sole shareholder of the five Swiss companies that owned the building. However, according to Equatorial Guinea, the building became State property on 15 September 2011, when Mr. Teodoro Nguema Obiang Mangue transferred all his shareholder rights therein to the State of Equatorial Guinea. The Applicant further states that the transfer of the building to the State of Equatorial Guinea was duly recorded and registered by the relevant French authorities on 17 October 2011. Equatorial Guinea argues that France, by failing to recognize the building at 42 Avenue Foch in Paris as property belonging to the State of Equatorial Guinea with effect from 15 September 2011 and by failing to ensure that no measures of constraint, such as attachment, or execution are taken by the forum State against that building, is in violation of the customary international rules governing immunities of States, State officials and State property, flowing from the principles referred to in Article 4 of the Palermo Convention.

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57. Regarding its claim concerning the status of the building at 42 Avenue Foch in Paris as premises of its diplomatic mission in France, which is based on the Vienna Convention, the Applicant contends that France, by failing to guarantee the inviolability, protection and immunity of that building, is in violation of its obligation under Article 22 of that Convention.

58. Equatorial Guinea states that the building at 42 Avenue Foch in Paris “acquired diplomatic status” as of 4 October 2011 and that its diplomatic mission in France transferred all its offices to that building in July 2012. Equatorial Guinea further states that, in its Note Verbale of 4 October 2011 (see paragraph 25 above), it informed the Protocol Department of the French Ministry of Foreign Affairs that:

“[s]ince the building forms part of the premises of the diplomatic mission, pursuant to Article 1 of the Vienna Convention . . . the Republic of Equatorial Guinea wishes to give you official notification so that the French State can ensure the protection of those premises, in accordance with Article 22 of the said Convention”.

Equatorial Guinea contends that it has since then consistently affirmed the diplomatic status of the building through several diplomatic exchanges. The Applicant adds that France’s own position in relation to the building has not been consistent in that, since the dispute arose, it has allowed the French authorities to go to the building at 42 Avenue Foch in Paris to obtain a visa to enter Equatorial Guinea; French tax authorities have collected the taxes payable in relation to the transfer of the building from Mr. Teodoro Nguema Obiang Mangue to the State of Equatorial Guinea; and France dispatched a security team to the building on the occasion of the presidential elections held in April 2016 in Equatorial Guinea. Equatorial Guinea thus claims that the building that serves as the premises of its diplomatic mission in France enjoys inviolability, protection and immunity under Article 22 of the Vienna Convention.

59. Equatorial Guinea further states that French authorities entered and searched the said building on numerous occasions between 28 September 2011 and 23 February 2012, and ordered its attachment (*saisie pénale immobilière*) on 19 July 2012 and confiscation on 27 October 2017.

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60. For its part, France objects to the jurisdiction of the Court to entertain Equatorial Guinea's claims, first, under the Palermo Convention and, second, under the Optional Protocol to the Vienna Convention, on the grounds that those claims concern "the alleged violation of very broad principles of international law, which Equatorial Guinea attempts to link artificially" to the two Conventions that it invokes as bases of jurisdiction. France further objects to the jurisdiction of the Court on the grounds that Equatorial Guinea's "submissions in both its Application and its Memorial go far beyond the subject-matter of the dispute" as defined by Equatorial Guinea itself.

61. Recalling the decision of the Court in its Order on provisional measures of 7 December 2016, France submits that the alleged dispute, as earlier identified by the Court, does not relate to the manner in which France performed its obligations under the Palermo Convention but appears rather "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". According to France, the Court's jurisdiction must be assessed within the strict limits of the subject-matter of the dispute as thus described in Equatorial Guinea's Application and Memorial and as delineated by the Conventions on which it seeks to establish that jurisdiction. France further objects to the jurisdiction of the Court and the admissibility of the Application on the grounds that Equatorial Guinea's claims amount to an abuse of process and abuse of rights.

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62. France raises several arguments in relation to Equatorial Guinea's claims brought pursuant to the Palermo Convention. First, France states that the purpose of that Convention is to "promote co-operation to prevent and combat transnational organized crime more effectively". It contends that the Convention "is in no way intended to organize in a general way, the legal relations between States in light of the principles mentioned [in Article 4 thereof], and, in particular, does not seek to create a system of immunities, or establish the status of property belonging to the States parties". France argues further that, by contending that Article 4 of the Palermo Convention "contains an 'independent obligation' to comply with customary international law in general", Equatorial Guinea unduly confuses the obligations under the Convention with the manner in which they must be performed, thereby attempting to ascribe to the Convention an object it does not have and artificially broadening the scope of the consent given by virtue of Article 35,

paragraph 2, thereof. France adds that since the Applicant does not accuse it of failing to criminalize the offences mentioned in the Palermo Convention in its domestic legislation, or of failing to establish domestic jurisdiction over those offences, or of failing to co-operate judicially, no question of the interpretation or application of a conventional obligation is at issue.

63. Second, France states that while the conventional obligations require domestic laws to conform with the Palermo Convention, the implementation of domestic legislation still falls under the sovereignty over penal matters of the States parties to that Convention. France argues that the fact that the criminal proceedings against Mr. Teodoro Nguema Obiang Mangue for the offence of money laundering were commenced on the basis of French domestic law does not “place those proceedings within the scope of the conventional obligations”. The Respondent contends in particular that Equatorial Guinea has failed to demonstrate how France has breached its conventional obligations under the various articles of the Palermo Convention cited by Equatorial Guinea (such as Articles 3, 4, 6, 11, 12, 14, 15 and 18). France accordingly argues that Equatorial Guinea’s claims in no way concern the application or interpretation of any of the provisions of that Convention.

64. Third, in response to Equatorial Guinea’s claim that France has “unilaterally gone beyond the bounds of its criminal jurisdiction” by entertaining and characterizing the predicate offences associated with money laundering, France states that it has complied with its obligation under Article 6 to criminalize the laundering of the proceeds of crime and to provide for punishment for the offence of money laundering domestically. France also states that Article 15 of the Palermo Convention obligates a State party to “adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance [with the Convention]”, and argues that it has in fact complied with this conventional obligation in its domestic legislation. France further argues that Article 15 relates to adjudicative jurisdiction, rather than to immunities, and that immunity is not a question of jurisdiction, but of the exercise of that jurisdiction. Accordingly, the two questions must be carefully distinguished.

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65. France also objects to the Court’s jurisdiction under the Optional Protocol to the Vienna Convention to entertain Equatorial Guinea’s claim concerning the legal status of the building at 42 Avenue Foch in Paris as premises of its diplomatic mission in France, on the ground that French authorities have never recognized the building at 42 Avenue Foch in Paris as Equatorial Guinea’s diplomatic mission. Whilst France agrees that premises used for the purposes of a diplomatic mission should enjoy immunity and inviolability under the Vienna Convention, it argues that the inviolability régime in Article 22 “can only be applied and implemented if it has previously been established that the premises in question do indeed enjoy diplomatic status”. According to France therefore, the real dispute between the Parties, which falls outside the scope of the Vienna Convention and of the Court’s jurisdiction, is whether, at the time of the events of which Equatorial Guinea complains in its Application, that building should — or should not — have been regarded as being used for the purposes of Equatorial Guinea’s mission in France.

66. Moreover, France contends that “the Vienna Convention contains no rules specifying the modalities or procedure for identifying the premises of a diplomatic mission and, therefore, for determining whether the Article 22 régime applies to a given building”. The Respondent maintains that this question too falls outside the scope of that Convention and thus, outside the jurisdiction of the Court.

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67. The Court notes that the dispute between the Parties arose from criminal proceedings instituted in France against Mr. Teodoro Nguema Obiang Mangue and that those criminal proceedings were ongoing in French courts on 13 June 2016, when Equatorial Guinea filed its Application with the Court. The facts of the case and submissions of the Parties narrated above indicate that there are several distinct claims over which the Parties hold opposing views and which form the subject-matter of the dispute. For convenience, these will be described under the bases of jurisdiction that Equatorial Guinea invokes for each claim.

68. The aspect of the dispute for which Equatorial Guinea invokes the Palermo Convention as the title of jurisdiction involves various claims on which the Parties have expressed differing views in their written and oral pleadings. First, they disagree on whether, as a consequence of the principles of sovereign equality and non-intervention in the internal affairs of another State, to which Article 4 of the Palermo Convention refers, Mr. Teodoro Nguema Obiang Mangue, as Vice-President of Equatorial Guinea in charge of National Defence and State Security, is immune from foreign criminal jurisdiction. Second, they hold differing views on whether, as a consequence of the principles referred to in Article 4 of the Palermo Convention, the building at 42 Avenue Foch in Paris is immune from measures of constraint. Third, they differ on whether, by establishing its jurisdiction over the predicate offences associated with the offence of money laundering, France exceeded its criminal jurisdiction and breached its conventional obligation under Article 4 read in conjunction with Articles 6 and 15 of the Palermo Convention.

69. The Court will ascertain whether this aspect of the dispute between the Parties described above is capable of falling within the provisions of the Palermo Convention and whether, as a consequence, it is one which the Court has jurisdiction to entertain under the Palermo Convention. This will be dealt with in Part IV of the Judgment.

70. The aspect of the dispute for which Equatorial Guinea invokes the Optional Protocol to the Vienna Convention as the title of jurisdiction involves two claims on which the Parties have expressed differing views. First, they disagree on whether the building at 42 Avenue Foch in Paris constitutes part of the premises of the mission of Equatorial Guinea in France and is thus entitled to the treatment afforded for such premises under Article 22 of the Vienna Convention. They also disagree on whether France, by the action of its authorities in relation to the building, is in breach of its obligations under Article 22. The Court will ascertain whether this aspect of the dispute

between the Parties is capable of falling within the Vienna Convention, and consequently whether it is one which the Court has jurisdiction to entertain under the Optional Protocol to the Vienna Convention. This will be dealt with in Part V of the Judgment.

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71. Aside from the claims outlined above, the Court notes that Equatorial Guinea has made certain assertions under the Palermo Convention as the title of jurisdiction. Equatorial Guinea argues that France has failed to perform its obligations of consultation and of co-operation under Article 15, paragraph 5 and Article 18, respectively, of the Palermo Convention in a manner consistent with the principles of sovereign equality, territorial integrity and non-intervention in the internal affairs of other States, to which Article 4 refers. It contends that its Public Prosecutor investigated the predicate offences associated with the offence of money laundering and alleged to have been committed in Equatorial Guinea, but found that no such offences were ever committed. The Applicant claims that, although this information was communicated to the relevant French authorities, they ignored that information and proceeded to indict Mr. Teodoro Nguema Obiang Mangue with money laundering in France. Equatorial Guinea submits that it has what it describes as exclusive jurisdiction under the Palermo Convention to determine whether the alleged predicate offences were committed. Consequently, it maintains that France was under an obligation to take the report of Equatorial Guinea's Public Prosecutor into account in accordance with the obligations to consult and co-operate under the Palermo Convention, and also to defer to the outcome of that report in accordance with the principles of sovereign equality and non-intervention by "put[ting] an end to the criminal proceedings".

72. France responds that these assertions were not raised in Equatorial Guinea's Application and moreover, that they are an attempt by the Applicant to broaden the subject-matter of the dispute between the Parties. France further submits that the obligation to co-operate under Article 15, paragraph 5, of the Palermo Convention does not require a State party to put an end to proceedings at the request of another State, and that neither the obligation to consult under Article 15, paragraph 5, nor the obligation to co-operate under Article 18, can be construed as having an impact on the jurisdiction of the French courts to prosecute acts of money laundering committed within French territory.

73. The Court observes that Equatorial Guinea mentions the conventional obligations to consult and co-operate for the first time in its Memorial. However, in its submissions in the Memorial, Equatorial Guinea makes no reference to claims related to an alleged failure to comply with the obligations to consult and co-operate. Accordingly, the Court is of the view that such assertions can only be considered as additional arguments which do not constitute distinct claims made under the Palermo Convention.



**IV. THE FIRST PRELIMINARY OBJECTION: JURISDICTION  
UNDER THE PALERMO CONVENTION**

74. France's first preliminary objection is that the Court lacks jurisdiction under the Palermo Convention because the dispute between itself and Equatorial Guinea, as submitted to the Court, does not concern the interpretation or application of that Convention.

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75. As a preliminary matter, the Court notes that Article 35 of the Palermo Convention lays down certain procedural requirements before a State party may refer a dispute to the Court. States parties are required to attempt to negotiate settlement of the dispute for a reasonable time, then to proceed to arbitration should one of the States parties involved so request, and to attempt, for a period of six months from the request to arbitrate, to organize that arbitration.

76. The Court further notes that Equatorial Guinea and France have exchanged Notes Verbales in relation to the prosecution of Mr. Teodoro Nguema Obiang Mangue and the building at 42 Avenue Foch in Paris and that they held a meeting in January 2016 to discuss the dispute. Equatorial Guinea proposed arbitration between the two Parties on 26 October 2015. That offer, which was made more than six months before the filing of Equatorial Guinea's Application on 13 June 2016, was reiterated in Notes Verbales dated 6 January 2016 and 2 February 2016. By Note Verbale of 17 March 2016, France responded by indicating that "the facts mentioned in [Equatorial Guinea's] Note Verbale have been the subject of court decisions in France and remain the subject of ongoing legal proceedings". It concluded that France is "unable to accept the offer of settlement by the means proposed by the Republic of Equatorial Guinea". The Court is therefore satisfied that the procedural requirements of Article 35 had been complied with prior to the filing of Equatorial Guinea's Application.

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77. The Court now turns to the question whether the aspect of the dispute described in paragraph 68 falls within the provisions of the Palermo Convention. Equatorial Guinea argues that this aspect of the dispute raises issues related to the interpretation and application of Article 4 read in conjunction with other articles of the Convention.

78. Article 4 of the Palermo Convention provides as follows:

*"Protection of sovereignty*

1. 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.

2. Nothing in this Convention entitles a State Party to undertake in the territory of another State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other State by its domestic law.”

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79. France maintains that Article 4 does not incorporate the rules of customary international law, in particular those concerning immunities of States and State officials. France further contends that there is no dispute between the Parties calling into question any of the obligations under the Convention.

80. In response to the allegation that it had overextended its jurisdiction to cover offences which fall within the exclusive jurisdiction of Equatorial Guinea, France argues that the Convention recognizes no exclusive jurisdiction of Equatorial Guinea.

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81. Equatorial Guinea relies on Article 4 in two ways. First, it argues that the rules relating to the immunity *ratione personae* of certain holders of high-ranking office and the immunity from execution of State property flow directly from the principles of sovereign equality and non-intervention referred to in Article 4. It maintains that Article 4 imposes a treaty obligation to respect the customary international rules relating to immunities of States and State officials when applying the Palermo Convention. Relying on this interpretation of Article 4, Equatorial Guinea asserts that France has failed to carry out various obligations pursuant to the Palermo Convention in a manner that is consistent with Article 4, by failing to respect the immunity to which the Vice-President is entitled and the immunity of the building at 42 Avenue Foch in Paris from measures of constraint as State property.

82. Second, Equatorial Guinea relies on the principles expressly referred to in Article 4, asserting that France has failed to carry out various obligations under the Palermo Convention in a manner consistent with those principles. In particular, Equatorial Guinea argues that France has violated Article 4 by asserting jurisdiction pursuant to Articles 6 and 15 of the Palermo Convention over alleged offences which fall exclusively within the jurisdiction of Equatorial Guinea’s courts.

83. Equatorial Guinea concedes that Article 4 does not require respect for the principles of sovereign equality and non-intervention (including the rules on immunities of States and State officials which it claims flow from those principles) in a general sense. It does not seek to dissociate Article 4 from the Convention’s other provisions. Rather, it argues that respect for those principles becomes a treaty obligation for a State party when it is applying the other provisions of the Convention. Equatorial Guinea alleges that France has violated Article 4 in the implementation of Article 6 (Criminalization of the laundering of proceeds of crime), Article 11 (Prosecution,

adjudication and sanctions), Article 12 (Confiscation and seizure), Article 14 (Disposal of confiscated proceeds of crime or property), Article 15 (Jurisdiction) and Article 18 (Mutual legal assistance).

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84. The Court will first proceed to examine Article 4 to determine whether the claim by Equatorial Guinea relating to the immunities of States and State officials falls within the provisions of Article 4. Unless the Court finds that this is the case, the aspect of the dispute between the Parties in relation to the asserted immunities of the Vice-President of Equatorial Guinea and the building at 42 Avenue Foch in Paris as State property cannot be said to concern the interpretation or application of the Palermo Convention.

85. Second, the Court will consider Equatorial Guinea's argument that France has violated Article 4 of the Convention by failing to carry out its obligations relating to the criminalization of money laundering and the establishment of its jurisdiction over that offence (pursuant to Articles 6 and 15) in a manner consistent with the principles of sovereign equality and non-intervention referred to in Article 4. The Court will determine whether the actions by France of which Equatorial Guinea complains are capable of falling within the provisions of the Palermo Convention. Unless the Court finds that this is the case, the aspect of the dispute between the Parties in relation to France's alleged overextension of jurisdiction cannot be said to concern the interpretation or application of the Palermo Convention.

#### **A. The alleged breach by France of the rules on immunities of States and State officials**

86. The factual background to the prosecution in France of Mr. Teodoro Nguema Obiang Mangue is recalled above at paragraphs 23 to 41.

87. France views Article 4 as a general clause recalling fundamental principles of international law, one which establishes an aim or objective rather than an independent obligation. In this regard, France refers to Article I of the Treaty of Amity, Economic Relations and Consular Rights between the United States and Iran (hereinafter the "Treaty of Amity"), which France identifies as the same kind of "conventional formulation" as Article 4. It recalls that in *Oil Platforms*, the Court found that Article I of the Treaty of Amity had to be regarded as fixing "an objective, in the light of which the other Treaty provisions are to be interpreted and applied" (*Oil Platforms (Islamic Republic of Iran v. United States of America), Preliminary Objection, Judgment, I.C.J. Reports 1996 (II)*, p. 814, para. 28).

88. France argues that the Palermo Convention is not intended to organize in a general way the legal relations between States in light of the principles of sovereign equality, territorial integrity and non-intervention, nor to create a system of immunities or establish the status of property belonging to States parties. It further argues that Article 4 (2) is a reformulation in a negative form

of the principle of territorial integrity mentioned in Article 4 (1), in the context of judicial co-operation.

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89. As the Court has recalled, Equatorial Guinea argues that Mr. Teodoro Nguema Obiang Mangue is entitled to immunity *ratione personae* from criminal prosecution in French courts and that the building at 42 Avenue Foch in Paris is State property which is immune from measures of execution by France (see paragraphs 54 and 56).

90. Equatorial Guinea claims that the customary international rules on immunities of States and State officials, and on the immunity of State property from execution, are incorporated into Article 4 through the reference in that article to the principles of sovereign equality and non-intervention. In its written pleadings Equatorial Guinea states that “the rules concerning the immunities to which States are entitled before foreign courts” are “*embodied* in the principle of sovereign equality” (emphasis added). At the oral hearings, Equatorial Guinea asserted that the “rules of international law on the immunity of States, their officials and their property . . . are *contained within* the principles referred to in Article 4” (emphasis added). Equatorial Guinea further maintains that Article 4 (2) must be regarded as providing additional protection for State sovereignty and that it does not limit the scope of Article 4 (1).

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91. Pursuant to customary international law, as reflected in Articles 31 and 32 of the Vienna Convention on the Law of Treaties, the provisions of the Palermo Convention must be interpreted in good faith in accordance with the ordinary meaning to be given to their terms in their context and in light of the object and purpose of the Convention. To confirm the meaning resulting from that process, or to remove ambiguity or obscurity, or to avoid a manifestly absurd or unreasonable result, recourse may be had to the supplementary means of interpretation which include the preparatory work of the Convention and the circumstances of its conclusion (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, *I.C.J. Reports 2007 (I)*, pp. 109-110, para. 160).

92. Article 4 (1) stipulates that “States Parties shall carry out their obligations under [the Palermo] Convention in a manner consistent with the principles” to which it refers. The Court considers that the word “shall” imposes an obligation on States parties. Article 4 (1) is not preambular in character, nor does it merely formulate a general aim, as the Court held that Article I of the Treaty of Amity did in *Oil Platforms*. However, Article 4 is not independent of the other provisions of the Convention. Its purpose is to ensure that the States parties to the Convention perform their obligations in accordance with the principles of sovereign equality, territorial integrity and non-intervention in the domestic affairs of other States.

93. As the Court has previously observed, the rules of State immunity derive from the principle of sovereign equality of States (*Jurisdictional Immunities of the State (Germany v. Italy: Greece Intervening)*, Judgment, I.C.J. Reports 2012 (I), pp. 123-124, para. 57). However, Article 4 does not refer to the customary international rules, including State immunity, that derive from sovereign equality but to the principle of sovereign equality itself. Article 4 refers only to general principles of international law. In its ordinary meaning, Article 4 (1) does not impose, through its reference to sovereign equality, an obligation on States parties to act in a manner consistent with the many rules of international law which protect sovereignty in general, as well as all the qualifications to those rules.

94. Article 4 (1) is to be read in its context. Article 4 (2) of the Palermo Convention states that “[n]othing in [the] Convention entitles a State Party to undertake in the territory of another State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other State by its domestic law”. Article 4 (2) does not refer to the customary international rules on immunities of States and State officials. Moreover, none of the provisions of the Palermo Convention relates expressly to the immunities of States and State officials.

95. Article 4 (1) is also to be read in light of the object and purpose of the Convention. That object and purpose, stated in Article 1, is the promotion of co-operation to prevent and combat transnational organized crime more effectively. The interpretation of Article 4 advanced by Equatorial Guinea, whereby the customary rules relating to immunities of States and State officials are incorporated into the Convention as conventional obligations, is unrelated to the stated object and purpose of the Palermo Convention.

96. The Court concludes that, in its ordinary meaning, Article 4, read in its context and in light of the object and purpose of the Convention, does not incorporate the customary international rules on immunities of States and State officials. This interpretation is confirmed by the *travaux préparatoires* of the Palermo Convention. The *Ad Hoc* Committee on the Elaboration of a Convention against Transnational Organized Crime met over the course of thirteen sessions between January 1999 and February 2004 in its elaboration of the Convention and its Protocols. So far as the record shows, during this process, no reference was made to immunities of States and State officials in relation to the drafting of Article 4.

97. The records of the preparatory meetings of the *Ad Hoc* Committee indicate that the issue of State immunity was raised twice with regard to other provisions. First, a proposal to include an article covering measures against corruption by, *inter alia*, foreign public officials led some delegations to raise concerns about the immunities accorded by international instruments to some of those officials. The proposal was not retained in the final text of the Convention.

98. Second, the issue of immunity of State property was raised in the context of a proposal by Singapore to include a provision dealing with State immunity from execution in the article relating to confiscation and seizure (now Article 12 of the Palermo Convention). This proposal was likewise not retained in the final text of the Convention. Instead it was agreed that the *travaux préparatoires* should indicate the following in the interpretative notes to Article 12:

“interpretation of article 12 should take into account the principle in international law that property belonging to a foreign State and used for non-commercial purposes may not be confiscated except with the consent of the foreign State. It is not the intention of the Convention to restrict the rules that apply to diplomatic or State immunity, including that of international organizations.” (*travaux préparatoires*, p. 115).

The interpretative note specifies that the Palermo Convention does not restrict the rules that apply to State immunity. The note does not relate to Article 4 of the Palermo Convention and does not suggest that these rules are incorporated by reference into the Palermo Convention.

99. Article 4 (1) of the Palermo Convention was transposed from Article 2 (2) of the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (hereinafter the “Convention against Illicit Traffic in Narcotic Drugs”). Article 4 (1) of the Palermo Convention is identical to Article 2 (2) of the Convention against Illicit Traffic in Narcotic Drugs, while Article 4 (2) of the Palermo Convention is very similar to Article 2 (3) of the Convention against Illicit Traffic in Narcotic Drugs. The Commentary to the Convention against Illicit Traffic in Narcotic Drugs, in relation to Article 2 (2), is therefore relevant to the Court’s examination of Article 4 of the Palermo Convention.

100. The Commentary notes that Article 2 (2) of the Convention against Illicit Traffic in Narcotic Drugs “reiterates universally accepted and well-established principles of international law concerning the sovereign equality and territorial integrity of States and non-intervention in the domestic affairs of States” (Commentary, para. 2.12). According to the Commentary, the rationale for restating these principles in Article 2 is that the Convention against Illicit Traffic in Narcotic Drugs “goes much further than previous drug control treaties in matters of law enforcement and mutual legal assistance” (Commentary, para. 2.13). Again the focus is on law enforcement and mutual legal assistance, not immunity.

101. The purpose of the Convention against Illicit Traffic in Narcotic Drugs, set out in Article 2 of that Convention, is the promotion of co-operation among States parties to effectively address illicit trafficking in narcotic drugs and psychotropic substances having an international dimension. The Convention against Illicit Traffic in Narcotic Drugs does not include a provision protecting the State immunity of individuals suspected of drug trafficking. The protection of the sovereignty, territorial integrity and domestic jurisdiction of a State is the purpose of Article 2 (2) of the Convention against Illicit Traffic in Narcotic Drugs. Article 4 (1) of the Palermo Convention shares that purpose. Neither of these provisions is concerned with the related, but separate, question of the immunities of individuals, or of State property, in foreign territory.

102. In light of the above, the Court concludes that Article 4 does not incorporate the customary international rules relating to immunities of States and State officials. Therefore, the aspect of the dispute between the Parties relating to the asserted immunity of the Vice-President of Equatorial Guinea and the immunity claimed for the building at 42 Avenue Foch in Paris from measures of constraint as State property does not concern the interpretation or application of the Palermo Convention. Consequently, the Court lacks jurisdiction in relation to this aspect of the dispute. The Court notes that its determination that Article 4 does not incorporate the customary international rules relating to immunities of States and State officials is without prejudice to the continued application of those rules.

103. Equatorial Guinea raises a further claim based on the Palermo Convention which does not depend on the view of Article 4 as incorporating the rules relating to immunities of States and State officials. The Court will now address this claim.

### **B. The alleged overextension of jurisdiction by France**

104. Equatorial Guinea asserts that the French legislation that criminalizes money laundering and establishes France's jurisdiction over that offence (pursuant to Articles 6 and 15 of the Palermo Convention), as interpreted and applied by French courts, does not respect the principles of sovereign equality and non-intervention. Therefore, Equatorial Guinea contends that the French legislation is not in harmony with Article 4 of the Convention. Equatorial Guinea maintains that the Court has jurisdiction in relation to this aspect of its dispute with France because these actions by France fall within the scope of the Palermo Convention.

105. As recalled above, France contends that there is no dispute between the Parties calling into question any of the obligations under the Convention.

106. The Court must determine whether the aspect of the dispute between the Parties relating to France's criminalization of money laundering and its establishment of jurisdiction over that offence, as described above, "concerns the interpretation or application" of the Palermo Convention. To do so, the Court must ascertain whether the alleged violations by France complained of by Equatorial Guinea are capable of falling within the provisions of the Palermo Convention and whether, as a consequence, this aspect of the dispute is one which the Court has jurisdiction to entertain pursuant to Article 35, paragraph 2, of the Convention (see paragraph 46 above).

107. Article 6 of the Palermo Convention states in its relevant part:

#### *"Criminalization of the laundering of proceeds of crime"*

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:
  - (a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;
  - (ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;
- (b) Subject to the basic concepts of its legal system:
  - (i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;

- (ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

2. For purposes of implementing or applying paragraph 1 of this article:

- (a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;
- (b) Each State Party shall include as predicate offences all serious crime as defined in article 2 of this Convention and the offences established in accordance with articles 5, 8 and 23 of this Convention. In the case of States Parties whose legislation sets out a list of specific predicate offences, they shall, at a minimum, include in such list a comprehensive range of offences associated with organized criminal groups;
- (c) For the purposes of subparagraph (b), predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there”.

108. The relevant part of Article 15 of the Palermo Convention is worded as follows:

*“Jurisdiction*

- 1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with articles 5, 6, 8 and 23 of this Convention when:
  - (a) The offence is committed in the territory of that State Party . . .  
.....
- 6. Without prejudice to norms of general international law, this Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.”

\*      \*

109. France concedes that Article 6 imposes an obligation on States parties to the Convention to criminalize money laundering in their domestic legislation. It submits that it has complied with that obligation since the offence of money laundering is provided for, and is punishable, under the French Penal Code. It points out that Equatorial Guinea is not challenging the conformity of French legislation with the Convention obligation to criminalize behaviour. France



maintains that its legislation in the matter of money laundering and the establishment of jurisdiction over that offence was adequate at the time it ratified the Palermo Convention. It points out that it did not need to enact specific legislation to implement the Convention.

110. In relation to Equatorial Guinea's argument as to the extent of France's jurisdiction, France asserts that the proceedings against Mr. Teodoro Nguema Obiang Mangue do not involve the extraterritorial extension of the jurisdiction of the French courts, as the criminal proceedings only concern acts committed on French territory. France asserts furthermore that the dispute between the Parties, as defined in Equatorial Guinea's Application, does not relate to the establishment by France of its jurisdiction over Convention offences.

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111. Equatorial Guinea does not claim that French law has failed to criminalize money laundering pursuant to Article 6, nor that France has failed to establish its criminal jurisdiction to enable the prosecution of money laundering pursuant to Article 15. Rather, according to Equatorial Guinea, France's legislation implementing Articles 6 and 15 is incompatible with the principles of sovereign equality and non-intervention referred to in Article 4.

112. Equatorial Guinea argues that France has failed to respect the principles of sovereign equality and non-intervention, as prescribed by Article 4, by permitting its courts to initiate criminal proceedings in relation to alleged offences which, even if they were established, would fall solely within the jurisdiction of the courts of Equatorial Guinea. In particular, Equatorial Guinea asserts that France has overextended its jurisdiction, pursuant to Article 15 of the Palermo Convention, to cover predicate offences allegedly committed in Equatorial Guinea by and against nationals of Equatorial Guinea or against the Equatorial Guinean State.

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113. In the Court's view, a State can give effect to a treaty by using pre-existing legislation and there can be a dispute as to the implementation of that treaty through such legislation. Consequently, even if France did not enact specific legislation to comply with the requirements of the Palermo Convention, this would not be decisive for the purposes of the application of the Convention and therefore for the jurisdiction of the Court with regard to such a dispute.

114. On the other hand, in assessing whether France was implementing the Convention in taking action against Mr. Teodoro Nguema Obiang Mangue, it is relevant to note that the Palermo Convention recognizes that the definition of offences and related legal rules and procedures is a matter for the domestic law of the prosecuting State. Specifically, Article 11 (6) provides that:

“Nothing contained in this Convention shall affect the principle that the description of the offences established in accordance with this Convention and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in accordance with that law.”

In accordance with that general principle, the Convention helps to co-ordinate but does not direct the actions of States parties in the exercise of their domestic jurisdiction. Articles 12 (9), 13 (4), 14 (1), 14 (2) and 15 (6) are also relevant in this regard: they similarly provide that States parties are free to implement the convention obligations contained in these provisions in accordance with their domestic law. The scope of action taken in the implementation of the Convention is therefore limited.

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115. The Court now turns to the issue of France’s alleged overextension of jurisdiction in relation to the predicate offences of money laundering. The Court notes that Article 2 (*h*) of the Palermo Convention defines “predicate offence” as “any offence as a result of which proceeds have been generated that may become the subject of an offence as defined in article 6 of this Convention”. Article 6 (2) imposes an obligation on States parties to “seek to” establish criminal offences as set out in Article 6 (1) in relation to the “widest range of predicate offences”, including offences committed outside the jurisdiction of the State party. The obligation is limited by Article 6 (2) (*c*). Pursuant to that provision, predicate offences committed outside the jurisdiction of a State party may only relate to conduct that is a criminal offence under the domestic law of the State where the conduct occurs. That conduct must also constitute a criminal offence under the domestic law of the State party adopting the measures pursuant to Article 6, had the conduct occurred there.

116. The Court observes that Article 6 (2) (*c*) is not concerned with the question whether any particular individual has committed a predicate offence abroad, but with the distinct prior question whether the alleged conduct abroad constitutes a criminal offence under the domestic law of the State where it occurred. The Court further observes that Article 6 (2) (*c*) of the Palermo Convention does not provide for the exclusive jurisdiction of the State on whose territory such an offence was committed. It is for each State party to adopt measures to criminalize the Convention offences as required by Article 6, including “the widest range” of predicate offences inside and outside the jurisdiction of that State party. It is also for each State party to adopt such measures as may be necessary to establish their jurisdiction over Convention offences pursuant to Article 15. This is in accordance with the principle stated in Article 15 (6) of the Palermo Convention, which provides that “[w]ithout prejudice to norms of general international law”, the Convention does not exclude the exercise of any criminal jurisdiction established by a State party in accordance with its domestic law.

117. For these reasons, the Court finds that the alleged violations complained of by Equatorial Guinea are not capable of falling within the provisions of the Palermo Convention,

notably Articles 6 and 15. The Court therefore lacks jurisdiction to entertain the aspect of the dispute relating to France's alleged overextension of jurisdiction.

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118. Having analysed the aspect of the dispute in respect of which Equatorial Guinea invoked the Palermo Convention as a basis of jurisdiction (see paragraph 68 above), the Court concludes that this aspect of the dispute is not capable of falling within the provisions of the Palermo Convention. The Court therefore lacks jurisdiction pursuant to the Palermo Convention to entertain Equatorial Guinea's Application and must uphold France's first preliminary objection.

119. The Court's conclusion in relation to France's first preliminary objection makes it unnecessary to make any further determinations regarding the scope or content of the obligations on States parties pursuant to Article 4 of the Palermo Convention (see paragraph 102).

#### **V. THE SECOND PRELIMINARY OBJECTION: JURISDICTION UNDER THE OPTIONAL PROTOCOL TO THE VIENNA CONVENTION**

120. The Court recalls that the aspect of the dispute between the Parties, in respect of which Equatorial Guinea invokes the Optional Protocol to the Vienna Convention as the title of jurisdiction, concerns whether the building at 42 Avenue Foch, Paris, constitutes part of the premises of the mission of Equatorial Guinea in France and is thus entitled to the treatment provided for under Article 22 of the Vienna Convention. It also concerns whether France, by the actions of its authorities in relation to the building, is in breach of its obligation under Article 22 (see paragraph 70 above). Equatorial Guinea seeks to found the Court's jurisdiction under Article I of the Optional Protocol to the Vienna Convention, the text of which is quoted in paragraph 45 above.

121. The Court further recalls that Articles II and III of the Optional Protocol to the Vienna Convention provide that parties to a dispute arising out of the interpretation or application of the Vienna Convention may agree, within a period of two months after one party has notified its opinion to the other that a dispute exists, to resort not to the International Court of Justice but rather to arbitration or conciliation. After the expiry of that period, either party may bring the dispute before the Court by an application. As the Court has previously noted, the terms of Articles II and III

“when read in conjunction with those of Article I and with the Preamble to the Protocols, make it crystal clear that they are not to be understood as laying down a precondition of the applicability of the precise and categorical provision contained in Article I establishing the compulsory jurisdiction of the Court in respect of disputes arising out of the interpretation or application of the Vienna Convention” (*United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran)*, Judgment, *I.C.J. Reports 1980*, pp. 25-26, para. 48).

The Court explained further that

“Articles II and III provide only that, as a substitute for recourse to the Court, the parties *may agree* upon resort either to arbitration or to conciliation. It follows, first, that Articles II and III have no application unless recourse to arbitration or conciliation has been proposed by one of the parties to the dispute and the other has expressed its readiness to consider the proposal. Secondly, it follows that only then may the provisions in those articles regarding a two months’ period come into play, and function as a time limit upon the conclusion of the agreement as to the organization of the alternative procedure.” (*Ibid.*, p. 26, para. 48; emphasis in the original.)

122. As the Court noted in paragraph 76 above, Equatorial Guinea proposed to France to have recourse to conciliation or arbitration. However, France did not express its readiness to consider that proposal and, instead, expressly stated that it could not pursue it. Thus, Articles II and III of Optional Protocol to the Vienna Convention in no way affect any jurisdiction the Court might have under Article I thereof (*Immunities and Criminal Proceedings (Equatorial Guinea v. France), Provisional Measures, Order of 7 December 2016, I.C.J. Reports 2016 (II)*, p. 1164, para. 64). In light of the foregoing, the Court will examine, on the basis of Article I of the Optional Protocol to the Vienna Convention, whether the aspect of the dispute relating to the status of the building at 42 Avenue Foch in Paris as diplomatic premises of Equatorial Guinea (see paragraphs 70 and 120 above) is one arising out of the interpretation or application of the Vienna Convention and, consequently, whether it is one that falls within the scope of Article I.

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123. The Court recalls that France objects to the Court’s jurisdiction under Article I of the Optional Protocol to the Vienna Convention on the grounds that the dispute relating to the status of the building at 42 Avenue Foch in Paris as diplomatic premises of Equatorial Guinea is not one arising out of the interpretation or application of the Vienna Convention (see paragraph 65 above). The Court also recalls France’s argument that the inviolability régime in Article 22 “can only be applied and implemented if it has previously been established that the premises in question do indeed enjoy diplomatic status”. Furthermore, France argues that the French authorities have never recognized the building at 42 Avenue Foch in Paris as Equatorial Guinea’s diplomatic mission. Thus, the real dispute between the Parties, according to France, is whether at the time of its search and seizure, that building should or should not have been regarded as being used for the purposes of Equatorial Guinea’s mission in France (see paragraph 65 above). The Respondent maintains that this dispute falls outside the scope of the Vienna Convention and is consequently outside the Court’s jurisdiction.

124. France states that, in a Note Verbale of 28 March 2012, it reminded Equatorial Guinea of the constant practice in France regarding the recognition of premises of a diplomatic mission. In this Note Verbale, the Protocol Department of the Ministry of Foreign Affairs stated:

“In accordance with constant practice in France, an Embassy which envisages acquiring premises for its mission so notifies the Protocol Department beforehand and undertakes to assign the said premises for the performance of its missions or as the residence of its head of mission.

Official recognition of the status of ‘premises of the mission’ within the meaning of Article 1, paragraph (*i*), of the Vienna Convention on Diplomatic Relations . . . is determined on the date of completion of the assignment of the said premises to the services of the diplomatic mission, i.e., at the time that they are effectively moved into. The criterion of actual assignment must accordingly be satisfied.

It is only as from that date, notified by Note Verbale, that the premises enjoy the benefit of appropriate protection as provided for by Article 22 of the [Vienna Convention].”

125. France maintains that, since it has never recognized the building as forming part of the premises of Equatorial Guinea’s diplomatic mission in accordance with its “constant practice”, the building does not enjoy the régime of protection guaranteed under Article 22 of the Vienna Convention.

126. France further argues that the term “premises of the mission” referred to in Article 1 (*i*) of the Vienna Convention is “essentially descriptive” and not prescriptive because “it does not stipulate the modalities or procedures for establishing that a building does indeed fall into the category of diplomatic premises”. France adds that Article 22, while setting out the legal régime for diplomatic premises, contains no reference to any criteria or procedures for acquiring diplomatic status. Accordingly, France contends that, since the Vienna Convention contains no provision stipulating the conditions under which a building may be characterized as diplomatic premises, the matter falls outside the scope of that Convention and, in accordance with the Preamble, “the rules of customary international law should continue to govern questions not expressly regulated by the provisions of the present Convention”.

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127. Equatorial Guinea maintains that the dispute relating to the legal status of the building at 42 Avenue Foch in Paris, as diplomatic premises of Equatorial Guinea, is one arising out of “the interpretation and application of several provisions of the [Vienna Convention], including but not limited to Article 1 (*i*) and Article 22”, and that, accordingly, the Court has jurisdiction, under the Optional Protocol to the Vienna Convention, to entertain it. The Applicant contends in particular, that the building forms part of the premises of Equatorial Guinea’s diplomatic mission within the meaning of Article 1 (*i*) of the Vienna Convention, and that as such, it should benefit from the régime of inviolability and immunity from search and seizure provided for under that Convention. In this regard the Court recalls Equatorial Guinea’s arguments in support of its position that the building forms part of its diplomatic mission (see paragraphs 57-58 above).

128. Equatorial Guinea argues that Article 1 (*i*) of the Vienna Convention is not merely “descriptive” as maintained by France, but is also “declaratory” in that “[a]s soon as a building is designated for the purposes of a diplomatic mission by the sending State — at least in the absence of clear and undisputed conditions imposed by the receiving State on all sending States, without discrimination — the receiving State must recognize its inviolability”. Furthermore, whilst the Applicant recognizes that some countries adopt domestic procedures “subject[ing] the assignment of the premises of a diplomatic mission to the approval of the receiving State”, it submits that France does not have any special legislation on State immunity or diplomatic missions.

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129. The Court recalls that both France and Equatorial Guinea are parties to the Vienna Convention and are also parties to the Optional Protocol (see paragraph 43 above). The Court further recalls that the Vienna Convention is a treaty on the “diplomatic intercourse, privileges and immunities” of States parties and that “the purpose of such privileges and immunities is not to benefit individuals but to ensure the efficient performance of the functions of diplomatic missions as representing States” (see Preamble to the Vienna Convention). Article 1 (*i*) of the Vienna Convention provides:

“For the purpose of the present Convention, the following expressions shall have the following meanings hereunder assigned to them:

.....

(*i*) The ‘premises of the mission’ are the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used for the purposes of the mission including the residence of the head of the mission.”

130. Article 22 of the Vienna Convention provides:

“1. The premises of the mission shall be inviolable. The agents of the receiving State may not enter them, except with the consent of the head of the mission.

2. The receiving State is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.

3. The premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment or execution.”

131. In order to establish jurisdiction over the aspect of the dispute identified by the Court in paragraph 70 above, the Court is required to determine whether that aspect of the dispute is one that arises out of the interpretation or application of the Vienna Convention, as required by the provisions of Article I of the Optional Protocol to the Vienna Convention (see paragraph 45 above).

Making that determination requires an analysis of the relevant terms of the Vienna Convention in accordance with the rules of customary international law on the interpretation of treaties, as described above in paragraph 91.

132. Article 1 (*i*) of the Vienna Convention is prefaced by the following sentence: “For the purpose of the present Convention, the following expressions shall have the meanings hereunder assigned to them”. Article 1 (*i*) of the Vienna Convention thus does no more than to define what constitutes “premises of the mission”, a phrase used later in Article 22. For the purposes of the Vienna Convention, a building or part of a building “used for the purposes of [a diplomatic] mission”, including the residence of the head of mission, is considered “premises of the mission”, regardless of ownership.

133. Article 22 of the Vienna Convention provides a régime of inviolability, protection and immunity for “premises of [a diplomatic] mission” by obligating the receiving State, *inter alia*, to refrain from entering such premises without the consent of the head of mission, and to protect those premises against intrusion, damage or disturbance of the peace of the mission by agents of the receiving State. The Article also guarantees immunity from search, requisition, attachment or execution for the premises of the mission, their furnishings and other property thereon, as well as means of transportation of the mission.

134. Where, as in this case, there is a difference of opinion as to whether or not the building at 42 Avenue Foch in Paris, which Equatorial Guinea claims is “used for the purposes of its diplomatic mission”, qualifies as “premises of the mission” and, consequently, whether it should be accorded or denied protection under Article 22, this aspect of the dispute can be said to “aris[e] out of the interpretation or application of the Vienna Convention” within the meaning of Article I of the Optional Protocol to the said Convention. The Court therefore finds that this aspect of the dispute falls within the scope of the Vienna Convention.

135. In light of the above, the Court concludes that it has jurisdiction under Article I of the Optional Protocol to the Vienna Convention to entertain the aspect of the dispute.

136. It now remains for the Court to determine the extent of its jurisdiction. France argues in the alternative that, should the Court find that it does have jurisdiction to entertain Equatorial Guinea’s claim relating to the status of the building at 42 Avenue Foch in Paris as diplomatic premises, that jurisdiction “would be strictly limited to an examination of the lawfulness of the attachment of the building . . . to the exclusion of any question relating to the movable property present in the building before its attachment on 19 July 2012”.

137. Although the Court has held that an applicant may not introduce during the course of the proceedings a new claim which would have the effect of transforming the subject-matter of the dispute originally brought before it (*Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)*, Judgment, *I.C.J. Reports 2007 (II)*, p. 695, para. 108), it is not persuaded that Equatorial Guinea, in advancing its argument regarding movable property seized from the premises at 42 Avenue Foch in Paris, has introduced a new claim into the proceedings. The aspect of the dispute as identified by the Court in paragraph 70 above

relates to the inviolability and immunity of the premises in question as a legal consequence of diplomatic status. The Parties agree that Article 22 of the Vienna Convention provides for the régime of inviolability of buildings which have the status of diplomatic premises. Under Article 22, paragraph 3, it is not only the premises of the mission but also “their furnishings and other property thereon and the means of transport of the mission” that are immune from search, requisition, attachment or execution. The Court considers that any claims relating to movable property present on the premises at 42 Avenue Foch in Paris, and resulting from the alleged violation of the immunity to which the building is said to be entitled, fall within the subject-matter of the dispute and that as such the Court is competent to entertain them.

138. The Court thus concludes that it has jurisdiction to entertain the aspect of the dispute relating to the status of the building, including any claims relating to the furnishings and other property present on the premises at 42 Avenue Foch in Paris. France’s second preliminary objection is consequently dismissed.

#### **VI. THE THIRD PRELIMINARY OBJECTION: ABUSE OF PROCESS AND ABUSE OF RIGHTS**

139. In its Preliminary Objections, France denies that the Court has jurisdiction, *inter alia*, on the ground that “Equatorial Guinea’s claim seeks to consolidate an abuse of rights”. It refers to “a necessary corollary of the principle of good faith, in the form of both an abuse of process and an abuse of rights”. France argues that Equatorial Guinea’s conduct was an abuse of rights and that its seisin of the Court was an abuse of process. In the oral proceedings, France contended that, regardless of whether the Court viewed its argument relating to abuse of rights and abuse of process as a matter of jurisdiction or admissibility, the Court should decline to hear the dispute between the Parties on the merits.

140. As to abuse of rights, France refers to inconsistencies in correspondence sent and statements made by Equatorial Guinea regarding the date of acquisition by Equatorial Guinea of the building at 42 Avenue Foch in Paris and the use to which it was put. France argues that Equatorial Guinea had “suddenly and unexpectedly” transformed a private residence into premises of its mission and had appointed “its owner”, Mr. Teodoro Nguema Obiang Mangue, “to increasingly eminent political positions” as the French investigation proceeded. France alleges that Equatorial Guinea’s objective was to shield Mr. Teodoro Nguema Obiang Mangue and the premises from the pending criminal proceedings. France further contends in its written pleadings that the President of Equatorial Guinea “explicitly acknowledged that the reason for invoking the diplomatic nature of the building located at 42 Avenue Foch [in Paris] was to protect the building from criminal proceedings”. In a letter dated 14 February 2012, addressed to the French President, the President of Equatorial Guinea had indicated that “due to the pressures on [Mr. Teodoro Nguema Obiang Mangue] as a result of the supposed unlawful acquisition of assets, he decided to resell the said building [at 42 Avenue Foch in Paris] to the Government of . . . Equatorial Guinea”.



141. As to abuse of process, France argues that Equatorial Guinea's Application by which it seised the Court constitutes an abuse of process because it was submitted "in the manifest absence of any legal remedy and with the aim of covering abuses of rights committed in other respects".

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142. In its Written Statement, Equatorial Guinea submits that the allegation of abuse of rights "raises issues pertaining to the merits that cannot be addressed in these incidental proceedings" and formally denies that there had been any abuse of rights on its part.

143. In regard to France's allegation of abuse of process, Equatorial Guinea contends that it seised the Court in good faith and in accordance with the conditions and requirements of the Conventions on which it bases the Court's jurisdiction. Equatorial Guinea further argues that France is seeking to dissuade Equatorial Guinea from settling a dispute by judicial means and that it is established jurisprudence that seising the Court, even immediately after accepting the Court's jurisdiction, does not constitute an abuse of process. Finally, Equatorial Guinea maintains that it is "perfectly legitimate" for it to seise the Court with the aim of putting an end to the criminal proceedings brought before the French courts against its Vice-President because Equatorial Guinea considers that the French courts are exercising jurisdiction contrary to international law.

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144. The Court will consider France's objection only in relation to the Vienna Convention, since it has found that it lacks jurisdiction under the Palermo Convention (see paragraph 118 above).

145. In the Court's view, France's third preliminary objection is properly characterized as a claim relating to admissibility. This is reflected in the final submissions of France, which refer not only to lack of jurisdiction but also to the inadmissibility of the Application.

146. In the case law of the Court and its predecessor, a distinction has been drawn between abuse of rights and abuse of process. Although the basic concept of an abuse may be the same, the consequences of an abuse of rights or an abuse of process may be different.

147. On several occasions before the Permanent Court of International Justice, abuse of rights was pleaded and rejected at the merits phase for want of sufficient proof. For example, in *Certain German Interests in Polish Upper Silesia*, the Court said:

“Germany undoubtedly retained until the actual transfer of sovereignty the right to dispose of her property, and only a misuse of this right could endow an act of alienation with the character of a breach of the Treaty; such misuse cannot be presumed, and it rests with the party who states that there has been such misuse to prove his statement.” (*Merits, Judgment No. 7, 1926, P.C.I.J., Series A, No. 7, p. 30.*)

148. In *Arbitral Award of 31 July 1989 (Guinea-Bissau v. Senegal)*, this Court was faced with an argument relating to abuse of process. Senegal argued that

“Guinea-Bissau’s Application is inadmissible, insofar as it seeks to use the declaration of President Barberis for the purpose of casting doubt on the validity of the Award . . . Senegal argues that that declaration is not part of the Award, and therefore that any attempt by Guinea-Bissau to make use of it for that purpose ‘must be regarded as an abuse of process aimed at depriving Senegal of the rights belonging to it under the Award’. Senegal also contends that the remedies sought are disproportionate to the grounds invoked and that the proceedings have been brought for the purpose of delaying the final solution of the dispute.” (*Judgment, I.C.J. Reports 1991, p. 63, para. 26.*)

The Court rejected the argument on the basis that “Guinea-Bissau’s Application has been properly presented in the framework of its right to have recourse to the Court in the circumstances of the case” (*ibid.*, p. 63, para. 27).

149. In *Certain Phosphate Lands in Nauru*, Australia argued that Nauru had failed to act consistently and in good faith in relation to rehabilitation of the phosphate lands and that the Court “in exercise of its discretion, and in order to uphold judicial propriety should . . . decline to hear the Nauruan claims” (*Preliminary Objections, Judgment, I.C.J. Reports 1992, p. 255, para. 37*). The Court held that

“the Application by Nauru has been properly submitted in the framework of the remedies open to it. At the present stage, the Court is not called upon to weigh the possible consequences of the conduct of Nauru with respect to the merits of the case. It need merely note that such conduct does not amount to an abuse of process.” (*Ibid.*, p. 255, para. 38.)

150. An abuse of process goes to the procedure before a court or tribunal and can be considered at the preliminary phase of these proceedings. In this case, the Court does not consider that Equatorial Guinea, having established a valid title of jurisdiction, should be barred at the threshold without clear evidence that its conduct could amount to an abuse of process. Such evidence has not been presented to the Court. It is only in exceptional circumstances that the Court should reject a claim based on a valid title of jurisdiction on the ground of abuse of process. The Court does not consider the present case to be one of those circumstances.

151. As to the abuse of rights invoked by France, it will be for each Party to establish both the facts and the law on which it seeks to rely at the merits phase of the case. The Court considers that abuse of rights cannot be invoked as a ground of inadmissibility when the establishment of the right in question is properly a matter for the merits. Any argument in relation to abuse of rights will be considered at the stage of the merits of this case.

152. For these reasons, the Court does not consider Equatorial Guinea's present claim inadmissible on grounds of abuse of process or abuse of rights. France's third preliminary objection is therefore dismissed.

## VII. GENERAL CONCLUSIONS

153. The Court concludes that it lacks jurisdiction pursuant to the Palermo Convention to entertain Equatorial Guinea's Application. The Court further concludes that it has jurisdiction pursuant to the Optional Protocol to the Vienna Convention to entertain the submissions of Equatorial Guinea relating to the status of the building at 42 Avenue Foch in Paris as diplomatic premises, including any claims relating to the seizure of certain furnishings and other property present on the above-mentioned premises. Finally, the Court finds that Equatorial Guinea's Application is not inadmissible on grounds of abuse of process or abuse of rights.

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154. For these reasons,

THE COURT,

(1) By eleven votes to four,

*Upholds* the first preliminary objection raised by the French Republic that the Court lacks jurisdiction on the basis of Article 35 of the United Nations Convention against Transnational Organized Crime;

IN FAVOUR: *President* Yusuf; *Judges* Owada, Abraham, Bennouna, Cançado Trindade, Donoghue, Gaja, Bhandari, Crawford, Gevorgian, Salam;

AGAINST: *Vice-President* Xue; *Judges* Sebutinde, Robinson; *Judge ad hoc* Kateka;

(2) Unanimously,

*Rejects* the second preliminary objection raised by the French Republic that the Court lacks jurisdiction on the basis of the Optional Protocol to the Vienna Convention on Diplomatic Relations concerning the Compulsory Settlement of Disputes;

(3) By fourteen votes to one,

*Rejects* the third preliminary objection raised by the French Republic that the Application is inadmissible for abuse of process or abuse of rights;

IN FAVOUR: *President* Yusuf; *Vice-President* Xue; *Judges* Owada, Abraham, Bennouna, Cançado Trindade, Gaja, Sebutinde, Bhandari, Robinson, Crawford, Gevorgian, Salam; *Judge ad hoc* Kateka;

AGAINST: *Judge* Donoghue;

(4) By fourteen votes to one,

*Declares* that it has jurisdiction, on the basis of the Optional Protocol to the Vienna Convention on Diplomatic Relations concerning the Compulsory Settlement of Disputes, to entertain the Application filed by the Republic of Equatorial Guinea on 13 June 2016, in so far as it concerns the status of the building located at 42 Avenue Foch in Paris as premises of the mission, and that this part of the Application is admissible.

IN FAVOUR: *President* Yusuf; *Vice-President* Xue; *Judges* Owada, Abraham, Bennouna, Cançado Trindade, Gaja, Sebutinde, Bhandari, Robinson, Crawford, Gevorgian, Salam; *Judge ad hoc* Kateka;

AGAINST: *Judge* Donoghue.

Done in French and in English, the French text being authoritative, at the Peace Palace, The Hague, this sixth day of June, two thousand and eighteen, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Republic of Equatorial Guinea and the Government of the French Republic, respectively.

(Signed) Abdulqawi Ahmed YUSUF,  
President.

(Signed) Philippe COUVREUR,  
Registrar.

Vice-President XUE, Judges SEBUTINDE, ROBINSON and Judge *ad hoc* KATEKA append a joint dissenting opinion to the Judgment of the Court; Judge OWADA appends a declaration to the Judgment of the Court; Judge ABRAHAM appends a separate opinion to the Judgment of the Court; Judge DONOGHUE appends a dissenting opinion to the Judgment of the Court; Judges GAJA and CRAWFORD append declarations to the Judgment of the Court; Judge GEVORGIAN appends a separate opinion to the Judgment of the Court.

(Initialed) A.A.Y.

(Initialed) Ph.C.

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