

**Letter dated 1 February 2008 to the Registrar from the Deputy Agent
of the Republic of Djibouti**

[Translation]

In reference to the explanations given by the French Republic on 29 January 2008 during the second round of oral argument in reply to a question put by Judge Simma on 25 January 2008 during the first round of oral argument, I have the honour, on the instructions of the Agent of the Republic of Djibouti, to submit the following observations to the Court.

1. First, the Republic of Djibouti wishes to point out that the reply given by the French Republic could be of significance to the present case only if the description of the French practice were to show that the refusal contained in the letter of 6 June 2005 sent to the Applicant was the exception to a rule, that rule being that the French Republic generally provides substantive and clear statements of reasons for its refusals. Even if the examples furnished by the French Republic in support of its arguments show that the Respondent does not give reasons for its refusals of mutual assistance, this in no way means that said practice is in accordance with its international obligations in the present case.
2. As the Republic of Djibouti understood Judge Simma's question, Djibouti considers that the Respondent's reply should have shed light on the French Republic's practice in respect of refusals of requests for mutual assistance as that practice existed at the date of the refusal to grant the request for execution of the international letter rogatory presented by the Republic of Djibouti. Accordingly, the Republic of Djibouti expected the French Republic to give the Court examples taken from the practice in 2005 and earlier years. The only examples of refusal which the Respondent chose to provide were taken from the practice in 2007; in our view, these examples are not relevant for purposes of the present case and show just how much the French Republic's reply to Judge Simma's question must be put in perspective. On the other hand, while the example taken by the Respondent from the refusals which it itself has received (a refusal by Togo) dates from 2003, it obviously cannot evidence the French practice.
3. The Respondent told the Court that the French Republic rejected five of the 1,000 requests for mutual assistance received in 2007. Despite the rather limited information provided by the French Republic, it appears that one refusal concerns a request for mutual assistance submitted by the United Kingdom and the other four concern requests from Côte d'Ivoire.
4. It is hard to identify the subject-matter of the United Kingdom's request which was refused by France. It would appear from the passage quoted by the Respondent that the refusal to grant the United Kingdom's request, presented by way of an international letter rogatory, had to do with the fact that the United Kingdom was seeking to have several journalists heard as witnesses, whereas they had already given testimony which had been forwarded to the United Kingdom. A quick search on the web shows that the question of mutual assistance between the United Kingdom and France has arisen in the context of enquiries into Princess Diana's death (enquiries conducted both in the United Kingdom and France) and they have received a great deal of media coverage. It can also be seen from the media reports that the British authorities are not prepared to accept the French refusal and intend to challenge the decision in court.
5. In respect of the four refusals of requests for mutual assistance from Côte d'Ivoire, it is important to note the following point. It is not at all clear whether the four requests fell within the scope of a single case or arose out of four completely separate cases. This makes it difficult to determine the significance of these examples for the present dispute.

6. The Republic of Djibouti takes note of the fact that the Respondent cited the Convention on Mutual Assistance between the French Republic and Côte d'Ivoire and stated: "the Franco-Ivorian Convention of 24 April 1961 includes provisions similar to those laid down by Article 2 (c) of the Franco-Djiboutian Convention on Mutual Assistance"¹. The Respondent stopped there and did not tell the Court whether or not there was a provision similar to Article 17 of the 1986 Convention at issue in the present case.
7. According to the French Republic, the letter of refusal sent to Côte d'Ivoire reads as follows: "The Ministry informs the Embassy that, since these requests for mutual assistance are capable of prejudicing the sovereignty and security of France, the French authorities cannot accede to them."² The 6 June 2005 letter of refusal sent to the Djiboutian authorities by the Ambassador of France reads as follows: "After consulting my authorities, I regret to inform you that we are not in a position to comply with this request."³ In other words, the refusals sent to Côte d'Ivoire must be characterized as "notifications"; this is in no way the case of the refusal of 6 June 2005, which contains no information as to the reason for refusal.
8. The Republic of Djibouti showed in its oral statements that a notification must not be considered a statement of reasons in the strict sense, let alone proper justification for the Respondent's resort to the exceptions set out in Article 2 (c) of the 1986 Convention⁴. Otherwise put, the letters of refusal sent to Côte d'Ivoire also show that, in the opinion of France, it is for the recipient to search to discover the real reason, to check in the *Official Journal* of the French Republic, to seek information from the French authorities, etc. It can therefore be said that the letters sent to Côte d'Ivoire are based on the same premise that the obligation to state reasons must be interpreted to be an obligation to seek out the potential grounds and that this obligation is borne by the party receiving the letter of refusal.
9. In presenting to the Court the examples involving Côte d'Ivoire, the Respondent omitted to indicate that the Ivorian cases concerned investigations into the deaths of nine French soldiers, which provoked an armed response from France. In other words, these cases are of an order completely different from that of Djibouti's case against France. Apart from this, the Respondent refrained from drawing attention to another major difference between the position in respect of Côte d'Ivoire and the refusal sent to the Republic of Djibouti. The Respondent failed to inform the Court that, unusually, the Convention on Mutual Assistance between the French Republic and Côte d'Ivoire includes no provision like Article 17 of the 1986 Convention. Judge Simma's question did not concern France's practice in implementing conventions on mutual assistance not including an obligation to state reasons: "What is the practice of France *with regard to the obligation to provide reasons* for a refusal to comply with requests that are based on treaty clauses corresponding to Article 3 of the said Convention?" (Emphasis added.) Thus, from the comparison made by the Respondent between the refusals sent to Côte d'Ivoire and the 6 June 2005 letter of refusal, it can be concluded that the French Republic provided even fuller information to a State to which it was under no obligation to give reasons than it provided to the Republic of Djibouti, notwithstanding the Respondent's obligation under Article 17 of the 1986 Convention.

The Republic of Djibouti expresses its keen appreciation to the Court for having afforded it the opportunity to provide the Court with its observations on the explanations given by the French Republic in reply to the question put by Judge Simma.

¹CR 2008/7, p. 35, para. 48.

²*Ibid.*

³Memorial, Ann. 24.

⁴CR 2008/2, p. 26, para. 35 (Condorelli); p. 43, para. 50 (van den Biesen).

As for the letter from the Agent of the French Republic which we had the honour to receive yesterday afternoon at about 4.15 by facsimile from the Registrar dated 30 January, and which contained a despatch note to the Ambassador of France to Djibouti, we observe that the note contained no instructions to the Ambassador and that it is dated 16 June 2005, i.e., 10 days after the Ambassador sent his letter of refusal of 6 June 2005 to the Djiboutian authorities. At any rate, Djibouti did not receive the letter dated 31 May 2005 until it appeared as an annex to the Counter-Memorial.
