DISSENTING OPINION OF JUDGE *AD HOC* KATEKA

Disagreement with the operative part of the Judgment — Disagreement with the reasoning on procedural and substantive grounds — Preliminary issues — The VCDR preamble alone cannot be basis of consent condition — Circumstances for a property to acquire status of "premises of the mission" — Judgment ignores "use" condition and prefers "consent" condition — Interpretation of Article 1 (i) *of the Vienna Convention on Diplomatic Relations — Status of the building at 42 avenue Foch in Paris — Test of timeliness, non-arbitrary and non-discriminatory character — Fate of the diplomatic premises of Equatorial Guinea.*

I. Introduction

1. Regrettably I disagree with the Court's finding that the building at 42 avenue Foch has never acquired the status of "premises of the mission" of the Republic of Equatorial Guinea in the French Republic within the meaning of Article 1 *(i)* of the Vienna Convention on Diplomatic Relations (hereinafter the "VCDR" or the "Vienna Convention"). I also disagree with the Judgment's declaration that France has not breached its obligations under the VCDR. I have thus voted against the operative paragraph 126 of the Judgment, including the subparagraph where the majority rejects all other submissions of the Republic of Equatorial Guinea. I am of the view that the building at 42 avenue Foch acquired the status of diplomatic mission of Equatorial Guinea and that France breached its obligations under the VCDR by its measures of constraint against the building. I disagree with the Court's reasoning on procedural and substantive grounds. Procedurally I do not share the Court's reading into the VCDR of the consent requirement on which the Convention is silent and the putting aside of the "use" requirement which is mentioned in the instrument. In this connection, I disagree with the Court's over-reliance on the preamble under the guise of interpreting the object and purpose of the VCDR. I shall deal with the substantive issues of the conditions (referred to as "circumstances" in the Judgment) and the status of the building after considering some relevant preliminary issues.

II. Preliminary issues

2. The majority concludes that — where the receiving State objects to the designation by the sending State of certain property as forming part of the premises of its diplomatic mission, and this objection is communicated in a timely manner and is neither arbitrary nor discriminatory in character — that property does not acquire the status of "premises of the mission" within the meaning of Article 1 *(i)* of the Vienna Convention, and therefore does not benefit from protection under Article 22 of the Convention (paragraph 74 of the Judgment). The majority is of the view that the dispute between the Parties can be resolved by reliance on the consent or non-objection condition. This is because the Judgment merely adds (paragraph 75) that "[i]f necessary, the Court will then examine the second condition which, according to France, must be met for a property to acquire the status of 'premises of the mission', namely the requirement of actual assignment". This conclusion is rather surprising because of several reasons. First, before reaching this conclusion, the Court analyses considerably the two conditions for designating diplomatic premises (paragraphs 61 to 73 of the Judgment). Secondly, it is surprising because the condition of consent or non-objection is not provided for in the VCDR. The Convention is silent on this condition. Thirdly, the majority uses reasoning — of treaty interpretation under the Vienna Convention on the Law of Treaties (hereinafter the "VCLT") — which I do not share to reach its position of relying on the consent or non-objection condition and conveniently ignoring the "use" condition. The majority avoids the "use" condition which is provided for in the Vienna Convention. The "use" condition is referred to in paragraphs 107, 108 and 109 of the Judgment as actual assignment.

These are passing references in the context of justifying the majority's consent or non-objection argument and the criminal proceedings in France against Mr Teodoro Nguema Obiang Mangue. I thus regret the selective invocation of a non-existing criterion of consent or non-objection including its coupling to the test or standard of "timely, non-arbitrary and non-discriminatory character". I shall explain further when I consider the conditions for designation of a diplomatic mission.

3. The Judgment rightly invokes the rule of treaty interpretation in paragraph 61. However, the Judgment does not do justice to the interpretation rule in Article 31 of the VCLT. First, the majority considers the VCDR provisions in their ordinary meaning to be of little assistance in determining the circumstances in which a property acquires the status of "premises of the mission". Without attempting to interpret Article 1 *(i)* of the VCDR, the majority merely concludes that the provision is unhelpful in determining how a building may come to be used for the purposes of a diplomatic mission (paragraph 62 of the Judgment). Secondly, the Judgment uses the Convention's object and purpose by invoking the preamble, in particular, the third preambular paragraph on contributing to the development of friendly relations among nations. Unfortunately, this creates an element of confusion as to which object and purpose to take. For the Judgment also invokes the purpose of ensuring the efficient performance of the functions of diplomatic missions as representing States (fourth preambular paragraph of the VCDR cited at paragraph 66 of the Judgment). In the process, the majority agrees with the respondent State that diplomatic privileges and immunities impose weighty obligations on the receiving State. I do not share this view. It may be recalled that reciprocity permeates diplomatic practice. It is misleading for the majority to state that the receiving States have weighty or onerous obligations. As rightly stated by Denza[1], "[e]very State is both a sending and a receiving State".

4. The view of weighty obligations leads the majority to state that there is an imbalance in the obligations of the receiving State (paragraph 65 of the Judgment) in relation to the sending State concerning privileges and immunities of diplomats and diplomatic missions. This is a misconceived view. The VCDR in Article 2 provides for the establishment of diplomatic relations by mutual consent. The benefits for diplomatic missions are counterbalanced by the sanctions provided for in the VCDR. The Judgment (paragraph 67) refers to the well-known passage in the *Hostages* case[2]:

> "The rules of diplomatic law . . . constitute a self-contained régime which, on the one hand, lays down the receiving State's obligations regarding the facilities, privileges and immunities to be accorded to diplomatic missions and, on the other, foresees their possible abuse by members of the mission and specifies the means at the disposal of the receiving State to counter any such abuse."

This Court's view reaffirms the well-established rule of reciprocity in diplomatic law as a sanction against non-compliance.

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[1] Eileen Denza, *Diplomatic Law: Commentary on the Vienna Convention on Diplomatic Relations*, Fourth Edition, 2016, Oxford, Oxford University Press, p. 2.

[2] *United States Diplomatic and Consular Staff in Tehran (United States of America* v. *Iran), Judgment, I.C.J. Reports 1980*, p. 40, para. 86.

5. I am of the view that the drawbacks referred to above would have been avoided if the majority had not placed too much reliance on the preamble of the VCDR in the present case. Although the Court has given legal significance to preambles in its jurisprudence[3], the legal weight given to the VCDR's preamble is, in my opinion, rather excessive. It is true that preambles are part of a treaty and that tribunals refer to them in the context of the interpretive provisions of the VCLT. However, by using the preamble to interpret the VCDR, the Court makes far-reaching pronouncements which are not in the Convention. I have already referred to the alleged imbalance against the receiving States and their so-called weighty obligations. Of concern is the use of the object and purpose mechanism by the majority to read into the Convention what is not provided for, while ignoring the condition set out in the VCDR, as I explain below.

6. In view of the fact that the majority has given an eminent role to the preamble of the VCDR in the context of treaty interpretation, it bears recalling some canons of treaty interpretation laid down in Article 31 of the VCLT. They show that the drafters of the VCDR intended to emphasize the process of interpretation as a unity[4]. This unity applies not only in the textual-contextual object and purpose circumstances but also by not considering an isolated treaty provision but reading the treaty as a whole.

7. While preambles have normative influence on the understanding of a treaty's meaning[5], this influence is limited. Preambles on their own, not supported by specific operative provisions of a treaty, do not create substantive obligations to the parties to a treaty. As stated by Judge *ad hoc* Mensah[6]:

> "Specifically, I do not subscribe to the view that the 'object and purpose of UNCLOS, as stipulated in its Preamble', in and by themselves, impose on parties to the Convention obligations vis-à-vis other States which have taken a conscious decision not to agree to be bound by that Convention."

This was stated by Judge Mensah in response to the Court's statement that "[g]iven the object and purpose of UNCLOS, as stipulated in its Preamble, the fact that Colombia is not a party thereto does not relieve Nicaragua of its obligations under Article 76 of that Convention"[7].

8. The conclusion I draw from the above analysis is that while preambles are of assistance in treaty interpretation, they should not be elevated to play a role that would change the meaning of a treaty to the detriment of what the drafters intended. For example, the Court has been against a construction that would involve radical changes and additions to the provisions of the 1880 Madrid Convention by invoking the purposes and objects of the Convention. Doing so would not be to interpret but to revise the treaty[8].

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[3] *Rights of Nationals of the United States of America in Morocco (France* v. *United States of America), Judgment, I.C.J. Reports 1952*, p. 196; *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Judgment, I.C.J. Reports 2012 (II)*, p. 624.

[4] International Law Commission (ILC), Commentary to Article 27 (now Article 31), *Yearbook*, 1966, Vol. II, p. 220.

[5] O. Dörr *et al.* (ed.), *Vienna Convention on the Law of Treaties: A Commentary*, p. 10.

[6] *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Judgment, I.C.J. Reports 2012 (II)*, declaration of Judge *ad hoc* Mensah, p. 765.

[7] *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Judgment, I.C.J. Reports 2012 (II)*, p. 669, para. 126.

[8] *Rights of Nationals of the United States of America in Morocco, (France* v. *United States of America), Judgment, I.C.J. Reports 1952*, p. 196.

III. Circumstances in which a property acquires the status of "premises of the mission" under the Convention

9. The two conditions that were argued by the Parties in their pleadings are consent or non-objection and use of a property as requirements for the status of premises of the mission. The respondent State argued for two cumulative conditions of consent and actual assignment, i.e. effective use for the purposes of the mission. The applicant State contended that the VCDR did not make the granting of diplomatic status subject to the consent of the receiving State. As for the use condition, Equatorial Guinea was of the view that this criterion was met where a building was designated by the sending State. I shall consider the two conditions in turn.

10. I start with the condition that the majority has preferred, namely, consent/non-objection. The Judgment states that — if France's objection is communicated in a timely manner and is neither arbitrary nor discriminatory in character — the property does not acquire the status of "premises of the mission" within the meaning of Article 1 *(i)* of the Vienna Convention and thus does not benefit from protection under Article 22 of the Convention (paragraph 74 of the Judgment). This conclusion is reached after considering the object and purpose of the Convention. In addition to the use of the preamble, the majority has formulated the standard or test of "timeliness, non-arbitrariness and non-discriminatory character".

11. I disagree with the majority when it states that the consent or non-objection of the receiving State is required for the designation of a building as diplomatic mission. First, as already observed, the Convention is silent as to this requirement. It does not make the granting of diplomatic status subject to the consent or non-objection of the receiving State. Secondly, where the consent of the receiving State is required it is so stated in the Convention. There are numerous provisions such as Articles 5 (1), 6, 7, 8 (2), 12, 19 (2), 27 (1) and 46 of the VCDR which spell out the requirement of the consent or non-objection of the receiving State.

12. Here one may use a few of these provisions to illustrate when consent or non-objection is needed. Article 4 requires that the *agrément* of the receiving State is obtained for the accreditation of a head of mission; so does Article 10, which requires notification for the appointment of members of the mission. The logic of these provisions is reinforced by Article 4 of the 1963 Vienna Convention on Consular Relations which requires consent for the establishment of a consular post. Thus, when the drafters of the VCDR considered it necessary to have the consent of the receiving State, they provided so explicitly in the Vienna Convention.

13. A further illustration is that the majority claims not to be persuaded by Equatorial Guinea's *a contrario* reading of Article 12 — the provision for consent to open a branch office by the sending State. The majority does not consider such *a contrario* reading to be consistent with the object and purpose of the Vienna Convention. The reason given for this rejection is not convincing. It is said that the receiving State would have to make special arrangements for the security of that branch office. In my view, the receiving State is obligated to provide security for all diplomatic missions, whether in the capital or other cities. Furthermore, this argument is based on the false premise of weighty obligations on the receiving State. I have already dealt with this matter above (paragraphs 3 and 4 of this opinion). The same logic applies to the majority's argument in paragraph 67 of the Judgment about the sending State unilaterally imposing its choice of mission premises upon the receiving State.

14. The majority also states that it is difficult to reconcile an interpretation of the Convention that would allow the sending State to use property for diplomatic missions despite express objection of the receiving State. The majority invokes Article 2 of the VCDR on the establishment of diplomatic relations taking place by mutual consent. In my view, this is mixing up two different concepts. While the establishment of diplomatic relations is by mutual consent, it does not follow automatically that two States with diplomatic relations will open diplomatic missions in their respective capitals. Relations can be promoted from the respective capitals. However, once a diplomatic mission is opened the reciprocal responsibilities between the sending and receiving States apply under the VCDR.

15. The analogy (paragraph 65 of the Judgment) between the *persona non grata* provision in Article 9 of the VCDR and lack of an equivalent mechanism for mission premises is misplaced. As I stated in paragraph 4 above, the Convention is a self-contained régime that concerns persons, premises and property. It must not be read in isolation. It must be read as an integrated régime. Thus, the sanctions available to a receiving State in respect of persons can also be used for solving disputes concerning premises or property. A receiving State can break off diplomatic relations with a sending State that disregards the rules in the VCDR. It can also use the *persona non grata* provision to expel diplomats of a State that offends against the VCDR régime.

16. With respect to consent or non-objection, the majority takes issue with Equatorial Guinea's contentions concerning advance notification and consultation (referred to as "co-ordination" in paragraphs 71 and 72 of the Judgment). The advance notification is required in the context of domestic law in the receiving State. In my view, it is not uncommon that where a State does not have national legislation in respect of diplomatic law, it issues circulars through the Foreign Office to diplomatic missions. Such circulars are guidelines to enable diplomatic missions to be aware of the practice in a particular State.

17. The issue of consultation (co-ordination) is not far-fetched either. The Applicant argues that in the absence of legislation or established practice, the receiving State may only object to the designation by the sending State of its diplomatic premises in consultation with the sending State. The majority (paragraph 71) is of the view that this condition among others does not exist under the VCDR or in general international law. And yet the majority has acknowledged the fact that the receiving State's power to object to a sending State's designation of its diplomatic mission is not unlimited. Such a power must be exercised reasonably and in good faith. France itself refers to the consensual letter and spirit of the Vienna Convention (paragraph 54 of the Judgment). It adds that the significant restrictions on the receiving State's territorial sovereignty through the inviolability régime calls for the sending State to use the rights conferred on it in good faith. France also refers to a "bond of trust" between the sending State and the receiving State. In my view, this is a clear acknowledgment of the need for consultation. The mutuality régime in Article 2 of the VCDR carries the same spirit of the need for consultation.

18. As for the State practice of France, the Respondent claims to have a practice of general tacit consent. This is called non-objection coupled with effective assignment i.e. actual use. The majority (paragraph 69), like France, cites the practice of a dozen States[9] which have legislated on the requirement of obtaining prior consent. It is not clear how the practice of a handful of States can be construed. Is it customary law? It cannot be. The majority does not consider that this practice necessarily establishes the agreement of the parties within the meaning of Article 31 (3) *(b)* of the VCLT. In my view, there is no constant and consistent practice of France.

[9] Out of the 192 States parties to the VCDR.

This is because the Respondent's explanation varies. When it denied recognition to the request of the Embassy of Equatorial Guinea, France invoked the use condition in its Note Verbale of 11 October 2011. France stated that the premises fell within the private domain and were subject to ordinary law. Subsequently France used the attachment of the building on 19 July 2012 as the reason.

19. It is this lack of consistent practice that leads Equatorial Guinea to accuse the Respondent of arbitrariness and discrimination. I share this view, as explained below, concerning the status of the building and the test of reasonableness and non-discrimination to deny recognition to the building as the premises of Equatorial Guinea's diplomatic mission.

20. I now turn to the second condition of "use" of the premises. As already indicated (paragraph 2 above), the majority does not consider it necessary to rule on the alleged "actual assignment" requirement for a building to benefit from the protections provided for in Article 22. The "if necessary" phraseology in paragraph 75 of the Judgment is not utilized in any meaningful way. In the majority's view, the dispute between the Parties can be resolved through an analysis of whether France's objection to the designation of the building at 42 avenue Foch as premises of Equatorial Guinea's diplomatic mission was "communicated in a timely manner, and was neither arbitrary nor discriminatory in character". As already stated, I disagree with this approach which ignores the condition of "use" which is mentioned in the VCDR and instead the majority adopts the consent or non-objection condition on which the Convention is silent. I am also not persuaded by the non-arbitrary and non-discriminatory test. It is adopted by the majority to rationalize the invocation of the consent or non-objection condition which is not provided for in the VCDR.

21. The majority finds itself in the situation of having to put aside the "use" condition and adopting a condition on which the Convention is silent. They also face the awkward situation of using arguments based on the "use" condition in order to justify the consent or non-objection condition (paragraphs 108 and 109 of the Judgment). In my view, the majority has erred in taking this approach.

22. The Judgment states that Article 1 *(i)* of the VCDR has a definition of what constitutes "premises of the mission" which does not expressly establish how and when a building may come to be diplomatic premises (paragraph 62 of the Judgment). Nevertheless, the majority does not interpret the provision in detail. Article 1 *(i)* defines "premises of the mission" as buildings and the land used for the purposes of the mission. I am of the view that this circular definition is more than descriptive. The term "used" indicates one of the conditions for establishing premises of the mission. Disagreement may be on what is meant by the term "used". France interprets the term to mean effective or actual use (where a diplomatic mission has completely moved into the premises in question), while Equatorial Guinea is of the view that the term encompasses premises assigned for diplomatic purposes, i.e. intended use. I share the latter view.

23. The term "use" can be interpreted differently. For "use" includes planning for the mission premises and their refurbishment. It is a gradual process. Once a sending State gives notification of its opening a diplomatic mission and assigns a building for this purpose, it takes time to complete the moving-in process. Diplomatic missions are not established overnight. For example, the movement of diplomatic missions from Bonn to Berlin in the 1990s lasted for several years for some diplomatic missions.

24. In this regard, I share the Applicant's view in rejecting the notion that "actual" or "effective" assignment occurs only when a diplomatic mission has completely moved into the premises in question. The intended use must be included by accepting the situation where the sending State has assigned premises for diplomatic purposes. From the time of assignment and notification to the receiving State to the final move in the premises have to be accorded immunity and inviolability. Otherwise the expression "used for the purposes of the mission" in Article 1 *(i)* of the VCDR would be deprived of *effet utile* in this context. The agents of the receiving State can enter the premises — as they did in the present case — under the guise of there not being "actual or effective assignment" of the property. In this connection, I share the view Judge Robinson expressed in paragraph 43 of his dissenting opinion that a building is entitled to immunity on the basis of the intended use as diplomatic premises when that "use" is followed by the actual use of the building as diplomatic premises.

25. I conclude this section by stating that the Judgment should have considered both conditions of "consent" and "use" thoroughly. The consent or non-objection condition is not found in the VCDR and it does not apply in the present case. As described by President Yusuf in his separate opinion, it is a "freshly minted" condition (paragraph 59). The condition of use which is mentioned in Article 1 *(i)* of the Vienna Convention can be interpreted to include the intended use of a diplomatic mission in which the actions of Equatorial Guinea fall for the period from 4 October 2011 to 27 July 2012.

IV. Status of the building at 42 avenue Foch in Paris

26. The Parties exchanged numerous diplomatic Notes between 4 October 2011 and 27 July 2012. These two dates are crucial in determining the status of the building at 42 avenue Foch. It should be noted that, because the Court ruled against jurisdiction of the building at 42 avenue Foch as property of a foreign State under the United Nations Convention against Transnational Organized Crime (or Palermo Convention), the claims of Equatorial Guinea prior to 4 October 2011 fall outside the Court's jurisdiction (paragraph 77 of the Judgment). Equatorial Guinea accepts that events before 4 October 2011 are inapplicable to the present case. Hence it is surprising that the majority invokes the "use" criterion to cite the events of the searches of 28 September and 3 October 2011 as proof that the building at 42 avenue Foch was not being used or being prepared for use for diplomatic purposes. The events of the period prior to 4 October 2011 are irrelevant and should not have been invoked by the majority.

27. France claims to have objected consistently to each of the diplomatic Notes of Equatorial Guinea. The majority agrees with the Respondent that French authorities conducting the on-site inspection did not find that the premises were being used or being prepared for use as Equatorial Guinea's diplomatic mission. The majority dismisses the evidence of signs at the premises ("Embassy of Equatorial Guinea") and residence of the Permanent Delegate to UNESCO as inconsequential. It also dismisses evidence of tacit consent and recognition by France (paragraph 32 below). This is a regrettable position.

28. As noted in paragraph 20 above, the majority has established a standard or test of whether the objection of France was timely, non-arbitrary and non-discriminatory. This is a standard that is difficult to justify. Whether the actions of France were timely is debatable. It may have responded to the Note Verbale of Equatorial Guinea of 4 October 2011 within a week. However, considering the lengthy period of the conflict, one wonders whether events were dealt with in a timely manner. The stalemate between the Parties lasted from October 2011 to 13 June 2016 when Equatorial Guinea instituted proceedings before the Court. The period of nine months, from 4 October 2011 to 27 July 2012, was the apex of the stalemate between the Parties. And yet

France as the receiving State, in spite of the sanctions available under the VCDR did not act because it did not want to jeopardize its bilateral relations with Equatorial Guinea. While this is understandable, it adds to the complication of this unique case.

29. In any case, to establish the reasonableness of France's conduct will depend on the particular circumstances. The majority concludes that Equatorial Guinea was aware on 4 October 2011 of the searches of 28 September and 3 October 2011 in the context of criminal proceedings. Hence there were reasonable grounds for France's objection to Equatorial Guinea's designation of the building as diplomatic premises. Unfortunately, this argument — as already indicated above — involves the irrelevant period prior to 4 October 2011. It is surprising that this temporal element is ignored by the majority. Furthermore, the circumstances of the present case point to Equatorial Guinea being a victim of unjust treatment. Accusations of abuse of rights were made although they have not been commented upon by the majority. This is another regrettable matter.

30. Hence the respondent State cannot be absolved from accusations of arbitrariness and discrimination. For example, French authorities accepted a capital gains tax for the property at 42 avenue Foch when they had no intention to pass on title of the building to Equatorial Guinea. Moreover, France tries to refute accusations of arbitrariness and discrimination by citing a single case of State X. It is not persuasive. Nor is the contention that no other sending State has ever conducted itself in France as Equatorial Guinea did in the present case. One may observe here that no other country has ever found itself in the situation Equatorial Guinea found itself in as a sending State. The linkage of France's actions to the criminal proceedings in French courts completes the unusual nature of the present case. Unfortunately, the majority agrees with France that if the respondent State had acceded to Equatorial Guinea's assignment of the building, it might have hindered the proper functioning of the French criminal justice system (paragraph 109 of the Judgment). This is in my view, a rather speculative and unnecessary comment which is not persuasive to justify further French searches of the building as reasonable.

31. As for the commencement date of the designation of the building at 42 avenue Foch as diplomatic premises of Equatorial Guinea, I am of the view that the notification by the Applicant on 4 October 2011 should be accepted. The period between this date and 27 July 2012 was used for planning the transfer of the premises from 29 boulevard de Courcelles to 42 avenue Foch in Paris.

32. In this connection, I observe that the French authorities, by their actions, have repeatedly recognized the building at 42 avenue Foch as the premises of the diplomatic mission of Equatorial Guinea. French officials have visited the building to obtain visas; the building was granted protection in 2015 and 2016; four letters were addressed to 42 avenue Foch by French officials in 2019. The majority (paragraph 114 of the Judgment) attempts to counter these recognition factors by advancing arguments that are not convincing. To argue that the acquisition of visas at 42 avenue Foch in Paris does not lead to the conclusion that the premises were recognized (by France) as constituting the premises of the mission — without giving reasons — is not convincing. France, rather unconvincingly, tries to explain that the four letters were sent by mistake (at different times)!

33. If the date of 4 October 2011 proves problematic, surely 27 July 2012 cannot be in doubt as the commencement date of the diplomatic status of Equatorial Guinea's mission at 42 avenue Foch. Several judges have recognized and voted in favour of the status of 42 avenue Foch as premises of the diplomatic mission of Equatorial Guinea even though they found no breach of obligations. France concedes that its non-recognition of the building and the seizures of assets were

done before 27 July 2012. It further states that since that date, Equatorial Guinea has never reported any incidents that could have affected the peace of the building. I am of the view that this is tacit consent and recognition of the diplomatic status of the premises.

34. In light of the above, I am of the view that the building at 42 avenue Foch acquired the status of premises of the mission of Equatorial Guinea in France as of 4 October 2011 and that France is in breach of its obligations under the VCDR.

V. Fate of the premises of Equatorial Guinea in France

35. The Court (paragraph 116) notes that the conduct of France did not deprive Equatorial Guinea of its premises in France and the Applicant already had diplomatic premises at 29 boulevard de Courcelles which France still recognizes. However, the premises at 42 avenue Foch have been recognized by the Court under the Order for provisional measures of December 2016. That recognition/protection will end with the present Judgment on the merits. The fate of these premises will be more uncertain when the appeal against the judgment of the *Cour d'appel* of 10 February 2020 comes to an end. Confiscation of the building will definitely affect the functioning of the Embassy of Equatorial Guinea in France. It is regrettable that the Court has left this matter unresolved. The issue is more than the question of ownership of the premises. It is the issue of the dignity and inviolability of the premises of the mission of Equatorial Guinea under Article 22 of the VCDR. The stability of the rules of diplomatic law will not be helped by this omission on the part of the Court.

(Signed) James KATEKA.