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INTERNATIONAL COURT OF JUSTICE

**CASE CONCERNING
IMMUNITIES AND CRIMINAL PROCEEDINGS
(EQUATORIAL GUINEA v. FRANCE)**

REJOINDER OF THE FRENCH REPUBLIC

[Translation by the Registry]

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INTRODUCTION

0. This Rejoinder is filed under Article 45 of the Rules of Court, in response to the Reply submitted by Equatorial Guinea on 8 May 2019. In the introduction to this Rejoinder, France will recall the latest developments in the proceedings before the Court **(I)**, before setting out its preliminary observations on the Applicant's Reply **(II)**. The introduction will then define the subject-matter of the dispute submitted to the Court in this case **(III)** and describe how this Rejoinder is structured **(IV)**.

I. Proceedings before the Court

0.1. The present proceedings were instituted by Equatorial Guinea's Application against France in the *Immunities and Criminal Proceedings* case, filed in the Registry of the Court on 13 June 2016.

0.2. At Equatorial Guinea's request, the Court made an Order indicating provisional measures on 7 December 2016. Pursuant to Article 79 of the Rules of Court, France raised preliminary objections, which were the subject of a Judgment of 6 June 2018. In accordance with the Court's instructions, the proceedings on the merits then gave rise to the filing of a Memorial by the Applicant and a Counter-Memorial by the Respondent in this case.

0.3. By an Order dated 24 January 2019, the Court authorized both Parties to file an additional written pleading. In its Order of 17 April 2019, having regard to Article 48 of its Statute and Article 44 of its Rules, the Court extended to 8 May and 21 August 2019 the respective time-limits for the filing of the Reply and the Rejoinder. Equatorial Guinea filed its Reply within the time-limit prescribed. The present Rejoinder was subsequently filed in accordance with that Order.

II. Preliminary observations on the Reply

0.4. Article 49, paragraph 3, of the Rules of Court provides that "[t]he Reply and Rejoinder, whenever authorized by the Court, shall not merely repeat the parties' contentions, but shall be directed to bringing out the issues that still divide them".

0.5. France first notes that Equatorial Guinea's Reply largely revisits elements, particularly factual elements, already set out in its Memorial. In accordance with Article 49, paragraph 3, of the Rules of Court, France will respond only to those points in the Reply which, in its view, continue to divide the Parties or which merit further clarification, at this stage of the proceedings, to supplement the information already provided in the Counter-Memorial.

0.6. France further notes that Equatorial Guinea makes a number of assertions in its Reply which are unsubstantiated by any evidence. This is particularly true of its claim, which is not corroborated by any documentation (Note Verbale, email, record or any other relevant document), that it had intended to use the building at 42 avenue Foch for the purposes of its diplomatic mission "long before" 4 October 2011¹. There is no evidence to support such a claim.

¹ Reply of Equatorial Guinea (REG), para. 1.41.

0.7. As this Court has consistently held, it can be considered that, “in accordance with the well-established principle of *onus probandi incumbit actori*, it is the duty of the party which asserts certain facts to establish the existence of such facts”². It follows, in particular, that “[i]t is of course to be expected that the Applicant should, in the first instance, submit the relevant evidence to substantiate its claims”³. It is clear when reading Equatorial Guinea’s Reply that this evidence is largely absent. This makes it difficult to assess the credibility of a number of the Applicant’s claims, especially in light of the contradictions and inconsistencies which persist in the statement of facts, as this Rejoinder will show.

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0.8. Lastly, France is dismayed by the accusations made against it in the Reply that it “show[s] contempt for Equatorial Guinea’s authorities, its counsel and their legal position”⁴. France deplores and refutes this allegation. On the contrary, since the emergence of the dispute, France has taken a pragmatic approach and been conciliatory, so as to prevent the dispute from affecting all its bilateral relations with Equatorial Guinea, relations to which France has repeatedly recalled its commitment since the start of the proceedings⁵, as, moreover, has Equatorial Guinea⁶.

0.9. The debates which may arise during judicial proceedings — and the inevitable differences of opinion they bring with them — should under no circumstances be perceived as unfriendly or contemptuous acts.

0.10. France’s written pleadings simply refute the legal arguments put forward by Equatorial Guinea on an important matter of diplomatic law, in which all States have a vested interest and which has been submitted to the Court for its kind consideration.

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III. Subject-matter of the dispute

0.11. The Judgment of 6 June 2018 stipulates that, in this case, the Court only 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”⁷.

In this regard, and as explained by the Court,

“[t]he 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

² *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, *I.C.J. Reports 2010 (I)*, p. 71, para. 162.

³ *Ibid.*, para. 163.

⁴ REG, para. 0.2.

⁵ See CR 2016/15, 18 Oct. 2016 (provisional measures), p. 8, para. 2 (Alabrune); CR 2018/2, 19 Feb. 2018 (preliminary objections), p. 10, para. 1 (Alabrune).

⁶ See CR 2016/14, 17 Oct. 2016 (provisional measures), p. 14, para. 4 (Nvono Nca); CR 2018/3, 20 Feb. 2018 (preliminary objections), p. 8, para. 1 (Nvono Nca).

⁷ *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, Preliminary Objections, Judgment, *I.C.J. Reports 2018 (I)*, p. 338, para. 154, point (4).

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.”⁸

0.12. The Judgment of 6 June 2018 clearly defined the scope of the dispute submitted to the Court for its consideration, which thus concerns only the status of the building at 42 avenue Foch and the régime of inviolability potentially associated with that status, to the exclusion of any other question. Consequently, the dispute before the Court relates solely to the application and interpretation of the Vienna Convention on Diplomatic Relations (VCDR), and only in respect of this particular point.

0.13. In its Reply, Equatorial Guinea contends that France adopts “too restrictive a reading”⁹ of paragraph 70 of the Judgment rendered by the Court on 6 June 2018. In particular, it states that, “together with the context, account must be taken [by the Court] of any relevant rule of international law applicable in the relations between the parties”¹⁰.

5 0.14. In making this assertion, Equatorial Guinea seeks unduly to broaden the scope of the dispute over which the Court has recognized its jurisdiction, by attempting to conflate the subject-matter of a dispute brought before an international court and the law which may be applied by that same court in resolving the dispute. Indeed, Equatorial Guinea’s Reply ignores the well-established “distinction between the scope of the rights and obligations which an international tribunal has jurisdiction to enforce and the law which it will have to apply in doing so”¹¹. As the Court has itself stated, the dispute in this case concerns only Article 22 of the VCDR, which Equatorial Guinea claims has been violated, and no other provisions of that instrument or of general international law. To argue otherwise, as Equatorial Guinea appears to do, is to disregard the fundamental rules governing the jurisdictional scope of international courts and tribunals.

0.15. France will therefore use the remainder of its Rejoinder to establish that it could not possibly have violated the provisions of Article 22 of the VCDR¹².

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IV. Structure of the Rejoinder

0.16. This Rejoinder will endeavour to respond to the points made by Equatorial Guinea in its Reply. First, it will highlight the various persistent inconsistencies and contradictions in the facts as presented by the Republic of Equatorial Guinea (**Chapter 1**).

⁸ *Immunities and Criminal Proceedings (Equatorial Guinea v. France), Preliminary Objections, Judgment, I.C.J. Reports 2018 (I)*, pp. 315-316, para. 70.

⁹ REG, para. 0.20.

¹⁰ *Ibid.*, para. 0.21.

¹¹ Permanent Court of Arbitration (PCA), Partial Award of 30 Jan. 2007, *The Eurotunnel Arbitration*, para. 152. Similarly, see PCA, Order No. 3, 24 June 2003, *MOX Plant Case (Ireland v. United Kingdom)*, para. 19; PCA, Award of 14 Aug. 2015, *The Arctic Sunrise Arbitration (Netherlands v. Russia)*, para. 188; ICJ, *Jadhav (India v. Pakistan), Judgment of 17 July 2019*, para. 36; see also M. Wood, “The ITLOS and General International Law”, *The International Journal of Marine and Coastal Law*, Vol. 22, No. 3, 2007, p. 356: “there is . . . ‘an elementary but important distinction between a court or tribunal’s jurisdiction to hear a case, and the law to be applied by the tribunal in deciding a case which is within its jurisdiction’”.

¹² See Chap. 2 below.

0.17. Second, France will return to the absence of any breach of the VCDR with regard to the building at 42 avenue Foch (**Chapter 2**).

0.18. Third, the Reply will show that Equatorial Guinea's conduct in this case constitutes an abuse of rights (**Chapter 3**).

0.19. Fourth — and as an entirely subsidiary and superfluous point, since France has not breached any of its international obligations in this case — the Rejoinder will address the question of France's international responsibility (**Chapter 4**).

CHAPTER 1

**THE PERSISTENT INCONSISTENCIES IN THE REPUBLIC OF EQUATORIAL GUINEA'S
PRESENTATION OF THE FACTS CONCERNING THE BUILDING
AT 42 AVENUE FOCH**

1.1. France first recalls that there is no need to revisit the facts related to the criminal proceedings against Mr. Teodoro Nguema Obiang Mangue. As stated in the Judgment on the preliminary objections of 6 June 2018, the Court lacks jurisdiction to entertain this aspect of the dispute. Consequently, this Rejoinder will address only the facts relating to the status of the building at 42 avenue Foch.

1.2. Furthermore, the Reply is incorrect in its assertion that “the facts set out in France’s Counter-Memorial are based to a very large extent on the information produced by the French judicial and police authorities during the criminal proceedings against the Vice-President of Equatorial Guinea”¹³. At each stage of the proceedings, France’s written pleadings have been based on a wide range of documentary evidence, including, principally, the Notes Verbales furnished by the Embassy of Equatorial Guinea itself. France is of the view that these official exchanges are the best illustration of Equatorial Guinea’s numerous contradictions. In addition, the Applicant itself also makes frequent reference to the information produced by the French judicial authorities, much of which is appended to its Memorial.

1.3. France thus notes that Equatorial Guinea’s Reply contains yet another partial and incomplete presentation of the facts, aimed at reshaping the chronology of events *a posteriori* so that it appears to support the argument on the merits put forward by Equatorial Guinea and refuted by France.

1.4. In order to set the record straight, this Rejoinder will expand on the facts set out in France’s Counter-Memorial regarding the assignment of the building at 42 avenue Foch, pointing out the inconsistencies and contradictions that Equatorial Guinea has been unable to resolve. France is also of the opinion that there is no need to revisit the facts relating to the ownership of the townhouse, which were discussed at length in the replies to the questions put by Judge Bennouna and Judge Donoghue, and which are unrelated to the alleged violations of the VCDR, as this Rejoinder will show¹⁴.

1.5. Thus, with regard to the assignment of the townhouse at 42 avenue Foch, and in an attempt to explain the inconsistencies in the dates — inconsistencies noted by France throughout these proceedings before the Court — Equatorial Guinea creates an artificial distinction between the building’s alleged “assignment for diplomatic use” and its purported “diplomatic status”.

1.6. Indeed, the Reply states that “Equatorial Guinea had decided to assign the building located at 42 avenue Foch for the purposes of its diplomatic mission even before it was acquired on

¹³ REG, para. 1.7.

¹⁴ See Chap. 2 below.

15 September 2011”¹⁵, while also pointing out that “Equatorial Guinea has never claimed that the building benefited from diplomatic status before 4 October 2011”¹⁶.

1.7. Aside from the fact that Equatorial Guinea contended in its Application that the building had benefited from diplomatic status since 15 September 2011, this new presentation of the facts suggests that there was therefore a period before 4 October 2011 — the exact starting date of which, however, remains vague — when the building at 42 avenue Foch was assigned for diplomatic activity, but the State of Equatorial Guinea did not consider it necessary to request diplomatic status for those premises¹⁷ or the protections and tax exemptions associated with that status.

1.8. This assertion seems at least to corroborate the terms of the Note Verbale from the Embassy of Equatorial Guinea dated 4 October 2011, by which France was informed that Equatorial Guinea had had at its disposal the building in question, which it claimed to have assigned to its diplomatic mission, “for a number of years”.

9 1.9. Not only does such an assertion inevitably raise questions, it is also contradicted by the information already in the case file, which France considers worth recalling. The building at 42 avenue Foch was thus not assigned to any effective diplomatic activity when it was searched between 28 September and 23 February 2012, or when the attachment (*saisie pénale immobilière*) was carried out on 19 July 2012.

1.10. It should be noted in this regard that, during the searches which took place from 14 to 23 February 2012, “no official documents were discovered concerning the State of Equatorial Guinea or indicating that the building might serve as a venue for official representation”¹⁸.

1.11. In its Reply, Equatorial Guinea also fails to demonstrate how the building at 42 avenue Foch could have housed its Embassy on 4 October 2011 and then served as the residence of its Permanent Delegate to UNESCO on 17 October 2011. Nor does it explain why UNESCO was only notified of this alleged new assignment on 14 February 2012, i.e. the first day of the searches and seizures of movable assets carried out at 42 avenue Foch, and several months after France had pointed out to Equatorial Guinea that any such change of address had to be notified to that organization’s Protocol Department. France further observes that Equatorial Guinea also fails to explain why a Note Verbale from the Embassy dated 27 July 2012, i.e. several months after its supposed establishment at 42 avenue Foch, still showed in its footer the address recognized by the French authorities as that of the Embassy: 29 boulevard de Courcelles in Paris. Nor does the Applicant explain why the curriculum vitae of its Permanent Representative to UNESCO, transmitted to the French authorities on 16 February 2012, gives Ms Bindang Obiang’s address as 46 rue des Belles Feuilles, when, on 17 October 2011 and again on 14 February 2012, the Equatorial Guinean authorities claimed that she was residing at 42 avenue Foch.

¹⁵ REG, para. 1.25.

¹⁶ *Ibid.*, para. 1.33.

¹⁷ See Note Verbale No. 365/11 from the Embassy of the Republic of Equatorial Guinea to the Ministry of Foreign Affairs of the French Republic, 4 Oct. 2011 (Doc. No. 1 of the additional documents communicated by France on 14 Oct. 2016 in the context of Equatorial Guinea’s request for the indication of provisional measures).

¹⁸ Judgment of the 32nd *Chambre correctionnelle* of the Paris *Tribunal correctionnel*, 27 Oct. 2017, p. 31 [translation by the Registry].

1.12. Equatorial Guinea's Reply fails to dispel the doubts or resolve the contradictions that have marked these entire proceedings regarding the date of the alleged diplomatic assignment of the building in question. As France has repeatedly recalled, in a Note Verbale of 4 October 2011, the Equatorial Guinean authorities asserted that

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“the Embassy has for a number of years had at its disposal a building located at 42 avenue Foch, Paris (16th arr.), which it uses for the performance of the functions of its diplomatic mission, a fact which it has hitherto not formally notified to [the Ministry's Protocol] Department”¹⁹.

1.13. On 17 October 2011, those premises were suddenly presented by Equatorial Guinea's Embassy as housing the new residence of the Permanent Delegate to UNESCO: a Note Verbale of that date from the Embassy stated that

“[p]ending the arrival of [the Ambassador's] successor, the Embassy will be headed by Ms Mariola BINDANG OBIANG, Permanent Delegate of the Republic of Equatorial Guinea to UNESCO in the capacity of Chargée d'affaires ad interim, and we wish to inform you that the official residence of the Permanent Delegate to UNESCO is on the premises of the diplomatic mission located at 40-42 avenue FOCH, 75016, which is at the disposal of the Republic of Equatorial Guinea”²⁰.

1.14. In its reply to Judge Donoghue's question, Equatorial Guinea moreover confirmed that the change in residence of its Permanent Delegate to UNESCO was only notified to that organization — despite it being the most directly concerned — on 14 February 2012, i.e. the first day of the searches and seizures of movable assets carried out at 42 avenue Foch. Besides the fact that this notification was sent belatedly, France must point out that it is by no means a coincidence that these two events occurred on the same date.

1.15. In another Note Verbale of 27 July 2012, its footer showing the Embassy's address as 29 boulevard de Courcelles in Paris (8th arr.), the Embassy of Equatorial Guinea in France informed the French authorities that,

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“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”²¹.

1.16. In its Reply, Equatorial Guinea also expresses surprise that France was perplexed by the paper signs marked “République de Guinée Équatoriale — locaux de l'ambassade” (Republic of Equatorial Guinea — Embassy premises) affixed to the entrance porch of the building. The

¹⁹ Note Verbale No. 365/11 from the Embassy of the Republic of Equatorial Guinea to the Ministry of Foreign Affairs of the French Republic, 4 Oct. 2011 (Doc. No. 1 of the additional documents communicated by France on 14 Oct. 2016 in the context of Equatorial Guinea's request for the indication of provisional measures).

²⁰ Note Verbale No. 387/11 from the Embassy of the Republic of Equatorial Guinea to the Ministry of Foreign Affairs of the French Republic, 17 Oct. 2011 (Doc. No. 3 of the additional documents communicated by France on 14 Oct. 2016 in the context of Equatorial Guinea's request for the indication of provisional measures).

²¹ Note Verbale No. 501/12 from the Embassy of the Republic of Equatorial Guinea to the Ministry of Foreign Affairs of the French Republic, 27 July 2012 (Doc. No. 22 of the additional documents communicated by France on 14 Oct. 2016 in the context of Equatorial Guinea's request for the indication of provisional measures); emphasis added.

Reply goes on to state that Equatorial Guinea “sees nothing extraordinary in that. It takes time to order and obtain suitable signs for a diplomatic mission.”²²

1.17. Equatorial Guinea, however, fails to explain how it believes that it can, on the one hand, reasonably claim to have spent several months — or even years, according to some of its written pleadings — contemplating establishing its Embassy in the building at 42 avenue Foch, without, on the other hand, having had the foresight to consider ordering and affixing a sign to that effect. The haste with which the paper signs marked “République de Guinée Équatoriale — locaux de l’ambassade” were put up²³ confirms that their appearance cannot be dissociated from the criminal proceedings initiated by the French judicial authorities, which they were intended to obstruct as a matter of urgency.

1.18. Once again, the skewed presentation of the facts of the case demands that Equatorial Guinea’s allegations that the building in question has been or could have been validly assigned for the purposes of a diplomatic mission must be refuted.

1.19. Nor is the order of 22 October 2013 made by the Paris *Tribunal de grande instance* on an urgent application (*en référé*), and to which Equatorial Guinea refers for the first time, capable of dispelling any doubts surrounding the assignment of the building at 42 avenue Foch.

1.20. That order was made in urgent civil proceedings initiated by the association of co-owners of 42 avenue Foch, who were concerned about the effects of the attempt to transform the building into diplomatic premises. In particular, the association sought the removal of Equatorial Guinea’s flag and requested that the common areas of the building be vacated.

1.21. The French civil court did not uphold those requests, finding that

“according to a Note Verbale of 4 October 2011 addressed by the Embassy of the Republic of Equatorial Guinea to the Protocol Department of the Ministry of Foreign Affairs of the French Republic, the State of Equatorial Guinea [had] intended to assign the premises at 40-42 avenue Foch for the performance of the functions of its diplomatic mission”²⁴.

1.22. In those proceedings, Equatorial Guinea therefore relied on the Note Verbale of 4 October 2011. However, it was careful not to produce the response to that Note, dated 11 October 2011, in which the Protocol Department of the Ministry of Foreign Affairs refused to recognize the building as forming part of the premises of the diplomatic mission.

1.23. It is important to recall that the order of 22 October 2013, made by a single judge in urgent proceedings, does not prejudice any assessment which may be made by other French judicial or executive authorities regarding the status of the building at 42 avenue Foch. The urgent applications judge (*juge des référés*), no doubt persuaded of Equatorial Guinea’s good faith, did not consider it necessary to question the Ministry of Foreign Affairs about the importance of the Note Verbale of 4 October 2011. It goes without saying that had the French Ministry of Foreign

²² REG, para. 1.42.

²³ See Counter-Memorial of France (CMF), paras. 1.20-1.22.

²⁴ Interim order of the Paris *Tribunal de grande instance*, 22 Oct. 2013, p. 2.

Affairs — the only authority able to recognize the diplomatic status of premises — been consulted, it would have provided the judge with all the information needed to rule independently and in full knowledge of the facts.

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1.24. Lastly, and in any event, France notes that the order of 22 October 2013 on which Equatorial Guinea relies shows, once again, that the date of the alleged assignment of the building at 42 avenue Foch was, in fact and contrary to Equatorial Guinea's assertions, much later than 4 October 2011. Indeed, according to the order produced by the Applicant, the urgent proceedings instituted by the association of co-owners contesting the building's transformation into a diplomatic mission originated in a summons dated 31 August 2012 and 8 July 2013, long after the building's alleged official assignment for diplomatic purposes.

1.25. This confirms at the very least that, before those dates, the townhouse at 42 avenue Foch bore none of the distinctive features which would typically enable the premises to be identified as those of a diplomatic mission.

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1.26. Having recalled these facts, the remainder of this Rejoinder will demonstrate that France could not have and has not violated its obligations under the VCDR.

**NO BREACH OF THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS
WITH REGARD TO THE BUILDING AT 42 AVENUE FOCH**

2.1. In the introduction to its Reply, Equatorial Guinea presents the subject-matter of its dispute with France as follows:

“The Court having determined that it lacks jurisdiction on the basis of the United Nations Convention against Transnational Organized Crime, the case now concerns the unlawful actions of the French courts and other French authorities in respect of the premises of Equatorial Guinea’s diplomatic mission in France, located at 42 avenue Foch in Paris.”²⁵

At the same time as prejudging the merits of the case by declaring France’s actions “unlawful”, Equatorial Guinea accepts the conclusion reached by the Court in its Judgment of 6 June 2018 on the preliminary objections, in which it found 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*”²⁶.

2.2. Although this delimitation of the Court’s jurisdiction is thus accepted, it is not sufficient to resolve the question of the scope of the claims that Equatorial Guinea seeks to submit on the basis of the VCDR. The Reply provides some useful clarification on this point. It is true that, previously, the Applicant’s position in this regard has varied greatly: in its Application, Equatorial Guinea contended that France had “breached its obligations owed to Equatorial Guinea under the Vienna Convention on Diplomatic Relations . . . , in particular Article 22 thereof”²⁷; its Memorial stated that “[t]he dispute before the Court concerns the interpretation and application of several provisions of the VCDR, including but not limited to Article 1 (*i*) and Article 22”²⁸, and mentioned, without further explanation, Articles 20 (flag and emblem of the sending State)²⁹ and 21 (facilitation of the acquisition of premises)³⁰ of the Convention; during the proceedings on the preliminary objections, Article 23 (exemption from taxation) was also added to this unsubstantiated list³¹.

2.3. While criticizing France’s allegedly “too restrictive a reading”³² of the Judgment of 6 June 2018, Equatorial Guinea now seeks to found its claims only on potential violations of Article 22 of the Convention. In its view, this “involves determining the circumstances in which a

²⁵ REG, para. 0.1.

²⁶ *Immunities and Criminal Proceedings (Equatorial Guinea v. France), Preliminary Objections, Judgment, I.C.J. Reports 2018 (I)*, p. 338, para. 154 (4); emphasis added.

²⁷ REG, para. 38.

²⁸ Memorial of Equatorial Guinea (MEG), para. 5.46.

²⁹ *Ibid.*, para. 8.18.

³⁰ *Ibid.*, para. 8.32.

³¹ Written Statement of Equatorial Guinea (WSEG), para. 1.57. At the hearings on the preliminary objections, Equatorial Guinea stated that “the provisions contained in Articles 20, 21 and 23 have been violated incidentally, since the inviolability guaranteed by Article 22 has not been respected” (CR 2018/3, p. 47, para. 10 (Kamto)).

³² REG, para. 0.20.

building may be considered ‘premises of the mission’ within the meaning of Article 1 (i) of the VCDR, and the acts of a receiving State which may constitute violations of Article 22³³. The chapter of the Reply devoted to “[t]he failure to respect the inviolability of the building at 42 avenue Foch as premises of the diplomatic mission”³⁴ further confirms this: all the alleged violations are linked solely to Article 22³⁵, without any reference to the provisions referred to previously. The cursory mention of Article 47 of the VCDR³⁶, concerning regard for the principle of non-discrimination in the application of the Convention, is not accompanied by any substantive information, and is not referred to in either the chapter on the potential international responsibility of France or the final submissions of Equatorial Guinea.

16 2.4. Thus delimited, the dispute appears to be confined to readily identifiable questions of law. Equatorial Guinea complicates them, however, by contending that “the question of who owns the building at 42 avenue Foch is relevant to the application of the Convention”³⁷; indeed, in its view, “France’s arguments on the relevance of the building’s ownership are in fact closely linked to the violations of the VCDR”³⁸. Yet the very terms of the Vienna Convention leave no room for doubt in this regard: the question of ownership of the building concerned is irrelevant to that of the possible failure to comply with the treaty (I). Once this point has been clarified, it will be shown that none of the arguments put forward by Equatorial Guinea in its Reply can cast doubt on the conclusion that this building was not entitled to the régime of inviolability established by Article 22 of the Vienna Convention (II). Lastly, France will then recall that it has not violated any of its obligations to Equatorial Guinea under the Convention (III).

17 **I. The question of ownership of the building at 42 avenue Foch is unrelated to that of compliance with the Vienna Convention on Diplomatic Relations**

2.5. France has already amply demonstrated that the arguments put forward by the Applicant to claim ownership of the building at 42 avenue Foch in Paris were irrelevant in assessing the alleged violations of the VCDR³⁹; in keeping with the requirements of Article 49, paragraph 3, of the Rules of Court, France sees no need to revisit this subject here. Moreover, in its Judgment of 6 June 2018, the Court clearly separated Equatorial Guinea’s claims under the Palermo Convention — including those pertaining to “France’s alleged failure to respect the immunity of the building at 42 Avenue Foch in Paris as State property of Equatorial Guinea”⁴⁰ — from those falling under the VCDR, which concern “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”⁴¹. As Judge Gaja explained in his declaration appended to the Judgment:

“the issue of the ownership concerning the building located at 42 Avenue Foch must be distinguished from the issue of inviolability and immunity of the premises of the mission. While the latter comes within the scope of the Optional Protocol, the part of

³³ REG, para. 0.24.

³⁴ *Ibid.*, p. 25.

³⁵ See *ibid.*, paras. 2.49 and 2.51-2.56.

³⁶ *Ibid.*, para. 2.69.

³⁷ *Ibid.*, para. 0.21.

³⁸ *Ibid.*

³⁹ See Preliminary Objections of France (POF), para. 141; CR 2018/2, p. 38, para. 23 (Bodeau-Livinec); CMF, paras. 2.13-2.20.

⁴⁰ *Immunities and Criminal Proceedings (Equatorial Guinea v. France), Preliminary Objections, Judgment, I.C.J. Reports 2018 (I)*, p. 310, para. 52.

⁴¹ *Ibid.*, para. 53.

the dispute over the ownership of the building is not so covered. Under the Optional Protocol the Court does not have jurisdiction to decide on that part of the dispute”⁴².

2.6. In its Reply, Equatorial Guinea nonetheless seeks to flout this distinction. Already in the “general overview” it gives of its position, Equatorial Guinea asserts that France,

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“[u]nable to respond to Equatorial Guinea’s arguments concerning its right of ownership over the building, . . . invites the Court not to address this question, taking the view that a measure which affects the ownership of a building housing the premises of a diplomatic mission cannot be in breach of Article 22 of the VCDR. This argument is untenable, especially since . . . France refused to recognize the diplomatic status of the building at 42 avenue Foch, considering it wrongly to fall within ‘the private domain’ in October 2011.”⁴³

2.7. Such an assertion calls for several comments. The claim of “right of ownership” which Equatorial Guinea asserts over the building must be met with the utmost caution. The inconsistencies in the Applicant’s position on this point are, moreover, part and parcel of the abusive practices which France has consistently denounced in this case⁴⁴. The same is true of the confusion which the Applicant attempts to create between private “ownership” and the private “domain” (A). From the standpoint of the inviolability régime established by the VCDR, the question of ownership of the building concerned remains irrelevant in any event (B).

A. Equatorial Guinea creates confusion between the building’s ownership and its use

2.8. In its Reply, Equatorial Guinea contends a number of times that “it was on (erroneously cited) grounds of ownership that France refused to recognize the diplomatic status of the building [at 42 avenue Foch] in October 2011”⁴⁵. This assertion is a direct reference to the response which the Protocol Department of the Ministry of Foreign Affairs gave to the Embassy of the Republic of Equatorial Guinea in Paris when the applicant State first sought to include the building as part of the premises of its diplomatic mission in France and claim the benefit of the associated régime of inviolability. The exchange of the Notes Verbales directly concerned is worth reproducing again here, since it clears up the confusion which the Applicant now seeks to create between the building’s ownership and its use.

2.9. In a Note Verbale of 4 October 2011, the Embassy of Equatorial Guinea informed the Protocol Department of the Ministry of Foreign Affairs that it

“*has for a number of years had at its disposal a building located at 42 avenue Foch, Paris (16th arr.), which it uses for the performance of the functions of its diplomatic mission, a fact which it has hitherto not formally notified to your Department.*

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Since *the building forms part of the premises of the diplomatic mission*, pursuant to Article 1 of the Vienna Convention on Diplomatic Relations of 18 April 1961, the Republic of Equatorial Guinea wishes to give you official notification so

⁴² *Immunities and Criminal Proceedings (Equatorial Guinea v. France), Preliminary Objections, Judgment, I.C.J. Reports 2018 (I)*, p. 389, declaration of Judge Gaja.

⁴³ REG, para. 0.26.

⁴⁴ See below, Chap. 3.

⁴⁵ REG, para. 3.24. See also *ibid.*, para. 1.16.

that the French State can ensure the protection of those premises, in accordance with Article 22 of the said Convention⁴⁶.

Regardless of the veracity of the assertions it contains, it is clear that this Note Verbale, which Equatorial Guinea regards as being crucial to the present case, makes no mention of a right of ownership of the building at 42 avenue Foch. Having the building “at its disposal”, as Equatorial Guinea claims, could mean a number of things, from ownership to rent-free occupation or third-party rental.

2.10. In its response, the Protocol Department of the Ministry of Foreign Affairs did not dwell on the question of the building’s ownership: Equatorial Guinea’s Note Verbale did not invite it to do so, and from a legal standpoint it was not necessary to identify the building’s owner in order to determine the appropriate response⁴⁷. The relevant passage of the Note Verbale of 11 October 2011 reads as follows:

“The Protocol Department recalls that the . . . building [located at 42 avenue Foch] does not form part of the premises of Equatorial Guinea’s *diplomatic mission*.

It falls within the private domain and is, as such, subject to ordinary law. The Protocol Department thus regrets that it is unable to grant the Embassy’s request.”⁴⁸

Both in general⁴⁹ and in the specific circumstances at issue here, “private domain” cannot be understood as a reference to the building’s ownership. It relates to the only relevant factor in determining how to respond to Equatorial Guinea’s claim: whether the building is used for diplomatic purposes — i.e. for government non-commercial purposes⁵⁰ and thus governed by a specific legal régime — or whether it is used for private purposes and must therefore remain subject to ordinary law. The building’s ownership — be it public or private — is irrelevant in this regard. Many diplomatic missions are established in property rented to private individuals under private lease agreements, as evidenced, moreover, by Equatorial Guinea’s practice in France over a number of years⁵¹.

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2.11. In subsequent communications with the Embassy of Equatorial Guinea, the Protocol Department consistently maintained this position. For instance, in response to the Note Verbale of

⁴⁶ Note Verbale No. 365/11 from the Embassy of the Republic of Equatorial Guinea to the Ministry of Foreign Affairs of the French Republic, 4 Oct. 2011 (Doc. No. 1 of the additional documents communicated by France on 14 Oct. 2016 in the context of Equatorial Guinea’s request for the indication of provisional measures); emphasis added.

⁴⁷ See below, paras. 2.17-2.19.

⁴⁸ Note Verbale No. 5007 from the Ministry of Foreign Affairs of the French Republic to the Embassy of the Republic of Equatorial Guinea, 11 Oct. 2011 (Doc. No. 2 of the additional documents communicated by France on 14 Oct. 2016 in the context of Equatorial Guinea’s request for the indication of provisional measures); emphasis added.

⁴⁹ According to G. Cornu’s *Vocabulaire juridique*, *domaine public* can be defined as the “[d]omain composed of the property assigned either to public use or to a public service and subject as such to a special legal régime”; conversely, *domaine privé* refers to the “[d]omain which is composed, in principle, of all other property and is subject to ordinary law” (G. Cornu, *Vocabulaire juridique*, Paris, PUF, 12th ed., 2017, p. 367) [*translation by the Registry*].

⁵⁰ According to Art. 21, para. 1 (a), of the United Nations Convention on Jurisdictional Immunities of States and Their Property of 2 Dec. 2004, “shall not be considered as property specifically in use or intended for use by the State for other than government non-commercial purposes . . . property . . . which is used or intended for use in the performance of the functions of the diplomatic mission of the State”.

⁵¹ In its statement of the facts, Equatorial Guinea notes that “[i]n June 1980, the diplomatic mission moved to a rented building at 6 rue Alfred de Vigny. Equatorial Guinea had intended to buy that building, but ultimately was unable to do so. For that reason, it had to terminate the rental contract and seek new premises” (REG, para. 1.13; emphasis added). As the relevant footnotes confirm, this rental situation continued for nearly twenty years; at no point did Equatorial Guinea mention any problems this may have caused with regard to the inviolability of the building in question.

17 October 2011 by which the Embassy of Equatorial Guinea sought to inform the Ministry of Foreign Affairs that the residence of the Permanent Delegate of the Republic of Equatorial Guinea to UNESCO was “on the premises of the diplomatic mission located at 40-42 avenue FOCH, 75016, *which is at the disposal of the Republic of Equatorial Guinea*”⁵², the Protocol Department recalled that the building in question was “not a part of the mission’s premises, ha[d] never been recognized as such, and *accordingly [was] subject to ordinary law*”⁵³. Nothing relating to the building’s ownership was mentioned in these exchanges, for good reason.

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2.12. When, the French judicial authorities carried out further searches at 42 avenue Foch in the context of the proceedings against Mr. Obiang Mangue, Equatorial Guinea, by a Note Verbale bearing the address 29 boulevard de Courcelles in Paris (8th arrondissement), sought expressly to claim ownership of the building, although it did so in terms which remain somewhat ambiguous:

“the Republic of Equatorial Guinea has acquired a townhouse at 42 avenue Foch. This is a building which is today included in the assets of the State of Equatorial Guinea in France.

On 17 October 2011, it was indicated that the official residence of the Chargée d’affaires heading the Embassy of Equatorial Guinea in France was established at 42 avenue Foch, 75116 Paris. *These are accordingly inviolable premises under the Vienna Convention.*

.....
The title to the property is in the process of being transferred to Equatorial Guinea, and you will find attached the company share certificates in the name of the State of Equatorial Guinea.”⁵⁴

Thus, Equatorial Guinea not only admits that it does not yet have any title to the building at 42 avenue Foch, it also fails to claim inviolability based on a right of ownership, which is in fact irrelevant in this regard.

2.13. The manner in which the Protocol Department responded to these assertions is interesting in several respects. It begins by reiterating the building’s status as already explained in the Notes Verbales of 11 and 31 October 2011, then recalls that

“[t]he Protocol Department . . . can only take into account a change of address for a chancellery or a residence if it has been provided with certain verified information:

- The end-occupancy date of the previous premises and the new status thereof (sale or end of rental agreement, with supporting documents) which results in the end of the official status and the related privileges and immunities.

⁵² Note Verbale No. 387/11 from the Embassy of the Republic of Equatorial Guinea to the Ministry of Foreign Affairs of the French Republic, 17 Oct. 2011 (Doc. No. 3 of the additional documents communicated by France on 14 Oct. 2016 in the context of Equatorial Guinea’s request for the indication of provisional measures); emphasis added.

⁵³ Note Verbale No. 5393 from the Ministry of Foreign Affairs of the French Republic to the Embassy of the Republic of Equatorial Guinea, 31 Oct. 2011 (Doc. No. 4 of the additional documents communicated by France on 14 Oct. 2016 in the context of Equatorial Guinea’s request for the indication of provisional measures); emphasis added.

⁵⁴ Note Verbale No. 187/12 from the Embassy of the Republic of Equatorial Guinea to the Ministry of Foreign Affairs of the French Republic, 15 Feb. 2012 (Doc. No. 10 of the additional documents communicated by France on 14 Oct. 2016 in the context of Equatorial Guinea’s request for the indication of provisional measures); emphasis added.

— The date of moving into the new premises, officially notified by Note Verbale (in this case, by the UNESCO Protocol Department)⁵⁵.

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Finally, after quoting the relevant provisions of Article 41, paragraph 1, of the VCDR, the Protocol Department notes that, “[a]s the building on avenue Foch is subject to ordinary law, by endeavouring to oppose an action conducted by the judicial authorities, Ms BINDANG OBIANG violated the provisions of the Vienna Convention”⁵⁶. Thus, by no means does the building’s ownership determine its status or the legal régime potentially associated with it; only the use of the building matters in this regard, in strict compliance with the letter of the VCDR.

B. A building’s ownership has no effect on entitlement to the régime of inviolability provided for by the Vienna Convention

2.14. In its Reply, Equatorial Guinea adopts an inconsistent position on the effect that a building’s ownership could potentially have on its status under the VCDR and the associated régime of inviolability. In its view,

“While it is true that, pursuant to Article 1 (*i*) of the Convention, the ‘premises of the mission’ are those used for the purposes of the mission ‘irrespective of ownership’, this does not mean that measures taken by the receiving State against a sending State’s ownership can never constitute a breach of Article 22. Such measures can indeed violate this provision, especially when ownership is the only title enabling the sending State to use a building for the purposes of its diplomatic mission.”⁵⁷

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2.15. As France has already recalled on several occasions⁵⁸, the legal owners of the building at 42 avenue Foch are currently still a number of Swiss companies, not Equatorial Guinea; unless the property were sold, the only way Equatorial Guinea could claim to be the building’s “owner”⁵⁹ would be if the assets of those companies were conflated with those of their shareholder — a conflation for which there is no legal basis or justification. As the Court has noted, “[c]onferring independent corporate personality on a company implies granting it rights over its own property, rights which it alone is capable of protecting”⁶⁰. Consequently, it is erroneous to claim that France, as the receiving State, took measures “against . . . [the] ownership” of Equatorial Guinea as the sending State.

2.16. Moreover, and above all, Equatorial Guinea fails to identify any measure taken against the ownership of the building at 42 avenue Foch that might have actually constituted a violation of Article 22 of the Convention⁶¹. It merely describes a hypothetical situation in which the receiving

⁵⁵ Note Verbale No. 802 from the Ministry of Foreign Affairs of the French Republic to the Embassy of the Republic of Equatorial Guinea, 20 Feb. 2012 (Doc. No. 13 of the additional documents communicated by France on 14 Oct. 2016 in the context of Equatorial Guinea’s request for the indication of provisional measures); emphasis added.

⁵⁶ *Ibid.*

⁵⁷ REG, para. 2.53. See also *ibid.*, para. 1.16.

⁵⁸ See, in particular, Comments of the French Republic on the replies of Equatorial Guinea to the questions put by Judge Bennouna and Judge Donoghue, 31 Oct. 2016, paras. 6-10.

⁵⁹ REG, para. 2.54.

⁶⁰ *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Preliminary Objections, Judgment, I.C.J. Reports 2007 (II)*, p. 605, para. 61. See also *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain), Second Phase, Judgment, I.C.J. Reports 1970*, p. 34, para. 41 (“[t]he separation of property rights as between company and shareholder is an important manifestation” of the distinction between these two entities).

⁶¹ See below, paras. 2.39-2.42.

State's conduct is said to carry "an ever-present risk of expulsion"⁶², which would in itself constitute a "situation of uncertainty which interferes with the proper functioning of the mission"⁶³. Thus, both the allegations against France and the harm supposedly incurred by Equatorial Guinea remain pure conjecture⁶⁴.

2.17. The VCDR leaves no doubt as to the absence of any link between ownership and inviolability. The three paragraphs of Article 22 directly link the régime of inviolability set out in that provision to the "premises of the mission". As Equatorial Guinea itself concedes, Article 1 (*i*) of the Convention defines such premises solely by how they are used, expressly excluding any considerations relating to their owner. Entitlement to the Article 22 régime is thus in no way dependent on ownership of the building in question.

2.18. Accordingly, and contrary to what is claimed by Equatorial Guinea, there is nothing "extraordinary"⁶⁵ in finding, as the European Court of Human Rights did in *Hirschhorn v. Romania*, that "even if the organisation in question did indeed enjoy such immunity, this in no sense acted as a bar to the transfer to the applicant of ownership rights over the disputed property"⁶⁶; the rationale for distinguishing between diplomatic inviolability and ownership has simply been transposed to the particular facts of the case. There is a clear dissociation in the Vienna Convention between questions concerning a building's ownership, on the one hand, and those relating to its diplomatic status and the associated legal régime, on the other; this is also supported by well-established practice⁶⁷.

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2.19. Furthermore, and after claiming the opposite, Equatorial Guinea ultimately concedes that "it is well established that ownership of a building is not conclusive when determining whether the building constitutes the premises of a diplomatic mission"⁶⁸. The internal consistency in what the Applicant is seeking to demonstrate here is unclear. At least this latest assertion tallies with those made by Equatorial Guinea previously, in particular when it acknowledged that the principle of inviolability was "not subject to ownership by the State of the property used as premises of its diplomatic mission"⁶⁹. Thus, the only question that matters is still whether, on the dates of the actions contested by Equatorial Guinea before the Court, the building at 42 avenue Foch could be considered as forming part of the premises of Equatorial Guinea's mission in Paris and therefore be covered by the régime of inviolability established by Article 22 of the VCDR. Only if the answer to this were in the affirmative (*quod non* in the present case) could it possibly be questioned whether a

⁶² REG, para. 2.54.

⁶³ *Ibid.* On the absence of such risk, see CR 2016/15, pp. 37-40, paras. 22-32 (Ascensio); CMF, para. 5.7 and para. 5.11.

⁶⁴ See below, Chap. 4.

⁶⁵ REG, para. 2.56.

⁶⁶ ECHR, *Hirschhorn v. Romania*, application No. 29294/02, decision of 26 July 2007, para. 60. See also German Federal Constitutional Court, *Jurisdiction over Yugoslav Military Mission (Germany) Case*, Case No. AVR XI (1963/64), 30 Oct. 1962, *International Law Reports (ILR)*, Vol. 38, pp. 162-170 ("an action for rectification of the land register aiming at the cancellation of an entry stating that a foreign State was the owner of the mission premises was not an action which interfered with the performance of the diplomatic functions of a foreign State, and accordingly the plaintiff's action for rectification of the land register should be allowed to proceed").

⁶⁷ See, for example, the internal memorandum of the Swiss Federal Department of Foreign Affairs published in L. Caflisch, "La pratique suisse en matière de droit international public 2004", *Swiss Review of International and European Law (SRIEL)*, Vol. 15, 2005/5, pp. 733-735.

⁶⁸ REG, para. 2.61.

⁶⁹ MEG, para. 8.26.

measure taken in relation to the building might affect its diplomatic inviolability. Ownership is of no consequence in this regard.

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II. The régime of inviolability provided for under the Vienna Convention is not applicable to the building at 42 avenue Foch

2.20. Since Equatorial Guinea filed its Application instituting proceedings, its position has varied considerably with regard to the date from which it claims the building at 42 avenue Foch should be considered to have acquired diplomatic status⁷⁰. Equatorial Guinea's contradictions in this regard are but a reflection of its shifting representations of reality over the course of the judicial proceedings concerning the building⁷¹. Above all, they are characteristic of the abusive conduct of the Applicant, which has sought to use the VCDR to shield the building from the legal consequences of the criminal proceedings against Teodoro Nguema Obiang Mangue⁷².

2.21. First of all, the Reply usefully clarifies this point. Beginning with the general overview of its position, Equatorial Guinea thus states:

“The building at 42 avenue Foch in Paris, for its part, acquired this [diplomatic] status on 4 October 2011. Consequently, any measures contrary to Article 22 of the VCDR which were taken against the building by the French authorities after that date engage France's international responsibility.”⁷³

While this assertion already excludes from the scope of the VCDR any actions ordered by the French judicial authorities before 4 October 2011, it is nonetheless not accompanied by any legally compelling evidence supporting the choice of that date. In this regard, Equatorial Guinea merely states that it “remains convinced that its interpretation of the VCDR is correct and that a building acquires diplomatic status when the sending State notifies the receiving State of the building's assignment for the purposes of its diplomatic mission”⁷⁴. Such an interpretation continues to rely on an unfounded conception of the VCDR, whereby identification of the premises of a diplomatic mission is a unilateral prerogative of the sending State (A), exercised irrespective of whether the building is actually assigned for diplomatic purposes (B).

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A. Despite unequivocal concessions, Equatorial Guinea continues to claim wrongly that a sending State can unilaterally impose on the receiving State its choice of premises for its diplomatic mission

2.22. In the part of its Reply where it seeks to demonstrate that a building's acquisition of diplomatic status “is not dependent”⁷⁵ on the receiving State's position in this regard, Equatorial Guinea claims the existence of a “right of the sending State to designate the premises it considers to be the most suitable and dignified to house its diplomatic mission in the receiving State. This in itself suggests that ‘prior official notification by a sending State of its intention to assign premises’

⁷⁰ For an account of these inconsistencies, see CMF, paras. 4.23-4.24, and below, Chap. 3, paras. 3.8-3.20.

⁷¹ See *ibid.*, paras. 4.20-4.22.

⁷² See below, Chap. 3.

⁷³ REG, para. 0.25.

⁷⁴ *Ibid.*, para. 0.25.

⁷⁵ *Ibid.*, p. 27.

is sufficient, and that ‘non-objection’ or ‘implicit consent’, as described by France in its Counter-Memorial, is not required under international law”⁷⁶.

2.23. On the face of it, this contention appears to mark a slight shift from the Applicant’s earlier positions on this question. Taking to its logical extreme the “declaratory”⁷⁷ régime mentioned in its response to the question put by Judge Donoghue, Equatorial Guinea had previously contended that Article 1 (*i*) of the Vienna Convention “may be understood as entitling the sending State to provide its own definition of the premises of its diplomatic mission”⁷⁸; seen from this perspective, the notification contained in the Note Verbale of 4 October 2011 was a simple “courtesy”⁷⁹, without “[t]he Convention requir[ing it]”⁸⁰. In light of the passage of the Reply quoted above, it would now appear that Equatorial Guinea at least accepts the requirement of official notification prior to any assignment of diplomatic premises. However, this development must be met with caution: Equatorial Guinea also continues to present the assignment of a building for diplomatic purposes as the sending State’s “sovereign decision”⁸¹, over which the receiving State has no control.

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2.24. This emphasis on unilateralism in fact continues to characterize Equatorial Guinea’s approach to the question: in its view, “for a building to acquire diplomatic status and to benefit from the protections afforded by the VCDR, it is generally sufficient for the sending State to assign the building for the purposes of its diplomatic mission and to notify the receiving State accordingly”⁸². As evidenced by its use of words such as “suggests”⁸³ and “generally”⁸⁴, Equatorial Guinea is nonetheless unable to provide a legal basis for its claim that this power of self-assessment lies solely with the sending State. The legal writings it cites in support of this interpretation⁸⁵ — which are supposed to show that the procedure for establishing premises of diplomatic missions does not depend on any form of assent by the receiving State — do not address the question of assignment but rather that of ownership⁸⁶.

2.25. The same can be said of the elements of State practice which Equatorial Guinea seeks to use to corroborate its own interpretation of the Convention: be it New Zealand’s *Guidelines for the Diplomatic and Consular Corps, Diplomatic Privileges and Immunities in Finland* or the *Manuale sul trattamento riservato al corpo diplomatico accreditato presso la Repubblica italiana*, the sending State’s freedom of choice, or the absence of any need to obtain the consent of the receiving State, concerns only the possibility to “locate and acquire property of their choice”, the

⁷⁶ REG, para. 2.10 (citing passages from CMF).

⁷⁷ Written replies of Equatorial Guinea to the questions put by Judge Bennouna and Judge Donoghue, 26 Oct. 2016, para. 23.

⁷⁸ WSEG, para. 1.61.

⁷⁹ MEG, para. 8.35.

⁸⁰ *Ibid.*

⁸¹ REG, para. 1.25.

⁸² *Ibid.*, para. 2.3.

⁸³ *Ibid.*, para. 2.10.

⁸⁴ *Ibid.*, para. 2.3.

⁸⁵ See *ibid.* paras. 2.3-2.4.

⁸⁶ E.g., in the excerpt of the commentary on the Vienna Convention cited by Equatorial Guinea, the author states that “Article 1 (*i*) of the Convention does not require a sending State to seek the approval of the receiving State *before acquiring property for use as premises of its mission*” (E. Denza, *Diplomatic Law: Commentary on the Vienna Convention on Diplomatic Relations*, Oxford, OUP, 4th ed., 2016, p. 16; emphasis added).

“acquisition or sale of real property in Finland” and “the conditions for the acquisition of immovable property by diplomatic missions”, respectively⁸⁷.

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2.26. Similarly, it is hard to see how Equatorial Guinea’s proposed analysis of British and United States legislation⁸⁸ supports its own position. On the contrary, these domestic legal instruments — to which France referred along with several other illustrations of State practice in its Counter-Memorial⁸⁹ — show that the receiving State has the power to oversee sending States’ designation of the premises of their diplomatic missions on its territory, by subjecting such designations to procedural or substantive requirements; it is unclear exactly how sending States might “object to” such oversight, as Equatorial Guinea curiously suggests with regard to the British legislation⁹⁰. As France has already recalled on several occasions⁹¹, the absence of any text formalizing the practices of receiving States is irrelevant from the standpoint of international law: like France, many States exercise their discretion as to whether a sending State’s designation of diplomatic premises is acceptable in both fact and law, without such practices ever being considered to be contrary to the VCDR⁹². Quite the opposite, their existence confirms France’s interpretation that the VCDR allows the receiving State some power of oversight. If the Convention were interpreted to exclude such power, then these various practices and laws would necessarily violate the Convention, a conclusion which Equatorial Guinea does not itself endorse.

2.27. Equally unconvincing is Equatorial Guinea’s repeated attempt⁹³ to construe Article 12 of the VCDR⁹⁴ as an *a contrario* confirmation of its argument that the receiving State’s only possibility under the law is to recognize the sending State’s choice of diplomatic premises. Giving Article 12 a scope which it clearly does not have — whereby the question of the designation of premises of diplomatic missions is answered “in full”⁹⁵ — Equatorial Guinea argues that this article contains an “express exception to the general rule”, the sole effect of which is to “limit the circumstances requiring the receiving State’s consent to those set out in Article 12”⁹⁶. This is to forget, yet again, that the provision in question requires the “express” consent of the receiving State and logically implies, contrary to what is claimed by Equatorial Guinea, that the designation of the premises of a diplomatic mission in the capital city of a receiving State remains, in any event, subject to the tacit approval of that State⁹⁷.

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2.28. To argue otherwise, as the Applicant does, is to advocate a one-sided and imbalanced reading of the VCDR which runs counter to the fundamental principles governing diplomatic relations between sovereign States. Perhaps it is to attenuate the inconsistencies and extremes of such a position that Equatorial Guinea now advances an interpretation of Article 1 (*i*) based on the existence of a “presumption of validity”. According to the Applicant,

⁸⁷ REG, para. 2.5, and fn. 61.

⁸⁸ See *ibid.*, paras. 2.27-2.29.

⁸⁹ CMF, para. 3.18.

⁹⁰ REG, para. 2.28.

⁹¹ See POF, para. 165, and CMF, para. 3.21.

⁹² See CMF, paras. 3.21-3.23.

⁹³ See MEG, para. 8.36, and CR 2018/3, p. 49, para. 20 (Kamto)).

⁹⁴ Article 12 reads as follows: “The sending State may not, without the prior express consent of the receiving State, establish offices forming part of the mission in localities other than those in which the mission itself is established.”

⁹⁵ REG, para. 2.21.

⁹⁶ *Ibid.*

⁹⁷ See CMF, para. 3.16.

“Rather than conferring on the receiving State the right to object to a sending State’s claims regarding the diplomatic status of property each time it considers there to be an abuse, the Convention’s object and purpose give rise to a presumption that such claims are valid, which is fundamental to the successful conduct of diplomatic relations based on the principle of reciprocity.”⁹⁸

2.29. At first sight, this “presumption of validity” has the merit of nuancing the scope that Equatorial Guinea otherwise seeks to give to the notification by a sending State of a building’s use for diplomatic purposes, by quite logically leaving the receiving State the possibility of overturning it if the circumstances so require. Moreover, the excerpt from the judgment of the German Federal Supreme Court which the Applicant adduces in support of this presumption⁹⁹ clearly attests to the relationship that must be established between a sending State and a receiving State when the use of a building for diplomatic purposes is at issue; as France pointed out in its Counter-Memorial, in the case in question, the German high court paid as much attention to the abundant evidence provided by the sending State in support of its claim as it did to the confirmation given by the German Minister for Foreign Affairs¹⁰⁰. More fundamentally, if such a régime of “presumption” does exist, as Equatorial Guinea now claims, it is because the receiving State at least has the right to call into question the sending State’s claims.

2.30. Similarly — and it is rather strange that Equatorial Guinea fails to point this out itself — the logical consequence of such a presumption would be to eliminate the risks enumerated by the Applicant when it complains of the “vulnerable position”¹⁰¹ in which the sending State would find itself with regard to the receiving State. Under such a presumption, any sending State acting in good faith could regard the receiving State’s silence following notification of a building’s intended use as that State’s consent to such use. Only in special circumstances could the receiving State express its refusal. This is exactly what happened in the present case: just one week after receiving its notification of 4 October 2011, the Protocol Department informed Equatorial Guinea of the reasons for which France could not grant its request¹⁰². In this instance, the French authorities’ prompt action ensured that there was no risk of the sending State finding itself in a vulnerable position as feared by Equatorial Guinea: by 11 October 2011, the latter knew exactly where it stood.

2.31. However, on examining Equatorial Guinea’s explanations, the “presumption of validity” it has asserted appears to be a smokescreen for the unilateral privilege it continues to claim in favour of the sending State. Although the Applicant does not expressly state that such a presumption should be irrebuttable, the means it describes to enable the receiving State to overturn the presumption are in fact ineffective¹⁰³. None of the provisions of the VCDR that are cited — be it Article 9 (declaration of *persona non grata*), Article 31, paragraph 4 (immunity from jurisdiction of diplomatic agents), or Article 32 (waiver of immunity from jurisdiction of diplomatic agents) — could enable the receiving State to respond to a notification by which a sending State might seek to have recognized as premises of its diplomatic mission a building which is clearly not used for such purposes.

⁹⁸ REG, para. 2.14.

⁹⁹ *Ibid.*, para. 2.16.

¹⁰⁰ See CMF, para. 3.37, and fn. 136.

¹⁰¹ REG, para. 2.23.

¹⁰² See above, para. 2.10.

¹⁰³ See REG, para. 2.15.

B. Equatorial Guinea continues to assert wrongly that a sending State can extend diplomatic status to buildings regardless of their actual assignment

2.32. In response to the detailed presentation made by France of the criterion of actual assignment¹⁰⁴ — by which it fully stands — Equatorial Guinea, in its Reply, objects only to a few considerations of no legal relevance.

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2.33. Thus, its sudden reliance¹⁰⁵ on the United Nations Convention on Jurisdictional Immunities of States and Their Property (which, moreover, is not in force) appears totally incongruous here. In the present case, the Court has found that it has jurisdiction on the sole basis of the VCDR; it cannot therefore address any “disregard”¹⁰⁶ for the 2004 Convention. Furthermore, an examination of the provisions relied on by Equatorial Guinea shows that they in no way support its claims and instead proves “informative”¹⁰⁷ of its manoeuvring here. The Applicant is clearly seeking to use these provisions to demonstrate that the principle of State immunity from post-judgment measures of constraint, laid down in Article 19 of the 2004 Convention, extends to property “used or intended for use in the performance of the functions of the diplomatic mission of the State”, referred to in Article 21 (1) (a). However, and aside from the fact that the latter provision is essentially intended to apply to property which, like bank accounts, is not mentioned in the Vienna Convention of 1961¹⁰⁸, Equatorial Guinea neglects to mention two important points: first, as stated in Article 3 (1) (a) of the 2004 Convention, the latter “is without prejudice to the privileges and immunities enjoyed by a State under international law in relation to the exercise of the functions of . . . its diplomatic missions”; second, it is generally accepted that the 2004 Convention does not cover criminal matters, which are at issue in the present case¹⁰⁹.

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2.34. In a similar vein, Equatorial Guinea seeks to give the Court a clearly unfounded picture of French practice regarding the assignment of premises for diplomatic purposes, including through the use of incomplete quotations. In its Counter-Memorial¹¹⁰, France endeavoured to show that Equatorial Guinea was fully informed of the French Protocol Department’s consistent application of the criterion of actual assignment, not only through their exchanges relating to the building at 42 avenue Foch, but also well before, when the department handled a request for tax exemption for the official residence of the Ambassador of Equatorial Guinea on rue de Verzy in the 17th arrondissement of Paris. In Equatorial Guinea’s view, “the tax exemption was granted long before the Ambassador of Equatorial Guinea took up residence in the new premises, and . . . Equatorial Guinea’s intended use of the building was sufficient for the French authorities”¹¹¹. There

¹⁰⁴ See CMF, paras. 3.24-3.42.

¹⁰⁵ REG, paras. 2.35-2.36.

¹⁰⁶ See *ibid.*, para. 2.36.

¹⁰⁷ *Ibid.*, para. 2.35.

¹⁰⁸ See C. Brown, R. O’Keefe, “Article 21”, in R. O’Keefe, C. J. Tams (eds.), *The United Nations Convention on Jurisdictional Immunities of States and their Property: A Commentary*, New York, OUP, 2013, p. 340.

¹⁰⁹ In the resolution by which it adopted the Convention, the United Nations General Assembly states that it “[a]grees with the general understanding reached in the Ad Hoc Committee that the United Nations Convention on Jurisdictional Immunities of States and Their Property does not cover criminal proceedings”; see A/RES/59/38, United Nations Convention on Jurisdictional Immunities of States and their Property, 2 Dec. 2004, para. 2. See also T. Treves, “Some Peculiarities of the UN Convention on Jurisdictional Immunities of States and Their Property: a Footnote on the Codification Technique”, in I. Buffard, J. Crawford, A. Pellet, S. Wittich (eds.), *International Law Between Universalism and Fragmentation, Festschrift in Honour of Gerhard Hafner*, Leiden/Boston, Martinus Nijhoff Publishers, 2008, p. 505; G. Hafner, “Historical Background to the Convention”, in R. O’Keefe and C. Tams (eds.), *The United Nations Convention on Jurisdictional Immunities of States and their Property*, Oxford, OUP, 2013, p. 1.

¹¹⁰ See CMF, paras. 3.33-3.34.

¹¹¹ REG, para. 2.43.

is nothing to support this reductionist interpretation in the actual wording of the Note Verbale by which the Protocol Department transmitted to Equatorial Guinea the relevant decision made by the Tax Legislation Department of the Ministry for the Economy and Finance. In granting the exemption requested¹¹², the competent department took express account of the following:

- the deed of sale for the premises concerned, which was transmitted by the notary, stated that “the buyer hereby declares and agrees that the property, object of this sale, is to be used exclusively as the official residence of the Ambassador of the Republic of Equatorial Guinea”¹¹³; there is no deed of sale (or lease agreement) for the building at 42 avenue Foch, let alone one which might include an undertaking of exclusive use;
- the exemption granted “[could] be withdrawn should the property be reassigned”¹¹⁴;
- the Embassy had to notify the competent French authorities of “the Ambassador’s date of arrival at the new premises *and to communicate to it the assignment given to the vacated premises* at 16 avenue Baudelaire in Sartrouville (Yvelines)”¹¹⁵.

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2.35. This detailed explanation is a fair reflection of French practice as it was recalled to Equatorial Guinea when it sought to have the building at 42 avenue Foch recognized as part of the premises used for the purposes of its diplomatic mission. It should be recalled that the Protocol Department informed Equatorial Guinea at the time that,

“[i]n 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 ‘the premises of the mission’, within the meaning of Article 1, paragraph (i), of the Vienna Convention on Diplomatic Relations of 18 April 1961, is determined on the date of completion of the assignment of the said premises to the offices 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 on Diplomatic Relations of 18 April 1961”¹¹⁶.

2.36. In its Reply, Equatorial Guinea does not hesitate to caricature this practice, hypothesizing that a building is considered to be used for diplomatic purposes only once “the move [has been] completed”¹¹⁷. That is not what France stated. All it asks is that a building which is intended to form part of premises “used for the purposes of the [diplomatic] mission”, within the

¹¹² Note Verbale No. 3190 from the Ministry of Foreign Affairs of the French Republic to the Embassy of the Republic of Equatorial Guinea, 6 July 2005 (CMF, Ann. 9).

¹¹³ *Ibid.*

¹¹⁴ *Ibid.*

¹¹⁵ *Ibid.*; emphasis added.

¹¹⁶ Note Verbale No. 1341 PRO/PID from the Ministry of Foreign Affairs of the French Republic to the Embassy of the Republic of Equatorial Guinea, 28 Mar. 2012 (Doc. No. 18 of the additional documents communicated by France on 14 Oct. 2016 in the context of Equatorial Guinea’s request for the indication of provisional measures).

¹¹⁷ REG, paras. 2.37-2.38.

meaning of Article 1 (i) of the VCDR, should actually be assigned for such purposes. For any sending State acting in good faith, such a requirement poses no problem.

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III. France has not breached its obligations to Equatorial Guinea under Article 22 of the Vienna Convention

2.37. In its Reply, Equatorial Guinea notes that

“France’s main argument as to why the measures taken against the building at 42 avenue Foch do not constitute violations of the VCDR is that the building did not acquire diplomatic status on 4 October 2011. It therefore does not deny that, should it be established that the building did acquire such status, the measures in question would engage its international responsibility”¹¹⁸.

From the beginning of the proceedings before the International Court of Justice, France has never made any such admission or implied anything that might give traction to this circular reasoning or the rash conclusion which Equatorial Guinea believes it can draw.

2.38. The Counter-Memorial sets out in detail the reasons why France considers that it has not breached any of its obligations under Article 22 of the VCDR¹¹⁹. There thus appears to be no need to revisit this subject, other than to respond briefly to the few new allegations made in the Reply.

2.39. One of these new allegations, at least, is welcome. In its Memorial, Equatorial Guinea suggested that France had “violated the prohibition . . . established under Article 22”¹²⁰ in conducting the “searches on 28 September and 3 October 2011”¹²¹, that is, before the notification of 4 October 2011. It now unequivocally concedes that only the measures taken by the French authorities “after that date”¹²² are at issue. Moreover, the period during which any breaches could have occurred is, according to Equatorial Guinea itself, very narrowly defined, since the Applicant does not cite any measures or incidents occurring after the date of the attachment (*saisie pénale immobilière*) of the building on 19 July 2012. All in all, there are therefore only two specific events — the search in February 2012 and the attachment carried out five months later — which could, according to Equatorial Guinea, give rise to the alleged violations of the Convention.

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2.40. Equatorial Guinea fails to give a detailed explanation of the reasons for its claim that the search which took place between 14 and 23 February 2012 constitutes a breach of Article 22. While acknowledging that the movable property seized on that occasion did not belong to its diplomatic mission, Equatorial Guinea simply states that “the seizure of the property is nonetheless unlawful, since it is the result of the French authorities entering the building in breach of Article 22 of the VCDR”¹²³. The circularity of this reasoning is plain to see. The search in question, which was ordered in the context of the judicial proceedings against Mr. Obiang Mangue, in fact

¹¹⁸ REG, para. 2.50.

¹¹⁹ See, in particular, CMF, paras. 3.61-3.68.

¹²⁰ MEG, para. 8.12.

¹²¹ *Ibid.*, para. 8.15.

¹²² REG, para. 2.49. Further on, Equatorial Guinea states that it “no longer insists on the question of the searches of 28 September and 3 October 2011, the Court having decided that it does not have jurisdiction to decide the aspect of the dispute relating to France’s violations of the immunity of State property” (*ibid.*, para. 4.12).

¹²³ *Ibid.*

concerned only his personal and private assets; as the Paris *Tribunal correctionnel* noted in its judgment of 27 October 2017, on that occasion, “no official documents were discovered concerning the State of Equatorial Guinea or indicating that the building might serve as a venue for official representation”¹²⁴. In other words, at that time at least, the building remained entirely at the “free disposal”¹²⁵ of a private individual and was in no way used for the purposes of Equatorial Guinea’s diplomatic mission in France.

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2.41. As regards the attachment of 19 July 2012, Equatorial Guinea first considers it to be an assault on ownership which can constitute, per se, a violation of Article 22¹²⁶. It has already been recalled that the question of a building’s ownership does not affect its entitlement to diplomatic status and, consequently, to the régime of inviolability provided for by the VCDR¹²⁷; the Applicant’s argument therefore cannot succeed in this regard. Equatorial Guinea also contends that Article 22, paragraph 3, of the Convention prohibits any measure of execution against premises of the mission¹²⁸. However — and this is precisely the point — on the date of the attachment, the building at 42 avenue Foch could not objectively be considered to form part of the premises of Equatorial Guinea’s diplomatic mission in Paris. What other meaning can be gleaned from the Note Verbale of 27 July 2012, whereby Equatorial Guinea sought to inform the Protocol Department 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”¹²⁹?

2.42. Given the flaws in this reasoning, Equatorial Guinea puts forward a new argument, relying on Article 22, paragraph 2, of the Convention¹³⁰. In its view, “the peace of the mission was disturbed as a result of the searches and attachment in 2012. Furthermore, these measures impaired the dignity of the mission, especially since they were widely covered in the media, painting a false and degrading picture of Equatorial Guinea both in France and elsewhere”¹³¹. Further on, the Applicant also refers, in this regard, to “an ever-present risk of expulsion”¹³² and the difficulty of installing in the building “all the systems needed for it to function effectively and efficiently as a diplomatic mission”¹³³. Yet ever since it declared moving there on 27 July 2012, the Embassy of Equatorial Guinea has never reported to the French authorities any incidents that could have affected the peace of the building at 42 avenue Foch. In another passage of the Reply, Equatorial Guinea itself states that, “[s]ince 27 July 2012, all of the Embassy’s offices have been housed in the building”¹³⁴. Moreover, as France has already had occasion to explain, protection was accorded to the premises at 42 avenue Foch — without prejudice to the non-recognition of their diplomatic

¹²⁴ Judgment of the 32nd *Chambre correctionnelle* of the Paris *Tribunal correctionnel*, 27 Oct. 2017, p. 31 [translation by the Registry].

¹²⁵ *Ibid.*

¹²⁶ See REG, para. 2.53.

¹²⁷ See above, paras. 2.17-2.19.

¹²⁸ See REG, para. 2.55.

¹²⁹ Note Verbale No. 501/12 from the Embassy of the Republic of Equatorial Guinea to the Ministry of Foreign Affairs of the French Republic, 27 July 2012 (Doc. No. 22 of the additional documents communicated by France on 14 Oct. 2016 in the context of Equatorial Guinea’s request for the indication of provisional measures).

¹³⁰ The text of Article 22, paragraph 2, reads as follows: “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”.

¹³¹ REG, para. 2.52.

¹³² *Ibid.*, para. 2.54.

¹³³ *Ibid.*

¹³⁴ *Ibid.*, para. 1.42.

status — on 13 October 2015 (because of a protest by members of the Equatorial Guinean opposition in France) and during the elections on 24 April 2016, when a polling station was set up there¹³⁵.

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2.43. Finally, “in the alternative”, the Applicant argues that, “whatever the correct interpretation” of the Convention, “Equatorial Guinea has been subjected to treatment which is arbitrary and discriminatory”¹³⁶. This arbitrariness is said to stem, in particular, from the fact that France allegedly refused to accept the building’s diplomatic character, on the basis of a flawed assessment of its ownership¹³⁷; it has already been shown that this was not the case¹³⁸. Similarly, contrary to what is claimed by the Applicant¹³⁹, the French authorities clearly informed Equatorial Guinea of France’s practice regarding the recognition of a building’s diplomatic status and followed this practice consistently in this instance¹⁴⁰.

2.44. As regards the complaint of discriminatory conduct — characterized by the fact that “no other State appears to have been subjected to the treatment received by Equatorial Guinea”¹⁴¹ — the Applicant would at the very least have to be able to establish that, in response to a claim similar to the one made on 4 October 2011, the French authorities had reacted differently. It is no wonder that such cases are so difficult to identify: in their ordinary diplomatic relations with France, sending States — fortunately — do not hide behind the abusive practices that the French authorities have been faced with here. Equatorial Guinea’s last-ditch allegation that France did not seek to implement the means offered by the VCDR¹⁴² does nothing if not reinforce this conclusion: none of the means in question would have been capable of solving the problem created by the conduct of Equatorial Guinea¹⁴³, whose sole — abusive — aim was to shield the building at 42 avenue Foch from judicial proceedings against a private individual.

¹³⁵ CR 2016/15, 18 Oct. 2016, p. 39, para. 25 (Ascensio).

¹³⁶ REG, para. 2.58.

¹³⁷ See *ibid.*, paras. 2.59-2.62.

¹³⁸ See above, paras. 2.9-2.13.

¹³⁹ See REG, paras. 2.63-2.67.

¹⁴⁰ See above, para. 2.35.

¹⁴¹ REG, para. 2.68.

¹⁴² See *ibid.*, paras. 2.72-2.74.

¹⁴³ See below, Chap. 3.

CHAPTER 3

THE ABUSE OF RIGHTS COMMITTED BY EQUATORIAL GUINEA

3.1. In its Reply dated 8 May 2019, the Republic of Equatorial Guinea claims that it “has acted reasonably and in good faith”¹⁴⁴, and therefore requests the Court to dismiss the abuse of rights “accusations”¹⁴⁵ made by the French Republic in its Counter-Memorial of 6 December 2018.

3.2. France agrees that “an abuse of rights is not to be lightly presumed, and that any finding of an abuse of rights can only be made in exceptional circumstances”¹⁴⁶. But it has clearly demonstrated in its Counter-Memorial that the exceptional circumstances of this case have the hallmarks of an abuse of rights by Equatorial Guinea.

3.3. It should first be recalled that France’s principal argument is that Equatorial Guinea could not compel it to grant the building at 42 avenue Foch the status of premises of the diplomatic mission and the protections associated with that status under the VCDR. Even if the Court were to find that the sending State does have a right under the VCDR to establish its diplomatic mission in the territory of the receiving State without restriction and without the receiving State having any say, Equatorial Guinea’s exercise of that right would still constitute an abuse of rights in this case, justifying France’s refusal to recognize the building’s diplomatic status.

3.4. Equatorial Guinea devotes very little attention to this matter in its Reply, despite announcing in its Written Statement on the preliminary objections that it was waiting for the merits of the case to address it¹⁴⁷. It would nonetheless be useful to make a few additional remarks. First, it should be recalled that, in order to determine whether (or not) an abuse of rights exists, the facts and circumstances of the case must be considered. And the statement of facts put forward by Equatorial Guinea in its Reply, and its interpretation of those facts, merely confirm that such an abuse exists in this case (I). In these circumstances, it is clear that the VCDR’s régime does not preclude France from refusing to grant diplomatic status to the building at 42 avenue Foch, not only for the reasons set out in the previous chapters, but also because of the abuse of rights committed by Equatorial Guinea (II).

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I. Equatorial Guinea’s latest contradictions

3.5. Even if a sending State could compel a receiving State to identify as a diplomatic mission any building located in its territory — *quod non*, as France has again demonstrated in the preceding chapter — Equatorial Guinea’s claim to the benefits of the VCDR and the *de facto* establishment of some of its offices on the premises of 42 avenue Foch following the express refusal of the French authorities to recognize that building as premises of a diplomatic mission¹⁴⁸

¹⁴⁴ REG, para. 3.3.

¹⁴⁵ *Ibid.*, para. 3.35.

¹⁴⁶ *Ibid.*, para. 3.5.

¹⁴⁷ See WSEG, para. 1.76.

¹⁴⁸ See CMF, paras. 4.15-4.27.

constitute an abuse of rights. The circumstances of this case are altogether exceptional¹⁴⁹ and leave no doubt in this regard, as shown by all the evidence produced during these proceedings.

3.6. France has furnished ample evidence in its earlier written pleadings¹⁵⁰ to establish Equatorial Guinea's abuse of rights, which consists in claiming the benefit of diplomatic status for a building involved in criminal proceedings against Mr. Teodoro Nguema Obiang Mangue, in other words, for private matters. Equatorial Guinea's acts and conduct, and the contradictory positions taken by its authorities, do not amount to "disputable inferences but [to] clear and convincing evidence which compels such a conclusion"¹⁵¹. These facts, taken together, characterize an objective situation of abuse of rights.

3.7. The facts relating to Equatorial Guinea's use of the building are central to the abuse of rights. The Reply again reveals the Applicant's contradictions (A), and when it claims to identify inconsistencies in France's position, it is actually its own discrepancies that are exposed (B).

41 A. The newly shifting position of Equatorial Guinea with regard to the date on which the premises of the building at 42 avenue Foch were first used

3.8. In its Reply, Equatorial Guinea states that "[i]n the years preceding Equatorial Guinea's acquisition of the building at 42 avenue Foch, Mr. Teodoro Nguema Obiang Mangue, who held a high-ranking office in the Equatorial Guinean State, allowed that building to be used for diplomatic and official purposes. Equatorial Guinea did indeed make such use of the building."¹⁵² This position is contradicted both by Equatorial Guinea's own assertions and by the facts. The inconsistencies in Equatorial Guinea's account since the emergence of the dispute are proof of this.

1. Inconsistencies relating to the use of the building at 42 avenue Foch for diplomatic purposes

3.9. As regards the date on which the building at 42 avenue Foch was first used for diplomatic purposes, it is worth briefly recalling the varying accounts put forward by Equatorial Guinea during these proceedings.

3.10. In its Application, Equatorial Guinea claimed that "[o]n 15 September 2011, [Mr. Teodoro Nguema Obiang Mangue] transferred his shareholder's rights in the companies [which owned the building] to the State of Equatorial Guinea. *Since then*, the building has been used by the diplomatic mission of Equatorial Guinea."¹⁵³ Thus, Equatorial Guinea initially established 15 September 2011 as the date on which the building's alleged "assignment" for diplomatic purposes began, without once claiming that it had been used for diplomatic purposes beforehand.

¹⁴⁹ In her dissenting opinion appended to the Court's Judgment of 6 June 2018 in the present case, Judge Donoghue observed in this regard that: "[t]he present case is such an exceptional circumstance. The sequence of actions taken by the applicant State is established . . . The purpose of those actions . . . is manifest. The evidence regarding the character of the Applicant's conduct is conclusive, easily meeting the heightened standards of proof" (para. 18).

¹⁵⁰ See CMF, paras. 4.15-4.57.

¹⁵¹ *Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v. Greece)*, Judgment, I.C.J. Reports 2011 (II), p. 685, para. 132.

¹⁵² REG, para. 1.2.

¹⁵³ Application of Equatorial Guinea (AEG), para. 20; emphasis added.

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3.11. In its written reply to Judge Donoghue’s question at the end of the hearings on the request for the indication of provisional measures, Equatorial Guinea stated that the building “acquired the status of premises of its diplomatic mission from the time when a diplomatic Note was sent to the French Ministry of Foreign Affairs, on 4 October 2011, informing it that the building *was being used* for the performance of the functions of Equatorial Guinea’s diplomatic mission”¹⁵⁴; it made the same claim in its Memorial¹⁵⁵.

3.12. It should be recalled that, in that Note Verbale of 4 October 2011, Equatorial Guinea claimed that it had “*for a number of years* had at its disposal a building located at 42 avenue Foch, Paris (16th arr.), which it uses for the performance of the functions of its diplomatic mission, a fact which it has hitherto not formally notified to [the Protocol Department of the French Ministry of Foreign Affairs]”¹⁵⁶. Similarly, in its reply to the question put by Judge Donoghue, Equatorial Guinea asserted that “[i]t had . . . happened previously, prior to 4 October 2011, that the building had been used to accommodate Equatorial Guinea’s diplomatic staff or other officials on special missions”¹⁵⁷. Equatorial Guinea has never offered a shred of evidence in support of this claim. France, on the other hand, has amply demonstrated that such an assertion was untenable in light of the findings of fact as to the building’s use.

3.13. In the hope of circumventing any objection, Equatorial Guinea merely argued in its Written Statement on the preliminary objections raised by France that

“repeated reference to the fact that in a Note Verbale of 4 October 2011 Equatorial Guinea stated that it had ‘for a number of years had at its disposal’ the building at 42 avenue Foch is of little relevance in view of the case against France. What is significant in this Note Verbale is that Equatorial Guinea sought to notify France that the building had been assigned as premises of its diplomatic mission.”¹⁵⁸

This was not an oversight or poor phrasing, however, but a completely false statement. And pointing it out is not “of little relevance”: it demonstrates the duplicity exhibited by Equatorial Guinea in claiming diplomatic protection since the emergence of the dispute. That is “[w]hat is significant in this Note Verbale” as regards the question of abuse of rights.

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3.14. In its Reply, Equatorial Guinea again offers no proof that the building was ever used by its diplomatic mission in France or for official purposes before 4 October 2011, contrary to what it most implausibly claims¹⁵⁹. This assertion, which is completely unsubstantiated, is contradicted by the facts established during the judicial investigation conducted by the French courts and by the

¹⁵⁴ Written replies of Equatorial Guinea to the questions put by Judge Bennouna and Judge Donoghue, 26 Oct. 2016, para. 21; emphasis added.

¹⁵⁵ MEG, para. 2.30.

¹⁵⁶ Note Verbale No. 365/11 from the Embassy of the Republic of Equatorial Guinea to the Ministry of Foreign and European Affairs of the French Republic, 4 Oct. 2011 (AEG, Ann. 8); emphasis added.

¹⁵⁷ Written replies of Equatorial Guinea to the questions put by Judge Bennouna and Judge Donoghue, 26 Oct. 2016, para. 22.

¹⁵⁸ WSEG, para. 1.38.

¹⁵⁹ See REG, para. 1.2, cited in para. 3.8 above.

testimony of employees of Mr. Teodoro Nguema Obiang Mangue, which established that there had been no diplomatic documents or activities in the building before summer 2012¹⁶⁰.

3.15. Moreover, in its Memorial, Equatorial Guinea claimed that autumn 2011 marked only the beginning of the transfer of its offices to the building at 42 avenue Foch, a process which is said to have continued until 27 July 2012¹⁶¹; this completely contradicts the idea that the building was already being used for diplomatic purposes on 4 October 2011, especially since, in February 2012, when movable property was seized from the building at 42 avenue Foch, no Embassy offices, diplomatic documents or archives were discovered there.

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3.16. In its reply to the question put by Judge Donoghue, Equatorial Guinea acknowledged that when, in a Note Verbale of 15 February 2012¹⁶², its Embassy requested protection for two Equatorial Guinean ministers who were to visit the building at 42 avenue Foch, “it was in fact in order to supervise preparations for the effective occupation of the building, which had been acquired for use as premises of the diplomatic mission of Equatorial Guinea”¹⁶³. In mid-February 2012, Equatorial Guinea was thus still at the stage of preparing for the Embassy’s transfer to the building. It also recognizes that all movable property seized from the building in February 2012 belonged to Mr. Teodoro Nguema Obiang Mangue and not to it or its diplomatic mission in France¹⁶⁴. All of this proves that, between September 2011 and February 2012, Equatorial Guinea had still not begun the effective transfer of the offices of its diplomatic mission to the building at 42 avenue Foch.

3.17. In its Reply, however, Equatorial Guinea states that the building had been “assigned *exclusively* for the purposes of its diplomatic mission in France”¹⁶⁵ since its acquisition on 15 September 2011, and that it had “notified France of that assignment” on 4 October 2011¹⁶⁶. The facts submitted to the Court, which have just been recalled, completely contradict this allegation. As has been established, all movable property seized by the French authorities from the building and its inner courtyard during the searches conducted on 28 September 2011 and 3 October 2011, and between 14 and 23 February 2012, belonged to Mr. Teodoro Nguema Obiang Mangue, and not to Equatorial Guinea or its Embassy in France. Equatorial Guinea explicitly recognizes this in its

¹⁶⁰ CR 2016/15, 18 Oct. 2016 (provisional measures), p. 29, para. 25 (Pellet). See record of on-site inspection and attachment of the townhouse located at 42 avenue Foch, 75016 Paris, 14 Feb. 2012 (doc. D.555) (Doc. No. 42 of the additional documents communicated by France on 14 Oct. 2016 in the context of Equatorial Guinea’s request for the indication of provisional measures); record of on-site inspection and attachment of the townhouse located at 42 avenue Foch, 75016 Paris, 15 Feb. 2012 (doc. D.556) (Doc. No. 43 of the additional documents communicated by France on 14 Oct. 2016 in the context of Equatorial Guinea’s request for the indication of provisional measures); record of further search of the townhouse located at 42 avenue Foch, 75016 Paris, 16 Feb. 2012 (doc. D.557) (Doc. No. 44 of the additional documents communicated by France on 14 Oct. 2016 in the context of Equatorial Guinea’s request for the indication of provisional measures); see also Judgment of the 32nd *Chambre correctionnelle* of the Paris *Tribunal correctionnel*, 27 Oct. 2017, p. 31.

¹⁶¹ MEG, para. 2.30: “The diplomatic mission of Equatorial Guinea in France transferred all its offices [to the building] in July 2012, after allowing due time to prepare for that move.” See also REG, para. 1.2: “Between September 2011 and July 2012, Equatorial Guinea gradually relocated the Embassy’s offices and stopped using the premises at 29 boulevard de Courcelles as premises of its diplomatic mission.”

¹⁶² Note Verbale No. 185/12 from the Embassy of the Republic of Equatorial Guinea to the Ministry of Foreign Affairs of the French Republic, 15 Feb. 2012 (Doc. No. 9 of the additional documents communicated by France on 14 Oct. 2016 in the context of Equatorial Guinea’s request for the indication of provisional measures).

¹⁶³ Written replies of Equatorial Guinea to the questions put by Judge Bennouna and Judge Donoghue, 26 Oct. 2016, para. 28.

¹⁶⁴ REG, para. 4.12.

¹⁶⁵ REG, para. 1.24; emphasis added.

¹⁶⁶ *Ibid.*

Reply¹⁶⁷. According to the Applicant, from September 2011 onwards, the building was assigned exclusively to its diplomatic mission in France; yet only the personal effects of Mr. Teodoro Nguema Obiang Mangue were found on its premises, until those effects were seized in February 2012. This is a strange situation, especially since Equatorial Guinea had previously claimed that, between September 2011 and February 2012, it had assigned the building for purposes other than those of its diplomatic mission.

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3.18. In its Reply, Equatorial Guinea implies that the decision to transfer the offices of its diplomatic mission to the building at 42 avenue Foch was the result of a long period of reflection which began in 2010¹⁶⁸, quite independently of the judicial proceedings instituted against Mr. Teodoro Nguema Obiang Mangue. It also claims that the arrangements for the transfer of its Embassy were set in motion “long before”¹⁶⁹ those proceedings. It should be recalled that on 17 October 2011, the Embassy of Equatorial Guinea presented the building as housing the new official residence of its Permanent Delegate to UNESCO¹⁷⁰. In its reply to the question put by Judge Donoghue at the end of the oral proceedings on the request for the indication of provisional measures, Equatorial Guinea acknowledged that this change in residence of its Permanent Delegate was only notified to UNESCO on 14 February 2012 — i.e. the same day on which the second set of searches began at 42 avenue Foch. It is therefore wrong to claim now, at the Reply stage, that the building was “assigned *exclusively* for the purposes of its diplomatic mission in France”¹⁷¹, without change, from the time it was acquired by Equatorial Guinea on 15 September 2011 and Equatorial Guinea “notified France of that assignment” on 4 October 2011¹⁷².

3.19. It is also clear from the circumstances that, in February 2012, Equatorial Guinea claimed that the building benefited from both the status of premises of its diplomatic mission in France, pursuant to the VCDR, and the status of residence of its Permanent Delegate to UNESCO, pursuant to the Headquarters Agreement concluded between that organization and France¹⁷³, the Permanent Delegate being said to have resided there from at least 17 October 2011. It did so even though it is established that there was nothing in the building to suggest that it was occupied by Ms Bindang Obiang or that it was being used by Equatorial Guinea’s diplomatic mission, since all

¹⁶⁷ REG, para. 4.12: “France maintains that Equatorial Guinea does not claim that the movable property seized belonged to its diplomatic mission. That is correct”. It merely states that “the seizure of the property is nonetheless unlawful, since it is the result of the French authorities entering the building in breach of Article 22 of the VCDR”.

¹⁶⁸ REG, para. 1.18.

¹⁶⁹ *Ibid.*, para. 1.19.

¹⁷⁰ Note Verbale No. 387/11 from the Embassy of the Republic of Equatorial Guinea to the Ministry of Foreign and European Affairs of the French Republic, 17 Oct. 2011 (MEG, Ann. 36).

¹⁷¹ REG, para. 1.24; emphasis added.

¹⁷² *Ibid.*

¹⁷³ Agreement between the Government of the French Republic and the United Nations Educational, Scientific and Cultural Organization regarding the Headquarters of UNESCO and the Privileges and Immunities of the Organization on French Territory, signed in Paris on 2 July 1954. Article 18 provides that:

“1. Representatives of Member States of the Organization at sessions of the various organs of the Organization and at conferences and meetings called by it; members of the Executive Board, alternates, permanent delegates accredited to the Organization and their deputies shall enjoy, during their stay in France on official duty, such privileges, immunities and facilities as are accorded to diplomats of equal rank belonging to foreign diplomatic missions accredited to the Government of the French Republic.

2. These privileges, immunities and facilities shall extend to the spouses and children under 21 of the above-mentioned persons.

3. Only the heads of delegations of Member States to the General Conferences of the Organization, the Chairperson of the Executive Board and permanent delegates accredited to the Organization with the rank of ambassador or minister plenipotentiary shall be assimilated to heads of diplomatic missions.”

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the furnishings and effects seized belonged to Mr. Teodoro Nguema Obiang Mangue, as Equatorial Guinea concedes¹⁷⁴. All this clearly contradicts the contention that the transfer had been carefully planned before the building was searched between September 2011 and February 2012. Above all, it demonstrates that Equatorial Guinea's aim was to shield the building and the property therein from any judicial seizure, and that this was for the personal benefit of Mr. Teodoro Nguema Obiang Mangue alone.

3.20. This accumulation of contradictions and discrepancies in Equatorial Guinea's position regarding the dates relating to the alleged uses of the building at 42 avenue Foch suffices to demonstrate the abuse of rights committed by Equatorial Guinea in invoking the régime of the VCDR to shield the property in question from the criminal proceedings brought against Mr. Teodoro Nguema Obiang Mangue in France.

2. *Inconsistencies linked to Equatorial Guinea's right of ownership of the building at 42 avenue Foch*

3.21. The question of Equatorial Guinea's alleged right of ownership of the building at 42 avenue Foch does not fall within the scope of the dispute submitted to the jurisdiction of the Court¹⁷⁵. From a factual point of view, however, Equatorial Guinea's claims in this regard are not without relevance to the question of abuse of rights. Equatorial Guinea attempts to suggest that it became the owner of the building "well before the criminal proceedings were initiated against the Vice-President of Equatorial Guinea and before any measure of constraint was taken against the building"¹⁷⁶. The deed of transfer of the shareholder rights in the Swiss companies which owned the building is dated 15 September 2011. Yet the first searches and seizures of vehicles from the building's courtyard took place on 28 September and 3 October 2011, i.e. less than 15 days later. This is not "well before", but entirely concomitant. Moreover, it was not "before" but *after* the first searches were conducted in the building that Equatorial Guinea undertook to inform the French authorities that it had acquired the ownership rights of the building and that it intended to establish its Embassy there. Once again, Equatorial Guinea offers the flimsiest of explanations for this troubling coincidence.

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3.22. It is also odd that Equatorial Guinea asserts, on the one hand, that it carefully prepared for the establishment of its diplomatic mission in the building (which, without offering any proof, it implausibly claims to have used for several years) and used the building effectively and exclusively for diplomatic purposes from 4 October 2011 (which is contradicted by the findings of fact of the French judicial authorities), and, on the other, that it nevertheless waited for almost a year before attempting to register itself as the owner of the building at the Land Registry. Between 15 September 2011 (the date that appears on the deed of transfer of the shares in the Swiss companies that owned the building) and 19 July 2012 (the date of the decision of the French courts to attach the building), there was nothing to prevent this registration from taking place.

3. *Inconsistencies linked to Equatorial Guinea's knowledge of the proceedings brought against Mr. Teodoro Nguema Obiang Mangue*

3.23. Similarly, Equatorial Guinea states that "[i]t was . . . on 14 February 2012, i.e. the day on which the French authorities first entered the building at 42 avenue Foch despite the express

¹⁷⁴ REG, para. 4.12.

¹⁷⁵ See Introduction above.

¹⁷⁶ REG, para. 1.19; emphasis added.

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opposition of the Embassy's Chargée d'affaires a.i., that [it] became aware of the fact that the building might be subject to measures of constraint"¹⁷⁷. According to the Applicant, the fact that the building was searched and property seized from it offered Equatorial Guinea no indication of that risk, since the search "was directed only at the vehicles belonging to Mr. Teodoro Nguema Obiang Mangue, which were parked in the building's... courtyard"¹⁷⁸. On the one hand, Equatorial Guinea was aware that criminal proceedings had been initiated against Mr. Teodoro Nguema Obiang Mangue and (at least the movable) assets he had acquired in France — since it was contesting the lawfulness of those proceedings¹⁷⁹ — and it knew that less than two weeks earlier, Mr. Teodoro Nguema Obiang Mangue had held the shares of the Swiss companies that owned the building in which those initial searches had taken place. Yet, on the other hand, Equatorial Guinea claims to have been unaware of the risk that this (immovable) property might also be affected by the judicial proceedings. This seems entirely improbable. In September 2011, Equatorial Guinea "merely drew France's attention to the ongoing judicial investigation which it regarded as unlawful"¹⁸⁰ in order to protect Mr. Teodoro Nguema Obiang Mangue and his assets. Noting that the criminal proceedings were continuing despite its protests, Equatorial Guinea then tried to shield Mr. Teodoro Nguema Obiang Mangue's assets by invoking the protection of the VCDR. This situation fits the definition of an abuse of rights.

4. *Inconsistencies in Equatorial Guinea's position on the findings made by the French police and judicial authorities in the building at 42 avenue Foch*

3.24. Lastly, it should be noted that although Equatorial Guinea disputes the validity of the findings made by the French police and judicial authorities¹⁸¹, it questions precisely none of the facts thus recorded. In particular, it implicitly recognizes that, until 15 September 2011 at least, the investigations were legitimately based on the consideration that the building belonged to Mr. Teodoro Nguema Obiang Mangue¹⁸², as did all the assets which were seized from it, since it makes no claim for reparation in that regard¹⁸³. These are the only facts of interest to the Court as regards the question of abuse of rights. The findings of the judicial proceedings relating to the money laundering offences are completely irrelevant in view of the subject-matter of the dispute as it now stands (if Equatorial Guinea means to challenge the validity of the findings of the French police and judicial authorities).

3.25. Once again, quite implausibly, Equatorial Guinea makes a clumsy attempt to convince the Court that the decision to make the building at 42 avenue Foch the premises of its diplomatic mission — at the very moment that building was the subject of a judicial investigation — was actually taken well in advance of those events, even though it has never before made such a claim and offers no evidence in support of it.

¹⁷⁷ REG, para. 1.29.

¹⁷⁸ *Ibid.*, para. 1.28.

¹⁷⁹ *Ibid.*, para. 1.32.

¹⁸⁰ *Ibid.*

¹⁸¹ *Ibid.*, paras. 1.8-1.9.

¹⁸² The Applicant merely claims that, on 15 September 2011, Mr. Teodoro Nguema Obiang Mangue transferred the shares of the Swiss companies which owned the building to Equatorial Guinea.

¹⁸³ REG, para. 4.12.

B. France has acted in good faith and consistently in response to Equatorial Guinea’s abusive claims concerning the building at 42 avenue Foch

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3.26. Its own contradictions notwithstanding, Equatorial Guinea seeks, in its Reply, to question the coherence and consistency of France’s position concerning the status of the building at 42 avenue Foch. A brief examination of the points raised suffices to demonstrate that these criticisms are unfounded. It would seem on the contrary that, in view of the circumstances of the case, France has acted in a pragmatic and highly conciliatory manner.

3.27. Implying a contradiction in the position of the French authorities, Equatorial Guinea expresses surprise that while, on the one hand, France maintains its refusal to recognize the building at 42 avenue Foch as premises of Equatorial Guinea’s diplomatic mission, “it nevertheless allows its authorities to go there to obtain visas”¹⁸⁴. The reason for this is quite simple, however: France does not want all its bilateral relations with Equatorial Guinea to be affected by the present dispute. France has repeatedly recalled its commitment to that bilateral relationship¹⁸⁵, as has Equatorial Guinea moreover¹⁸⁶. To enable visits and exchanges to take place, it was essential, from a practical point of view, that the French authorities engage with Equatorial Guinea’s visa office, established *de facto* at 42 avenue Foch; doing so, however, does not alter France’s position of principle in any way.

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3.28. It is regrettable that Equatorial Guinea seeks to exploit the goodwill of the French authorities to advance its claims. This is particularly true of the Applicant’s assertion that, “[d]uring the hearings on the request for provisional measures, France also acknowledged, through its Agent and counsel, that it had afforded the building protection under the VCDR on 13 October 2015 on account of a demonstration and on 24 April 2016 on the occasion of the presidential elections in Equatorial Guinea”¹⁸⁷. As one member of France’s legal team clearly stated during those hearings — and this is a direct citation — “the French Republic has provided protection for the premises at 42 avenue Foch, *at the same time as recalling its consistent position* that the diplomatic mission of the Republic of Equatorial Guinea was still located at 29 boulevard de Courcelles”¹⁸⁸. It is therefore not on the basis of the VCDR that France has been able to provide specific protection to the building in the past — as things stand, it is temporarily obliged to do so solely on the basis of the Court’s Order of 7 December 2016¹⁸⁹. Faced with a *de facto* situation, but wishing to avoid a deterioration of that situation or its bilateral relations, the French authorities have adopted certain pragmatic measures pending the resolution of the dispute between the two countries; however, they have done so without reconsidering their refusal to recognize the building at 42 avenue Foch as benefiting from the VCDR régime.

¹⁸⁴ REG, para. 3.28.

¹⁸⁵ See CR 2016/15, 18 Oct. 2016 (provisional measures), p. 8, para. 2 (Alabrune); CR 2018/2, 19 Feb. 2018 (preliminary objections), p. 10, para. 1 (Alabrune).

¹⁸⁶ See CR 2016/14, 17 Oct. 2016 (provisional measures), p. 14, para. 4 (Nvono Nca); CR 2018/3, 20 Feb. 2018 (preliminary objections), p. 8, para. 1 (Nvono Nca).

¹⁸⁷ REG, para. 3.28.

¹⁸⁸ CR 2016/15, 18 Oct. 2016, p. 38, para. 25 (Ascensio); emphasis added.

¹⁸⁹ *Immunities and Criminal Proceedings (Equatorial Guinea v. France), Provisional Measures, Order of 7 December 2016, I.C.J. Reports 2016 (II)*, p. 1171, para. 99:

“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.”

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3.29. Similarly, Equatorial Guinea claims that by collecting the taxes and duties relating to the acquisition, the French tax authorities have “officially” recognized Equatorial Guinea as the owner of the building¹⁹⁰. Yet Equatorial Guinea has acknowledged during these very proceedings, in its reply to the question put by Judge Bennouna at the end of the hearings on its request for the indication of provisional measures, that “because of the attachment order registered by the Paris *Tribunal de grande instance* at the Land Registration Department of the 8th arrondissement of Paris on 31 July 2012, it was legally impossible for Equatorial Guinea to register the property title directly under its name as the owner of the building at 42 avenue Foch”¹⁹¹. There can be no doubt, therefore, that the French tax authorities do not consider Equatorial Guinea to be the owner of the building at 42 avenue Foch. Nor is there anything surprising in the fact that the French tax authorities have allowed Equatorial Guinea to pay the taxes and duties owed in relation to that building. There is nothing in the rules to prevent them from being paid by a third party. The tax authorities are responsible for recovering taxes and duties. Questions regarding the ownership of immovable property located in French territory must be directed to the Land Registry. And, as Equatorial Guinea itself admits¹⁹², it is not listed as the owner of the building at 42 avenue Foch. Moreover, it should be noted that “[n]o request for a property or housing tax exemption has ever been made by the Embassy of the Republic of Equatorial Guinea for the premises at 42 avenue Foch, taxes from which are exempt official premises recognized as housing an embassy, pursuant to the provisions of the Vienna Convention on Diplomatic Relations of 18 April 1961. No application for a VAT refund has been submitted for the Embassy’s operating expenses in relation to the building at 42 avenue Foch”¹⁹³.

3.30. Equatorial Guinea relies on an interim order (*ordonnance en référé*) of the Paris *Tribunal de grande instance* dated 22 October 2013 to claim that France has “recognized Equatorial Guinea’s right of ownership of the property”¹⁹⁴. The Ministry of Foreign Affairs of the French Republic was not consulted by the judge presiding over those proceedings (*juge des référés*), whose finding that the building at 42 avenue Foch benefited from the status of diplomatic premises was therefore based exclusively on Equatorial Guinea’s claims. It is also important to emphasize the particular nature of the urgent applications procedure (*procédure de référé*), a summary procedure which seeks to “obtain from a single judge . . . any measures to which no serious opposition is raised or which are justified by the existence of a dispute”¹⁹⁵. Since the association of the building’s co-owners did not pursue the proceedings, there was no opportunity for the trial court (*juges du fond*) to rule on the case.

3.31. No conclusions can be drawn from the fact that the Ministry of Foreign and European Affairs did not protest to the Embassy of Equatorial Guinea following the transmission of the interim order of the Paris *Tribunal de grande instance*. In this regard, Equatorial Guinea omits to mention that, in accordance with the notification procedures for documents instituting procedures against foreign States (Art. 684, para. 2, of the Code of Civil Procedure), the summons was

¹⁹⁰ REG, paras. 3.21, 3.22 and 3.28.

¹⁹¹ Written replies of Equatorial Guinea to the questions put by Judge Bennouna and Judge Donoghue, 26 Oct. 2016, para. 16.

¹⁹² *Ibid.*

¹⁹³ Written statement of Ms de Coquereaumont, Deputy Director for Diplomatic Privileges and Immunities, dated 24 July 2019, annexed to this Rejoinder (Ann. 1).

¹⁹⁴ REG, para. 3.22.

¹⁹⁵ G. Cornu (ed.), *Vocabulaire juridique*, Paris, PUF, 7th ed., 2005, p. 767 [*translation by the Registry*]. See also Art. 808 of the Code of Civil Procedure: “In all cases of urgency, the president of the *Tribunal de grande instance* may order in urgent applications proceedings any measures to which no serious opposition is raised or which are justified by the existence of a dispute.” [*Translation by the Registry*] (French text available at the following address: <https://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000006411292&cidTexte=LEGITEXT000006070716&dateTexte=19760101>.)

transmitted through the Minister for Justice for service via diplomatic channels, and the Protocol Department of the Ministry of Foreign Affairs of France addressed it to Equatorial Guinea's Embassy at 29 boulevard de Courcelles¹⁹⁶, and not to 42 avenue Foch.

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3.32. Lastly, according to Equatorial Guinea, “in more recent Notes Verbales, the French Ministry of Foreign Affairs addressed itself to the Embassy of Equatorial Guinea located at ‘42 avenue Foch’”¹⁹⁷. This is another wholly unsubstantiated claim. There is no reference and no annex provided. The Protocol Department of the French Ministry of Foreign and European Affairs takes great care not to address official correspondence to 42 avenue Foch in Paris, as the Note Verbale appended to this written pleading attests¹⁹⁸. Moreover, it should be noted that, in practice, to ensure that correspondence is safely received, the Protocol Department contacts the Embassy of the Republic of Equatorial Guinea to enable a member of the Embassy's staff to collect it in person from the Quai d'Orsay. These are the practical arrangements that France has chosen to adopt to prevent the dispute from affecting the smooth functioning of its bilateral relations, but they do not in any way alter its rejection of Equatorial Guinea's abusive claims.

3.33. Having protested against the fact that “[f]rom the very beginning France has refused to recognize” Equatorial Guinea's claims, the Applicant now contends that the French authorities have acted inconsistently, to the point of recognizing Equatorial Guinea's rights as owner of the building at 42 avenue Foch. This is a futile endeavour.

3.34. In view of its dispute with Equatorial Guinea regarding the status of the building at 42 avenue Foch, France has put practical arrangements in place to preserve its bilateral relations and at the same time ensure that Equatorial Guinea's mission in Paris can fulfil its functions, regardless of its exact location. It has responded to each of Equatorial Guinea's approaches by Note Verbale and during meetings between the Embassy and the Ministry. Nevertheless, it has firmly maintained its refusal to consider the building at 42 avenue Foch as forming part of the premises of Equatorial Guinea's diplomatic mission in France. If Equatorial Guinea had been a good faith purchaser, it would have sought to abandon its acquisition of that building, which was the subject of a criminal investigation into money laundering offences, as soon as it learned of the proceedings' existence, rather than asserting the benefit of international legal protection to obstruct those proceedings.

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II. The abuse of rights committed by Equatorial Guinea justifies France's refusal to grant diplomatic status to the building at 42 avenue Foch

3.35. In view of the foregoing, and taking into account the positions taken by Equatorial Guinea in its Reply, France will recall, first, that the régime provided by the VCDR by no means precludes France from refusing to recognize the building at 42 avenue Foch on account of the abuse of rights committed by Equatorial Guinea (A) and, second, that the disputed measure (i.e. the refusal to recognize the building at 42 avenue Foch as diplomatic premises) does not constitute a countermeasure, but must be regarded, subsidiarily, as the logical consequence of the abuse of rights for which Equatorial Guinea is responsible (B).

¹⁹⁶ See REG, Ann. 6.

¹⁹⁷ REG, para. 3.28.

¹⁹⁸ Written statement of Ms de Coquereaumont, Deputy Director for Diplomatic Privileges and Immunities, dated 24 July 2019, annexed to this Rejoinder (Ann. 1).

3.36. First, since this provides perspective on the true subject-matter of the dispute and the rights at issue, it should be recalled that France has refused to grant diplomatic status only to the building at 42 avenue Foch. However, there have never been any issues with the other premises of Equatorial Guinea's diplomatic mission in France or the residences of its staff.

A. The régime provided by the Vienna Convention allows France to refuse to grant diplomatic status to the building at 42 avenue Foch on account of the abuse of rights committed by Equatorial Guinea

3.37. In its Reply, Equatorial Guinea maintains that the VCDR provides “specific means that can be used by the receiving State if it considers there has been a violation or an abuse of some kind. The receiving State can, for example, declare the head or any other member of staff of a diplomatic mission *persona non grata*, or even break off diplomatic relations with the sending State”¹⁹⁹; it further contends that, as a result, “it is not possible to take countermeasures that are not permitted, such as refusing to respect the inviolability and immunity of premises of diplomatic missions”²⁰⁰.

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3.38. This is a strange way of presenting the situation. Generally speaking, it should first be recalled that “countermeasures . . . are [*by their nature*] not permitted”²⁰¹, in so far as they are in themselves derogations from the law, but ones which are not unlawful if they are taken in response to an original internationally wrongful act²⁰². Furthermore, and in any event, France has not taken any countermeasures against Equatorial Guinea in this case. Contrary to Equatorial Guinea's allegations, France has never intended to take, nor has it ever taken, “countermeasures . . . such as refusing to respect the inviolability and immunity of premises of diplomatic missions”²⁰³. It refused to grant the building at 42 avenue Foch the benefit of diplomatic status when Equatorial Guinea first made its request²⁰⁴.

3.39. While it is true that the Court, like its predecessor, has never rejected an application on the grounds of abuse of rights, it is wrong to claim that it “has never applied [that doctrine] in a case”²⁰⁵. It has on a number of occasions examined allegations of abuse of rights put forward by certain States, but has found, in each case, that the circumstances required for its existence were not established. The Judgment recently delivered in the *Jadhav* case (*India v. Pakistan*) is a further illustration of this²⁰⁶. Far from raising questions as to the validity of the principle in positive law²⁰⁷, these precedents confirm its existence. What is more, Equatorial Guinea itself refers to the

¹⁹⁹ REG, para. 3.11.

²⁰⁰ *Ibid.*

²⁰¹ *Ibid.*

²⁰² See Arts. 49 to 54 of the ILC's Articles on Responsibility of States for Internationally Wrongful Acts (United Nations General Assembly resolution 56/83 of 12 Dec. 2001 (A/RES/56/83)).

²⁰³ REG, para. 3.11.

²⁰⁴ See Note Verbale No. 5007 from the Ministry of Foreign Affairs of the French Republic to the Embassy of the Republic of Equatorial Guinea, 11 Oct. 2011 (Doc. No. 2 of the additional documents communicated by France on 14 Oct. 2016 in the context of Equatorial Guinea's request for the indication of provisional measures), sent in response to Note Verbale No. 365/11 from the Embassy of the Republic of Equatorial Guinea to the Ministry of Foreign Affairs of the French Republic, 4 Oct. 2011 (Doc. No. 1 of the additional documents communicated by France on 14 Oct. 2016 in the context of Equatorial Guinea's request for the indication of provisional measures).

²⁰⁵ REG, para. 3.4.

²⁰⁶ *Jadhav (India v. Pakistan), Merits, Judgment of 17 July 2019*, paras. 54-58 and 121-124.

²⁰⁷ REG, paras. 3.4-3.5.

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jurisprudence of the Permanent Court of International Justice relating to abuse of rights²⁰⁸, and this Court invited the Parties, in its Judgment of 6 June 2018, to return to the question of abuse of rights at the merits phase of the case²⁰⁹ — a passage which was, moreover, referred to by the Court in its Judgment of 17 July 2019 in the *Jadhav* case²¹⁰. The régime governing abuse of rights may well be stringent, but this does not mean that it does not exist in positive law.

3.40. Abuse of rights is a “general principle of law”²¹¹ which is in no way precluded by the VCDR. On the contrary, the Convention makes express reference to it in its preamble²¹². By abusing rights it claims to hold under the VCDR, Equatorial Guinea has deprived itself of the possibility of asserting the benefit of those rights in respect of the building at 42 avenue Foch; this is what the abuse consists in and the basis which must be used to determine France’s correlative rights. Unlike in the *United States Diplomatic and Consular Staff* case, which is relied on by the Applicant²¹³ and in which the measures envisaged by the Convention provided an effective response to the alleged violations, those remedies would be inappropriate here:

- Under Article 9, the receiving State may declare any member or members of the sending State’s diplomatic staff *persona non grata*; but this would not have resolved the situation of the building at 42 avenue Foch, which was abusively disguised as a diplomatic mission by Equatorial Guinea.
- The same applies to the waiver of immunity from jurisdiction contemplated by Article 31, paragraph 4, and Article 32 of the VCDR, which concerns only diplomatic agents and not the mission, and which, moreover, is dependent on the goodwill of the sending State.
- As for the breaking-off of diplomatic relations mentioned in Article 45, not only would this have been against the wishes of either Party, it would also have made it impossible to achieve the desired objective, since, under those circumstances, “[t]he receiving State must . . . respect and protect the premises of the mission, together with its property and archives”. In other words, having recourse to this extreme solution would not have brought an end to the abuse; France would have been obliged to uphold the principle of inviolability in respect of the building at 42 avenue Foch, with no choice other than to wait for Equatorial Guinea to bring an end to its abusive actions.

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3.41. In this case, France was entitled to refuse to apply the provisions of the VCDR in respect of the building at 42 avenue Foch on account of the abuse of rights constituted by Equatorial Guinea’s request to that effect. In so doing, France did not make the Convention’s implementation conditional on Equatorial Guinea’s compliance with other international law obligations; it applied the VCDR, which provides that the rights and obligations set out in that instrument must not be used to benefit individuals, which is a clear example of abuse of rights²¹⁴.

²⁰⁸ REG, para. 3.6.

²⁰⁹ *Immunities and Criminal Proceedings (Equatorial Guinea v. France), Preliminary Objections, Judgment, I.C.J. Reports 2018 (I)*, p. 337, para. 151.

²¹⁰ *Jadhav (India v. Pakistan), Merits, Judgment of 17 July 2019*, para. 54.

²¹¹ World Trade Organization, *United States – Import Prohibition of Certain Shrimp and Shrimp Products*, Report of the Appellate Body (WT/DS58/AB/R), 12 Oct. 1998, para. 158.

²¹² VCDR, 18 Apr. 1961, para. 4 of the preamble: “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”.

²¹³ See REG, para. 2.15.

²¹⁴ In this regard see *Jadhav (India v. Pakistan), Merits, Judgment of 17 July 2019*, para. 123.

3.42. Consequently, first, France is not obliged under the provisions of the VCDR to grant diplomatic status to the building at 42 avenue Foch; second, and in any event, in view of the specific circumstances of the present case, France was entitled to oppose what clearly constituted an abuse of the rights conferred on the States parties by the VCDR.

B. The absence of a counter-claim for reparation has no effect on the existence of an abuse of rights committed by Equatorial Guinea

3.43. In its Reply, Equatorial Guinea asserts that “[t]here can be no abuse of rights because France prevented the exercise of the rights in question and it has suffered no harm”²¹⁵. This reasoning is entirely circular and posits the existence of rights, the reality and scope of which are precisely what this case is all about. Even supposing that the VCDR did afford Equatorial Guinea the rights it asserts (rights which France has shown in its Counter-Memorial and in the preceding chapters of this Rejoinder to be unfounded), the Applicant could not in any event rely on those rights in this case on account of its abusive conduct.

3.44. As France has demonstrated²¹⁶, Equatorial Guinea’s reliance on the VCDR régime is aimed solely at shielding the building at 42 avenue Foch from the legal proceedings brought before the French courts against Mr. Teodoro Nguema Obiang Mangue, i.e. “to benefit [an] individual[and not] to ensure the efficient performance of the functions of [the] diplomatic mission[]”, which is contrary to the object and purpose of the VCDR²¹⁷. This is what characterizes the situation of abuse of rights under the VCDR in this case.

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3.45. Second, Equatorial Guinea contends that France has suffered no harm as a result of Equatorial Guinea’s abuse of rights. According to the Applicant, it is “precisely because France did not allow Equatorial Guinea to exercise its rights under the VCDR that it cannot claim to have suffered any harm itself”²¹⁸. This is a fallacious argument: on the basis of the abuse of rights Equatorial Guinea has committed, it is asserting in respect of France alleged rights which it has assumed only as a result of fraudulent manoeuvres and the manipulation of certain facts. Yet the purpose of claiming these “rights” — which will be achieved if its claim is upheld — is to shield the building at 42 avenue Foch from the searches and the attachment decided by the French courts and to oblige France to guarantee that building diplomatic status. As has been noted, “[i]f the steps taken by the Applicant are given effect, real property in France’s territory that had been in the hands of an individual facing prosecution will be shielded from French authorities as inviolable mission premises that are ‘immune from search, requisition, attachment or execution’ under Article 22 of the Vienna Convention”²¹⁹. This is an infringement of a right which could clearly cause harm: under Article 31, paragraph 2, of its Articles on Responsibility of States, the International Law Commission (ILC) defined harm as including “any damage, whether material or moral, caused by the internationally wrongful act of a State”; in the commentary on that provision,

²¹⁵ REG, paras. 3.30-3.34.

²¹⁶ See CMF, paras. 4.15-4.57.

²¹⁷ VCDR, 18 Apr. 1961, para. 4 of the preamble: “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”.

²¹⁸ REG, para. 3.32.

²¹⁹ *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, Preliminary Objections, Judgment, I.C.J. Reports 2018 (I), dissenting opinion of Judge Donoghue, p. 386, para. 14.

the ILC also stated that it “includes damage caused to a State’s legal interests as such, whether or not that damage may be considered as ‘moral’”²²⁰.

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3.46. In this case, there can be no doubt that Equatorial Guinea’s conduct has caused harm to France, through the Applicant’s interference in the legal proceedings brought before the French courts to which Equatorial Guinea is not a party, the resources and means employed to deal with that interference, and the simple fact that the unfounded accusations of international law violations by France constitute moral damage.

3.47. Moreover, France, which has not made a counter-claim, considers at this stage that the Court’s rejection of Equatorial Guinea’s claims will be a satisfactory remedy²²¹.

3.48. For the reasons set out in this chapter, the French Republic once again requests the Court to reject, on the grounds of abuse of rights, all the claims put forward by Equatorial Guinea on the basis of the VCDR regarding the building at 42 avenue Foch and the furnishings and other objects seized in the context of the judicial proceedings instituted in France against Mr. Teodoro Nguema Obiang Mangue. It recalls, however, that this is merely a subsidiary request in the — in its view unlikely — event that the Court should find that the VCDR obliges France, in principle, to grant the building at 42 avenue Foch the status of diplomatic premises.

²²⁰ Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, *Yearbook of the International Law Commission (YILC)*, 2001, Vol. II, Part Two, p. 92, para. 5 of the commentary on Art. 31. [Translation by the Registry: while the text cited appears in the French version of the Draft articles, it is missing from the English version.]

²²¹ In the *Arrest Warrant* case, the Court noted that recognition that one party’s actions are unlawful may, in some circumstances, “constitute a form of satisfaction which will make good the . . . injury”, *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, Judgment, *I.C.J. Reports 2002*, p. 31, para. 75; see also *Corfu Channel (United Kingdom v. Albania)*, Merits, Judgment, *I.C.J. Reports 1949*, p. 35. The rejection of unfounded claims and the recognition of France’s lawful conduct in the case may, *mutatis mutandis*, constitute a satisfactory form of reparation for the harm caused to France by Equatorial Guinea’s abuse of rights.

FRANCE BEARS NO INTERNATIONAL RESPONSIBILITY

4.1. The French Republic has not violated any right that the Republic of Equatorial Guinea might be able to assert under the VCDR in the present case. Therefore, the comments on responsibility in this chapter are made entirely in the alternative; they continue the clarification provided in this respect in the Counter-Memorial.

4.2. As a preliminary point, France regrets that while the Republic of Equatorial Guinea affirms that “the Parties agree on the subject-matter of the dispute now before the Court”²²², it intentionally blurs the boundaries of the Court’s subject-matter jurisdiction as they result from the Judgment of 6 June 2018. In this regard, Equatorial Guinea states that it maintains “all its arguments” made in the Memorial²²³, even though a good many of them are irrelevant because they concerned the immunity of Mr. Teodoro Nguema Obiang Mangue and the protection of State property. It claims to analyse the alleged violations of the VCDR “in light of the unlawful criminal proceedings in relation to which they were committed”, thus expanding the discussion to include the “ownership” of the building at 42 avenue Foch, which falls outside the scope of the dispute over which the Court has jurisdiction²²⁴. It speaks of attachment of the “premises of the diplomatic mission”, not of the building, and of confiscation of “the premises”, rather than of the building, creating confusion between the assignment of premises to a diplomatic function and ownership of a building²²⁵. It asserts its claim for cessation of wrongful acts in respect of the attachment and confiscation, this time, “of the building”²²⁶. All of the foregoing continually clouds the discussion of responsibility and calls for certain clarifications and corrections.

4.3. Since the arguments put forward in Equatorial Guinea’s Reply follow the structure of France’s Counter-Memorial, this Rejoinder will maintain that same structure, addressing first the alleged harm (I), then the content of the responsibility (II).

I. The alleged harm

4.4. There is clearly a disagreement between France and the Republic of Equatorial Guinea as to the harm that can be alleged in the present case. In addition to the searches and the refusal to recognize the diplomatic status of the premises, which fall squarely within the scope of the dispute, Equatorial Guinea mentions “[t]he attachment of the building at 42 avenue Foch, followed by its confiscation”²²⁷. This calls for several comments.

4.5. First, and as a factual correction, it should be recalled that this building has not as yet been confiscated, because of the suspensive effect of the appeal in the criminal proceedings concerning Mr. Teodoro Nguema Obiang Mangue²²⁸. Second, it should also be recalled that

²²² REG, para. 4.3.

²²³ *Ibid.*, para. 4.2.

²²⁴ *Ibid.*, para. 4.4.

²²⁵ *Ibid.*, para. 4.6.

²²⁶ *Ibid.*

²²⁷ *Ibid.*, para. 4.8.

²²⁸ See CMF, para. 1.55.

attachment affects only the free disposal of the title to the building, not the building's use; it therefore cannot be assimilated to a measure of execution in respect of diplomatic premises, should the premises in question be recognized as having diplomatic status²²⁹. Third, and above all, the building's ownership is a question which falls outside the Court's subject-matter jurisdiction in the present case, since none of the provisions of the VCDR concern the protection of State property²³⁰.

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4.6. Moreover, the part of the Reply devoted to responsibility in no way specifies the nature of the harm suffered as a result of the potential confiscation of the building at 42 avenue Foch on the conclusion of the criminal proceedings. On reading another passage, it becomes clear that this harm purportedly arises from the uncertainty faced by the occupant of the premises due to the risk of expulsion following confiscation²³¹. The harm would thus be both non-material — the moral discomfort of the situation for a State — and doubly hypothetical, since it would be subject to the possibility of (i) confiscation being definitively ordered by the French courts, and (ii) a measure of expulsion being carried out, which cannot be presumed, especially in the highly unlikely event that the diplomatic character of the premises were to be recognized by the Court. There would also have to be no lease agreement between the Republic of Equatorial Guinea and the owner. The supposed harm thus depends on speculation about an altogether uncertain conjunction of future events, a situation which cannot give rise to reparation²³².

4.7. Equatorial Guinea turns next to the harm arising from the searches, first revisiting the parallel with the case concerning *United States Diplomatic and Consular Staff in Tehran*. While it admits that the factual background is patently different, Equatorial Guinea considers that “the applicable principle is the same”²³³. However, the principle is not at all the same: in the Judgment in that case, it was established that Iran incurred responsibility as a result of “successive *and continuing* breaches”²³⁴; the searches at issue in the present case, in contrast, took place at a specific point in time and are thus instantaneous acts. Consequently, a claim for cessation of wrongful acts cannot be made in respect of these searches, as confirmed by the commentaries on the ILC's 2001 Draft Articles on Responsibility of States for Internationally Wrongful Acts²³⁵.

4.8. Moreover, in paragraph 4.12 of the Reply, the Republic of Equatorial Guinea concedes a number of points raised in France's Counter-Memorial. First, it “no longer insists” that the searches of 28 September and 3 October 2011 are at issue in the present case²³⁶. Given that Equatorial Guinea then refers to the Court's Judgment of 6 June 2018, in which the Court found that it lacked jurisdiction in relation to “the immunity of State property”²³⁷, this also implies that Equatorial Guinea does not claim any violation of the VCDR on account of the French authorities entering the

²²⁹ See CMF, paras. 1.37-1.39.

²³⁰ See above, Chap. 2, paras. 2.1, 2.5, 2.14-2.19.

²³¹ REG, paras. 2.53-54.

²³² *Alabama (United States v. Great Britain)*, Award of 14 Sept. 1872, *Reports of International Arbitral Awards (RIAA)*, Vol. XXIX, p. 133; *Trail smelter case (United States of America, Canada)*, Award of 11 Mar. 1941, *RIAA*, Vol. III, p. 1931; *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, *Compensation, Judgment, I.C.J. Reports 2012 (I)*, p. 342, para. 49.

²³³ REG, para. 4.11.

²³⁴ *United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran)*, *Judgment, I.C.J. Reports 1980*, p. 41, para. 90; emphasis added.

²³⁵ *YILC*, 2001, Vol. II, Part Two, commentaries, pp. 216-217. See also CMF, paras. 5.5 and 5.14.

²³⁶ REG, para. 4.12.

²³⁷ *Ibid.*

building. This can be read as an admission that, on the dates in question, the building was not assigned to diplomatic functions.

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4.9. In that same paragraph, the Republic of Equatorial Guinea confirms that the assets seized during the searches which took place from 14 to 24 February 2012 did not belong to it²³⁸. The alleged harm would then arise solely from the manner in which the assets were seized, and Equatorial Guinea by no means claims that the process of conducting the searches caused material harm. The harm asserted is thus non-material.

4.10. As regards the non-recognition of the diplomatic status of the premises, the Republic of Equatorial Guinea expresses surprise that this act is characterized as instantaneous rather than continuing²³⁹. Yet this characterization is based on arguments supported by both Parties in the present case. In its Reply, the Republic of Equatorial Guinea now explains that the choice of where to establish its mission enjoys a “presumption of validity” under the VCDR²⁴⁰. At the same time, it contemplates the prospect of “possible abuse or violations”²⁴¹. In the interest of consistency, this should then lead it to acknowledge that the presumption is rebuttable. Accordingly, and by this logic, the legal debate would not concern a continuing act, but rather an act at a precise point in time: that by which the receiving State notifies its refusal with a view to overturning the “presumption of validity” relied on by the Republic of Equatorial Guinea. This is especially true if, in keeping with France’s position, one considers that the assignment of premises to a diplomatic mission is necessarily subject to the receiving State’s implicit or express consent and cannot be imposed on the receiving State when that State has expressly objected to it. The dispute thus concerns the act refusing the assignment of the premises for diplomatic purposes, in this instance the Note Verbale of 11 October 2011²⁴².

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4.11. Therefore, regardless of the position supported, the act marking the refusal to recognize the diplomatic character of the premises at 42 avenue Foch is the act giving rise to the dispute: it is an instantaneous act²⁴³. Conversely, by transferring its activities as of 27 July 2012 to the building at 42 avenue Foch despite the French authorities’ express refusal, the Republic of Equatorial Guinea created a *de facto* situation which, for its part, is a continuing act. As stated in Article 30 (a) of the 2001 Draft Articles on Responsibility of States, cessation is a consequence of a wrongful act only “if it is continuing”. It cannot be sought in respect of an act of refusal taking place at a specific point in time. A claim for cessation could apply, however, to the *de facto* situation created by the Republic of Equatorial Guinea notwithstanding that refusal.

²³⁸ REG, para. 4.12.

²³⁹ *Ibid.*, para. 4.13.

²⁴⁰ *Ibid.*, paras. 2.14 and 2.15.

²⁴¹ *Ibid.*, para. 2.15.

²⁴² Note Verbale No. 5007/PROD/PID from the Ministry of Foreign Affairs of the French Republic to the Embassy of the Republic of Equatorial Guinea, 11 Oct. 2011 (Doc. No. 2 of the additional documents communicated by France on 14 Oct. 2016 in the context of Equatorial Guinea’s request for the indication of provisional measures).

²⁴³ See, *mutatis mutandis*, *Phosphates in Morocco, Judgment, 1938, P.C.I.J., Series A/B, No. 74*, p. 26. See also *Mariposa Development Company and Others (U.S.A.) v. Panama*, 27 June 1933, *RIAA*, Vol. VI, pp. 338-341; European Commission on Human Rights (EComHR), *Mayer et al. v. Germany*, App. Nos. 18890/91, 19048/81, 19342/92 and 19549/92, Decision, 4 Mar. 1996, Decisions and Reports (DR) 85-B, p. 5; EComHR, *Brežny v. Slovak Republic*, App. No. 23131/93, Decision, 4 Mar. 1996, DR 85-A, p. 65; ECHR, *Malhous v. The Czech Republic*, App. No. 33071/96, Decision on admissibility, 13 Dec. 2000, p. 16; ECHR, *Prince Hans-Adam II of Liechtenstein v. Germany*, App. No. 42527/98, Judgment, 12 July 2001, para. 85; ECHR, *Beshiri et al. v. Albania*, App. No. 7352/03, Judgment, 12 Feb. 2007, para. 76.; ECHR, *Von Maltzan et al. v. Germany*, App. Nos. 71916/01, 71917/01 and 10260/02, Decision, 2 Mar. 2005, para. 74; ECHR, *Preussische Treuhand GmbH & Co. KG A.A. v. Poland*, App. No. 47550/06, Decision, 7 Oct. 2008, para. 61; ECHR, *Chiragov et al. v. Armenia*, App. No. 13216/05, Decision, 14 Dec. 2011, para. 96.; ECHR, *Călin et al. v. Romania*, App. Nos. 25057/11, 34739/11 and 20316/12, Judgment, 19 July 2016, para. 60.

4.12. The Republic of Equatorial Guinea further contends that there has “at the very least” been a “series of unlawful refusals”²⁴⁴. If that were so, there would still be multiple instantaneous acts, not a single continuing act. Nonetheless, it is important to examine the content of the Notes Verbales exchanged, which the Republic of Equatorial Guinea neglects to do because they show that its own position has varied widely. From 17 October 2011, the building is presented as the residence of Equatorial Guinea’s Permanent Delegate to UNESCO²⁴⁵. The Note Verbale of 12 March 2012 reverts to the initial claim; it then sets out a legal dispute and “reiterates” a request pertaining solely to the protection of the premises²⁴⁶. France’s responses refer back to its initial refusal and, at the same time, provide some clarification²⁴⁷. Subsequent Notes Verbales deepen the legal discussion, in light of the situation created by the notification of a transfer of activities to the building at 42 avenue Foch from 27 July 2012; that notification is not accompanied by a further request for recognition of the diplomatic character of the premises²⁴⁸. These exchanges thus instead reflect a “phase in the discussion”²⁴⁹, which still concerns the French authorities’ initial refusal to recognize the diplomatic character of the premises.

4.13. It should also be noted that the Republic of Equatorial Guinea provides no concrete evidence of any harm caused by the refusal to recognize the inviolability of the premises, all the while maintaining a certain degree of confusion. In its view, “[i]t is not necessary to demonstrate that incursions or material damage have actually occurred for Equatorial Guinea to suffer harm”²⁵⁰. This then gives the impression that it claims only *non-material* harm, consisting in harm to its dignity²⁵¹. Yet it then devotes a paragraph to the material harm that it claims to have suffered, the main aim of which seems to be to introduce claims relating to State property²⁵².

4.14. The alleged material harm consists first in the cost of acquiring the building. Clearly, this claim is made to defend only a proprietary interest, not any legal interest arising from the diplomatic status of the premises. Equatorial Guinea then cites the cost of maintenance, without it

²⁴⁴ REG, para. 4.14.

²⁴⁵ Note Verbale No. 387/11 from the Embassy of the Republic of Equatorial Guinea to the Ministry of Foreign Affairs of the French Republic, 17 Oct. 2011 (Doc. No. 3 of the additional documents communicated by France on 14 Oct. 2016 in the context of Equatorial Guinea’s request for the indication of provisional measures); Note Verbale No. 173/12 from the Embassy of the Republic of Equatorial Guinea to the Ministry of Foreign Affairs of the French Republic, 14 Feb. 2012 (MEG, Ann. 37); Note Verbale No. 251/012 from the Ministry of Foreign Affairs of the Republic of Equatorial Guinea to the Ministry of Foreign Affairs of the French Republic, 14 Feb. 2012 (MEG, Ann. 38); Letter from the President of the Republic of Equatorial Guinea to the President of the French Republic, 14 Feb. 2012 (MEG, Ann. 39).

²⁴⁶ Note Verbale No. 249/12 from the Embassy of the Republic of Equatorial Guinea to the Ministry of Foreign Affairs of the French Republic, 12 Mar. 2012 (MEG, Ann. 44).

²⁴⁷ Note Verbale No. 1341/PRO/PID from the Ministry of Foreign Affairs of the French Republic to the Embassy of the Republic of Equatorial Guinea, 28 Mar. 2012 (“referring to the . . . Note Verbale . . . of the Protocol Department No. 5007/PRO/PID dated 11 October 2011”) (Doc. No. 18 of the additional documents communicated by France on 14 Oct. 2016 in the context of Equatorial Guinea’s request for the indication of provisional measures); Note Verbale No. 1946/PRO/PID from the Ministry of Foreign Affairs of the French Republic to the Embassy of the Republic of Equatorial Guinea, 2 May 2012 (MEG, Ann. 46).

²⁴⁸ Note Verbale No. 501/12 from the Embassy of the Republic of Equatorial Guinea to the Ministry of Foreign Affairs of the French Republic, 27 July 2012 (MEG, Ann. 47); Note Verbale No. 517/12 from the Embassy of the Republic of Equatorial Guinea to the Ministry of Foreign Affairs of the French Republic, 2 Aug. 2012 (“further to *its* preceding Notes Verbales”; emphasis added) (MEG, Ann. 48); Note Verbale No. 3503/PRO/PID from the Ministry of Foreign Affairs of the French Republic to the Embassy of the Republic of Equatorial Guinea, 6 Aug. 2012 (MEG, Ann. 49).

²⁴⁹ *Phosphates in Morocco, Judgment, 1938, P.C.I.J., Series A/B, No. 74*, p. 28.

²⁵⁰ REG, para. 4.16.

²⁵¹ *Ibid.*, para. 4.17.

²⁵² *Ibid.*, para. 4.18.

65 being entirely clear whether it is referring to the building maintenance for which all owners are responsible, or the ordinary maintenance of premises which is normally the responsibility of whoever uses them, whatever their status. Finally, it mentions the taxes paid, even though it relies on the payment of dues and taxes as an argument to establish its title of ownership under French law²⁵³. Equatorial Guinea's Reply thus once again clouds the issues of responsibility by surreptitiously reintroducing the question of State property from the perspective of harm. Yet, as demonstrated in this Rejoinder²⁵⁴, this question is entirely separate from that of the assignment of the premises.

66 II. The content of the responsibility

4.15. In its Reply, the Republic of Equatorial Guinea outlines the consequences which, in its view, should flow from the alleged wrongful acts: cessation, for the attachment and confiscation; satisfaction, including guarantees of non-repetition, for the searches, attachment and confiscation; compensation, for material and moral harm; and continuance of the obligation to perform the obligations arising from the VCDR²⁵⁵. Unfortunately, these claims remain informed by a desire to expand the scope of the dispute to include the building's ownership and not to confine it to the building's status "as premises of the mission", to use the words of the Court's Judgment on jurisdiction in the present case. Moreover, they are based on arguments which are in themselves unconvincing and which take account of neither the lack of causality nor the Applicant's contribution to the harm that it alleges.

4.16. First, as regards cessation, the confiscation of the building obviously cannot be ceased, since it has not taken place. Moreover, an act of confiscation should be regarded as an instantaneous act, not a continuing one, which makes the claim for cessation inappropriate²⁵⁶. More importantly, such an act concerns the building's ownership, not the diplomatic use of the premises, and thus falls outside the scope of the present dispute. This last point, which is of course fundamental, also leads to the exclusion of the claim for cessation relating to the attachment, since attachment suspends the owner's right to dispose of property but does not affect its use²⁵⁷. What is more, the owners are Swiss companies, not Equatorial Guinea itself.

4.17. Next, the Reply mentions satisfaction, "including" guarantees of non-repetition, which implies that the guarantees are claimed in this respect alone. The special circumstances then put forward in support of this claim are particularly unconvincing²⁵⁸.

67 4.18. The Republic of Equatorial Guinea first argues that France's conduct is "arbitrary and discriminatory". This arbitrariness purportedly results from "[t]he major shifts in France's position"²⁵⁹, although the Counter-Memorial and the present Rejoinder have, on the contrary, demonstrated the consistency of France's position²⁶⁰. The allegation of discrimination, for its part,

²⁵³ MEG, paras. 2.23-2.25; REG, para. 1.20.

²⁵⁴ See above, Chap. 2, paras. 2.14-2.19.

²⁵⁵ REG, para. 4.6.

²⁵⁶ See above, in this chapter, the jurisprudence cited in fn. 243.

²⁵⁷ See above, para. 4.5.

²⁵⁸ REG, para. 4.20.

²⁵⁹ *Ibid.*, para. 2.68.

²⁶⁰ CMF, paras. 3.44-3.46, and above, Chap. 2, paras. 2.11 and 2.13, and Chap. 3, paras. 3.26-3.34.

is mainly based on the lack of domestic legislation on diplomatic relations²⁶¹, although the VCDR does not contain any obligation to legislate and many States rely on administrative practice and jurisprudence. Moreover, this allegation requires a comparison which is impossible to make here because, fortunately, the circumstances of the present case are unprecedented²⁶². In any event, the phrase “arbitrary and discriminatory” pertains to the legal arguments advanced by the Applicant in support of its interpretation of the VCDR. This is by no means a special circumstance, but simply one of the legal issues which form the subject-matter of the dispute and which the Court must decide on the merits.

4.19. Equatorial Guinea then affects to believe that France is invoking its domestic law, including the principle of separation of powers, to exonerate itself from responsibility²⁶³. That is completely false. France has painstakingly explained in its various written pleadings, and during the hearings in the previous phases of the proceedings, the content of its domestic law and the status of the judicial proceedings concerning Mr. Teodoro Nguema Obiang Mangue. Its aim in doing so has been to inform the Court to the best of its ability, while correcting the Applicant’s many misstatements. It is thus quite odd to regard these clarifications on the legal and factual background of the case as a special circumstance which would justify ordering guarantees of non-repetition.

4.20. It is equally strange to rely on the Court’s Order indicating provisional measures in this case to justify guarantees of non-repetition²⁶⁴, whereas the Order aims only to preserve the plausible rights of the Parties pending a judgment in the case, without in any way prejudging the issues on the merits²⁶⁵. Moreover, the French Republic has fully complied with the Order, which the Republic of Equatorial Guinea does not dispute.

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4.21. The last two forms of reparation sought by the Applicant are compensation and continuance of the obligation to implement the VCDR. The continuance of the obligation is self-evident and does not warrant a specific claim, since neither Party disputes that the VCDR remains applicable with regard to relations between the Parties²⁶⁶. The claim for compensation, however, calls for further comments.

4.22. In the Reply, compensation is presented as covering both material and moral harm. However, as explained above²⁶⁷, most of the harm mentioned in the Reply and falling within the scope of the Court’s jurisdiction is non-material. In respect of this harm, and in the highly unlikely event that the Court should conclude that there has been a violation of the Convention, the appropriate form of reparation would be satisfaction in the form of a finding that there has been a violation²⁶⁸.

²⁶¹ REG, para. 2.68.

²⁶² See above, Chap. 2, para. 2.44.

²⁶³ REG, para. 4.20.

²⁶⁴ *Ibid.*, para. 4.20.

²⁶⁵ *Immunities and Criminal Proceedings (Equatorial Guinea v. France), Provisional Measures, Order of 7 December 2016, I.C.J. Reports 2016 (II)*, p. 1171, para. 98.

²⁶⁶ See CMF, para. 5.23.

²⁶⁷ See above, paras. 4.9 and 4.13.

²⁶⁸ See CMF, para. 5.24.

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4.23. As regards the alleged material harm, it has not been established that there is a link with the refusal to recognize the assignment of the premises for diplomatic purposes. The Reply merely states bluntly that it results from “the fact that [Equatorial Guinea] cannot fully and safely use the building at 42 avenue Foch”, without providing a shred of evidence of any damage, let alone any attempt at an evaluation²⁶⁹. The only illustration it gives is the cost of purchasing the building, although that purchase has no causal link with the refusal and, according to the Reply itself, predates the refusal by a few days. Nor is there any causation in respect of the costs and expenses which would in any event be borne by the owner, in this instance the Swiss companies, or the occupant of the building. The Republic of Equatorial Guinea is thus content to remain vague in the hope of postponing the entire question of reparation until a later phase of the proceedings²⁷⁰. Yet, while it is true that compensation has been the subject of a separate phase in certain cases brought before the Court, in order for this to happen, the existence of substantial damage must be established beforehand²⁷¹. That is clearly not the case here.

4.24. This leaves one last aspect of the law of responsibility to be addressed, one which is of major relevance given the circumstances of the case. In the highly unlikely event that the Court were to conclude that France has violated the VCDR and rule out any abuse of rights, two questions would then become decisive with regard to reparation as a whole: the existence of a causal link and the contribution of the Republic of Equatorial Guinea to the alleged harm.

4.25. Article 39 of the ILC’s 2001 Draft Articles on Responsibility recognize that the injured State’s contribution to the harm must be taken into account in determining reparation²⁷². This principle of the law of responsibility has been recognized by the jurisprudence of the Court²⁷³; it has been applied on several occasions by international arbitral tribunals seised of investment disputes²⁷⁴. Equatorial Guinea, for its part, cites the ILC’s commentaries, as if they weakened France’s position, whereas they clarify the elements required to demonstrate contribution: a wilful or negligent action or omission of the injured State which contributed to the harm, without it being necessary for that negligence or wilful act or omission to be qualified as serious or gross²⁷⁵. These same commentaries add:

“It is possible to envisage situations where the injury in question is entirely attributable to the conduct of the victim and not at all to that of the ‘responsible’ State. Such situations are covered by the general requirement of proximate cause referred to in article 31, rather than by article 39.”²⁷⁶

²⁶⁹ REG, para. 4.18.

²⁷⁰ *Ibid.*, para. 4.25.

²⁷¹ See *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Judgment, I.C.J. Reports 2015 (II), p. 78, para. 226 (Nicaragua’s claim for compensation).

²⁷² See CMF, para. 5.16.

²⁷³ *LaGrand (Germany v. United States of America)*, Judgment, I.C.J. Reports 2001, p. 508, para. 116.

²⁷⁴ *MTD Equity Sdn. Bhd. and MTD Chili S.A. v. Chile*, ICSID Case No. ARB/01/7, Decision on the Application for Annulment, 21 Mar. 2007, paras. 93-101; *Occidental Petroleum Corporation and Occidental Exploration and Production Company v. Ecuador*, ICSID Case No. ARB/06/11, Award, 5 Oct. 2012, paras. 663-687; *Hulley Enterprises Limited (Cyprus) v. The Russian Federation*, PCA Case No. AA226, *Yukos Universal Limited (Isle of Man) v. The Russian Federation*, PCA Case No. AA227, *Veteran Petroleum Limited (Cyprus) v. The Russian Federation*, PCA Case No. AA228, Final Awards, 18 July 2014, paras. 1594-1637; *Copper Mesa Mining Corporation (Canada) v. The Republic of Ecuador*, CPA Case No. 2012-2, Award, 15 Mar. 2016, paras. 6.86-6.102.

²⁷⁵ *YILC*, 2001, Vol. II, Part Two, commentaries on Art. 39, para. 5.

²⁷⁶ *Ibid.*, fn. 660.

70 The relevance of these two articles (Articles 31 and 39) with regard to causation is well established²⁷⁷. A distinction thus emerges between harm actually caused entirely by the conduct of the State allegedly injured (Article 31) and harm that has several causes, one of which is the wilful or negligent conduct of that same State (Article 39).

4.26. In its Reply, Equatorial Guinea responds to this by arguing that it acquired the building at 42 avenue Foch “well before the criminal proceedings were initiated and well before coercive measures were taken against the building” and that it “always acted reasonably and in good faith, and in accordance with its consistent position that the building constituted the premises of its diplomatic mission”²⁷⁸.

4.27. Its first argument, which invites one to compare the timing of the French judicial proceedings with the date on which the building was acquired through shares in Swiss companies, is plainly false, as demonstrated in this Rejoinder²⁷⁹. At a minimum, it evidences persistent approximation, which is a form of negligence.

71 4.28. Equatorial Guinea’s supposedly consistent position regarding the premises’ assignment to its diplomatic mission is belied by the series of Notes Verbales offering such varying accounts that they reveal, at the very least, a particular negligence²⁸⁰. It will be recalled in this regard that, in its Note Verbale of 4 October 2011, the Embassy of Equatorial Guinea in France expressly acknowledged that it had omitted to inform the French authorities of the fact that it had “for a number of years” had at its disposal a building used for “the performance of the functions of its diplomatic mission”²⁸¹. Shortly thereafter, it designated the building as being intended for use as the residence of the Permanent Delegate of the Republic of Equatorial Guinea to UNESCO²⁸². It later stated that the actual transfer of the activities of its mission to 42 avenue Foch took effect on 27 July 2012²⁸³, which contradicts the idea that the building had been used “for a number of years”. The negligent presentation of the building’s assignment — the actuality of which was at the same time contradicted by the observations made during the searches — is thus the principal if not the only source of the harm now alleged by the Republic of Equatorial Guinea.

4.29. Finally, the Republic of Equatorial Guinea believes it detects “contempt” in the reference to the building located at 29 boulevard de Courcelles made in paragraph 5.22 of the Counter-Memorial; in this respect, it reasserts its freedom to choose where to establish its

²⁷⁷ *Occidental Petroleum Corporation and Occidental Exploration and Production Company v. Republic of Ecuador*, ICSID Case No. ARB/06/11, Award, 5 Oct. 2012, paras. 665-668; *Hulley Enterprises Limited (Cyprus) v. The Russian Federation*, CPA Case No. AA226, *Yukos Universal Limited (Isle of Man) v. The Russian Federation*, CPA Case No. AA227, *Veteran Petroleum Limited (Cyprus) v. The Russian Federation*, CPA Case No. AA228, Final Awards, 18 July 2014, paras. 1595-1599; *Copper Mesa Mining Corporation v. The Republic of Ecuador*, CPA Case No. 2012-2, Award, 15 Mar. 2016, paras. 6.87 and 6.91.

²⁷⁸ REG, para. 4.24.

²⁷⁹ See above, Chap. 3, paras. 3.21-3.24.

²⁸⁰ See above, Chap. 3, paras. 3.9-3.20.

²⁸¹ Note Verbale No. 365/11 from the Embassy of the Republic of Equatorial Guinea to the Ministry of Foreign Affairs of the French Republic, 4 Oct. 2011 (Doc. No. 1 of the additional documents communicated by France on 14 Oct. 2016 in the context of Equatorial Guinea’s request for the indication of provisional measures).

²⁸² See above, fn. 244.

²⁸³ Note Verbale No. 501/12 from the Embassy of the Republic of Equatorial Guinea to the Ministry of Foreign Affairs of the French Republic, 27 July 2012 (MEG, Ann. 47).

diplomatic mission²⁸⁴. However, the conditions for such a choice are the very subject-matter of the legal dispute brought before the Court, and to prohibit France from discussing them would be to show contempt for the judicial function of the Court and the principle of peaceful settlement of disputes. The choice which matters in terms of reparation is Equatorial Guinea's choice to transfer the activities of its diplomatic mission from a building theretofore recognized by both Parties as the seat of its mission, and which France continues to recognize as such *de jure*, to a building whose status is very particular. In this regard, the relevant date is that of the effective completion of the transfer, since it can be used to assess the causal link with the alleged harm, namely the supposed impairment of the proper functioning of the mission.

4.30. The transfer of the mission's activities to 42 avenue Foch was notified on 27 July 2012, in terms leaving no room for doubt ("henceforth"). Therefore, the transfer indisputably occurred at a time when the Republic of Equatorial Guinea — having chosen variously to assign the building to one activity rather than another, its varying positions being set out explicitly in the Notes Verbales to the French authorities recalled above — must have been aware that the building located at 42 avenue Foch was directly concerned by ongoing legal proceedings. The Republic of Equatorial Guinea thus made the fully informed decision, on its own, to create a *de facto* situation which it now presents as the source of harm. The cause of this harm lies in its own conduct.

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4.31. To conclude this chapter, the French Republic reaffirms its full compliance with the obligations contained in the VCDR. If the Court were to decide otherwise, it should dismiss the claims for cessation and guarantees of non-repetition, which are in no way justified, and find that the cause of the alleged harm lies in the conduct of the Republic of Equatorial Guinea. In the further and final alternative, if measures of reparation were to be ordered, the appropriate form of reparation would be a measure of satisfaction consisting in a finding that there has been a violation of the Convention.

²⁸⁴ REG, para. 4.25.

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SUBMISSIONS

For the reasons set out in this Rejoinder and in the Counter-Memorial of the French Republic, and on any other grounds that may be produced, inferred or substituted as appropriate, the French Republic respectfully requests the International Court of Justice to reject all the claims made by the Republic of Equatorial Guinea.

Paris, 14 August 2019

(Signed) Mr. François Alabrune,
Agent of the French Republic.

ANNEX 1

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**Written statement of Ms de Coquereaumont, Deputy Director for
Diplomatic Privileges and Immunities, dated 24 July 2019**

I the undersigned, Ms de Coquereaumont, in my capacity as Deputy Director for Diplomatic Privileges and Immunities of the Protocol Department of the Ministry for Europe and Foreign Affairs, hereby attest that:

1. The Diplomatic Privileges and Immunities Division of the Protocol Department has a privileged relationship with the diplomatic missions of foreign States in France. In view of the dispute between the French Republic and the Republic of Equatorial Guinea regarding the status of the building at 42 avenue Foch in Paris, the Diplomatic Privileges and Immunities Division is not sending any letters or Notes Verbales for the attention of the Embassy of the Republic of Equatorial Guinea to that address. To preserve bilateral relations and facilitate the smooth functioning of Equatorial Guinea's mission in Paris, practical arrangements have been put in place by France for all correspondence: the Diplomatic Privileges and Immunities Division telephones Equatorial Guinea's mission to ask it to collect any letters or Notes Verbales from the reception of the Protocol Department of the Ministry for Europe and Foreign Affairs, located at 57 boulevard des Invalides in Paris (7th arr.).
2. No request for a property or housing tax exemption has ever been made by the Embassy of the Republic of Equatorial Guinea for the premises at 42 avenue Foch, taxes from which are exempt official premises recognized as housing an embassy, pursuant to the provisions of the Vienna Convention on Diplomatic Relations of 18 April 1961. No application for a VAT refund has been submitted for the Embassy's operating expenses in relation to the building at 42 avenue Foch.

Done at Paris on 24 July 2019
