COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

IMMUNITÉS ET PROCÉDURES PÉNALES

(GUINÉE ÉQUATORIALE c. FRANCE)

ARRÊT DU 11 DÉCEMBRE 2020

2020

INTERNATIONAL COURT OF JUSTICE

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IMMUNITIES AND CRIMINAL PROCEEDINGS

(EQUATORIAL GUINEA *v.* FRANCE)

JUDGMENT OF 11 DECEMBER 2020

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IMMUNITIES AND CRIMINAL PROCEEDINGS

(EQUATORIAL GUINEA *v.* FRANCE)

Factual background — Judicial investigation into methods used to finance acquisition of assets in France by certain individuals, including Mr. Teodoro Nguema Obiang Mangue — Acquisition by Mr. Teodoro Nguema Obiang Mangue of building located at 42 avenue Foch in Paris part of investigation — Purported designation of building as diplomatic premises by Equatorial Guinea — Searches conducted in building by French investigators who seized movable assets — Exchanges between the Parties over question whether building at 42 avenue Foch part of premises of Equatorial Guinea's diplomatic mission — Building placed under attachment order (saisie pénale immobilière) *— Mr. Teodoro Nguema Obiang Mangue found guilty of money laundering offences by Paris* Tribunal correctionnel *— Judgment of Paris* Tribunal correctionnel *upheld by Paris* Cour d'appel *— Enforcement of sentences suspended pending outcome of further appeal* (pourvoi en cassation).

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Circumstances in which a property acquires status of "premises of the mission" under Vienna Convention on Diplomatic Relations — Ordinary meaning of provisions of Vienna Convention on Diplomatic Relations provides limited guidance in determining those circumstances — Context — Under Article 2 of Vienna Convention, establishment of diplomatic relations between States and of permanent diplomatic missions takes place by mutual consent — Difficult to reconcile this provision with any unilateral designation of the premises of the mission by sending State despite objection of receiving State — Unilateral imposition of a sending State's choice of premises not consistent with object and purpose of Convention to contribute to development of friendly relations among nations — Article 12 of Convention requiring express consent of receiving State prior to establishment of diplomatic offices outside locality in which mission established not open to a contrario *interpretation — State practice of some receiving States expressly requiring sending States to obtain prior approval and lack of objection to this practice weigh against finding that a sending State may unilaterally designate premises of its diplomatic*

mission — Preparatory work of Vienna Convention provides no clear indication of circumstances in which a property acquires status of "premises of the mission" — A receiving State may object to the sending State's choice of premises and choose modality of such objection — No specific requirement regarding modalities of such objection — Objection of receiving State must be timely and not arbitrary or discriminatory — If such conditions are met, a property does not acquire status of "premises of the mission".

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Question of status of building at 42 avenue Foch in Paris — France consistently objected to designation of building as premises of Equatorial Guinea's diplomatic mission — France communicated its objection in timely manner — Reasonable grounds for France's objection to Equatorial Guinea's designation of building — France's objection not arbitrary in character — France's position with respect to status of building not inconsistent — No evidence that France has acted differently in any circumstances comparable to those in present case — France's objection not discriminatory — Conduct of France did not deprive Equatorial Guinea of diplomatic premises already existing at separate address in Paris — Conclusion that building at 42 avenue Foch never acquired status of "premises of the mission" within meaning of Article 1 (i) *of Vienna Convention on Diplomatic Relations.*

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Consideration of Equatorial Guinea's final submissions — No breach by France of its obligations under Vienna Convention — No responsibility of France engaged — France under no obligation to recognize status of building at 42 avenue Foch as premises of diplomatic mission of Equatorial Guinea.

JUDGMENT

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

In the case concerning immunities and criminal proceedings,

between

the Republic of Equatorial Guinea,

represented by

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

as Agent;

Mr. Anatolio Nzang Nguema Mangue, Public Prosecutor of the Republic of Equatorial Guinea,
Mr. Juan Olo Mba, Minister Delegate for Justice of the Republic of Equatorial Guinea,
Mr. Pascual Nsue Eyi, Director, Ministry of Foreign Affairs of the Republic of Equatorial Guinea,
H.E. Mr. Miguel Oyono Ndong, Ambassador of the Republic of Equatorial Guinea to the French Republic,

as Members of the Delegation;

Mr. Maurice Kamto, Professor at the University of Yaoundé II, member of the Paris Bar, former Chairman of the International Law Commission,
Mr. Jean-Charles Tchikaya, member of the Bordeaux Bar,
Sir Michael Wood, KCMG, member of the International Law Commission, member of the Bar of England and Wales,
Mr. Francisco Evuy Nguema Mikue, *avocat* of the Republic of Equatorial Guinea,

as Counsel and Advocates;

Mr. Alfredo Crosato Neumann, Graduate Institute of International and Development Studies, Geneva,
Mr. Francisco Moro Nve Obono, *avocat* of the Republic of Equatorial Guinea,
Ms Magdalena Nanda Nzambi, *avocate* of the Republic of Equatorial Guinea,
Mr. Omri Sender, The George Washington University Law School, member of the Bar of Israel,
Mr. Alain-Guy Tachou-Sipowo, Lecturer at McGill University and Université Laval, member of the Bar of Quebec,
Mr. Nicholas Kaufman, member of the Bar of Israel,

as Counsel;

Ms Emilia Ndoho, Secretary at the Embassy of the Republic of Equatorial Guinea in Brussels,

as Assistant,

and

the French Republic,

represented by

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

as Agent;

Mr. Alain Pellet, Emeritus Professor at the University Paris Nanterre, former Chairman of the International Law Commission, member of the Institut de droit international,
Mr. Hervé Ascensio, Professor at the University Paris 1 Panthéon-Sorbonne,
Mr. Pierre Bodeau-Livinec, Professor at the University Paris Nanterre,
Mr. Mathias Forteau, Professor at the University Paris Nanterre,
Ms Maryline Grange, Associate Professor in Public Law at the Jean Monnet University in Saint-Etienne, University of Lyon,
Mr. Ludovic Legrand, Doctor of Public Law, University Paris Nanterre,

as Counsel;

Mr. Julien Boissise, Legal Consultant, Directorate of Legal Affairs, Ministry for Europe and Foreign Affairs of the French Republic,
Mr. Nabil Hajjami, Legal Consultant, Directorate of Legal Affairs, Ministry for Europe and Foreign Affairs of the French Republic,
Ms Sophie Lacote, Head of the Office of Economic, Financial and Social Law, the Environment and Public Health, Directorate of Criminal Affairs and Pardons, Ministry of Justice of the French Republic,

as Assistant Counsel;

H.E. Mr. Luis Vassy, Ambassador of the French Republic to the Kingdom of the Netherlands,
Ms Florence Levy, First Counsellor, Embassy of France in the Netherlands,
Ms Hélène Petit, Legal Consultant, Embassy of France in the Netherlands,
Ms Charlotte Daniel-Barrat, *Chargée de mission* for Legal Affairs, Embassy of France in the Netherlands,

as Members of the Delegation.

THE COURT,

composed as above,

after deliberation,

delivers the following Judgment:

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

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

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

3. The Registrar immediately communicated the Application to the French Government, in accordance with Article 40, paragraph 2, of the Statute of the Court. He also notified the Secretary-General of the United Nations of the filing of the Application by Equatorial Guinea.

4. In addition, by a letter of 20 June 2016, the Registrar informed all Member States of the United Nations of the filing of the Application of Equatorial Guinea.

5. Pursuant to Article 40, paragraph 3, of the Statute of the Court, the Registrar subsequently notified the Members of the United Nations, through the Secretary-General, of the filing of the Application, by transmission of the printed bilingual text.

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

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

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

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

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

> "France shall, pending a final decision in the case, take all measures at its disposal to ensure that the premises presented as housing the diplomatic mission of Equatorial Guinea at 42 avenue Foch in Paris enjoy treatment equivalent to that required by Article 22 of the Vienna Convention on Diplomatic Relations, in order to ensure their inviolability."

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

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

13. Pursuant to Article 43, paragraph 1, of the Rules of Court, the Registrar also addressed to States parties to the Vienna Convention on Diplomatic Relations (hereinafter the "Vienna Convention" or the "Convention"), and to States

parties to the Optional Protocol to the Vienna Convention, the notification provided for in Article 63, paragraph 1, of the Statute.

14. On 31 March 2017, within the time-limit prescribed by Article 79, paragraph 1, of the Rules of Court of 14 April 1978 as amended on 1 February 2001, France raised preliminary objections to the jurisdiction of the Court and the admissibility of the Application. Consequently, by an Order of 5 April 2017, the Court, noting that, by virtue of Article 79, paragraph 5, of the Rules of Court of 14 April 1978 as amended on 1 February 2001, the proceedings on the merits were suspended, fixed 31 July 2017 as the time-limit within which Equatorial Guinea could present a written statement of its observations and submissions on the preliminary objections raised by France. Equatorial Guinea filed such a statement within the time-limit so prescribed.

15. Public hearings on the preliminary objections raised by France were held from 19 to 23 February 2018.

16. By its Judgment of 6 June 2018, the Court upheld the first preliminary objection raised by France that the Court lacks jurisdiction on the basis of Article 35 of the Palermo Convention. However, it rejected the second preliminary objection that the Court lacks jurisdiction on the basis of the Optional Protocol to the Vienna Convention, and the third preliminary objection that the Application is inadmissible for abuse of process or abuse of rights. The Court thus declared that it has jurisdiction, on the basis of the Optional Protocol to the Vienna Convention, to entertain the Application filed by Equatorial Guinea, in so far as it concerns the status of the building located at 42 avenue Foch in Paris as premises of the mission, and that this part of the Application is admissible.

17. By an Order of 6 June 2018, the Court fixed 6 December 2018 as the time-limit for the filing of the Counter-Memorial of France. The Counter-Memorial was filed within the time-limit thus fixed.

18. By an Order of 24 January 2019, the Court authorized the submission of a Reply by Equatorial Guinea and a Rejoinder by France, and fixed 24 April 2019 and 24 July 2019 as the respective time-limits for the filing of those pleadings.

19. By an Order of 17 April 2019, further to a request made by Equatorial Guinea, the President of the Court extended those time-limits and fixed 8 May 2019 and 21 August 2019, respectively, as the new time-limits for the filing of the Reply and the Rejoinder. Those pleadings were filed within the time-limits thus extended.

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

21. Public hearings were held from 17 to 21 February 2020, during which the Court heard the oral arguments and replies of:

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

For France: Mr. François Alabrune,
Mr. Mathias Forteau,
Mr. Hervé Ascensio,

Mr. Pierre Bodeau-Livinec,
Ms Maryline Grange,
Mr. Alain Pellet.

*

22. In the Application, the following claims were made by Equatorial Guinea:

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

(a) With regard to the French Republic's failure to respect the sovereignty of the Republic of Equatorial Guinea,

(i) to adjudge and declare that the French Republic has breached its obligation to respect the principles of the sovereign equality of States and non-interference in the internal affairs of another State, owed to the Republic of Equatorial Guinea in accordance with international law, by permitting its courts to initiate criminal legal proceedings against the Second Vice-President of Equatorial Guinea for alleged offences which, even if they were established, *quod non*, would fall solely within the jurisdiction of the courts of Equatorial Guinea, and by allowing its courts to order the attachment of a building belonging to the Republic of Equatorial Guinea and used for the purposes of that country's diplomatic mission in France;

(b) With regard to the Second Vice-President of the Republic of Equatorial Guinea in charge of Defence and State Security,

(i) to adjudge and declare that, by initiating criminal proceedings against the Second Vice-President of the Republic of Equatorial Guinea in charge of Defence and State Security, His Excellency Mr. Teodoro Nguema Obiang Mangue, the French Republic has acted and is continuing to act in violation of its obligations under international law, notably the United Nations Convention against Transnational Organized Crime and general international law;

(ii) to order the French Republic to take all necessary measures to put an end to any ongoing proceedings against the Second Vice-President of the Republic of Equatorial Guinea in charge of Defence and State Security;

(iii) to order the French Republic to take all necessary measures to prevent further violations of the immunity of the Second Vice-President of Equatorial Guinea in charge of Defence and State Security and to ensure, in particular, that its courts do not initiate any criminal proceedings against the Second Vice-President of the Republic of Equatorial Guinea in the future;

(c) With regard to the building located at 42 avenue Foch in Paris,

(i) to adjudge and declare that, by attaching the building located at 42 avenue Foch in Paris, the property of the Republic of Equatorial Guinea and used for the purposes of that country's diplomatic mission in France, the French Republic is in breach of its obligations under international law, notably the Vienna Convention on Diplomatic Relations and the United Nations Convention [against

Transnational Organized Crime], as well as general international law;

(ii) to order the French Republic to recognize the status of the building located at 42 avenue Foch in Paris as the property of the Republic of Equatorial Guinea, and as the premises of its diplomatic mission in Paris, and, accordingly, to ensure its protection as required by international law;

(d) In view of all the violations by the French Republic of international obligations owed to the Republic of Equatorial Guinea,

(i) to adjudge and declare that the responsibility of the French Republic is engaged on account of the harm that the violations of its international obligations have caused and are continuing to cause to the Republic of Equatorial Guinea;

(ii) to order the French Republic to make full reparation to the Republic of Equatorial Guinea for the harm suffered, the amount of which shall be determined at a later stage."

23. In the written proceedings, the following submissions were presented by the Parties:

On behalf of the Government of Equatorial Guinea,

in the Memorial:

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

(a) With regard to [the] French Republic's failure to respect the sovereignty of the Republic of Equatorial Guinea,

(i) to adjudge and declare that the French Republic has breached its obligation to respect the principles of the sovereign equality of States and non-interference in the internal affairs of another State, owed to the Republic of Equatorial Guinea, in accordance with the United Nations Convention against Transnational Organized Crime and general international law, by permitting its courts to initiate criminal legal proceedings against the Vice-President of Equatorial Guinea for alleged offences which, even if they were established, *quod non*, would fall solely within the jurisdiction of the courts of Equatorial Guinea, and by allowing its courts to order the attachment of a building belonging to the Republic of Equatorial Guinea and used for the purposes of that country's diplomatic mission in France;

(b) With regard to the Vice-President of the Republic of Equatorial Guinea in charge of National Defence and State Security,

(i) to adjudge and declare that, by initiating criminal proceedings against the Vice-President of the Republic of Equatorial Guinea in charge of National Defence and State Security, His Excellency Mr. Teodoro Nguema Obiang Mangue, the French Republic has acted and is continuing to act in violation of its obligations under international law, notably the United Nations Convention against Transnational Organized Crime and general international law;

(ii) to order the French Republic to take all necessary measures to put an end to any ongoing proceedings against the Vice-President of the Republic of Equatorial Guinea in charge of National Defence and State Security;

(iii) to order the French Republic to take all necessary measures to prevent further violations of the immunity of the Vice-President of the Republic of Equatorial Guinea in charge of National Defence and State Security and, in particular, to ensure that its courts do not initiate any criminal proceedings against him in the future;

(c) With regard to the building located at 42 avenue Foch in Paris,

(i) to adjudge and declare that, by attaching the building located at 42 avenue Foch in Paris, the property of the Republic of Equatorial Guinea and used for the purposes of that country's diplomatic mission in France, the French Republic is in breach of its obligations under international law, notably the Vienna Convention on Diplomatic Relations and the United Nations Convention against Transnational Organized Crime, as well as general international law;

(ii) to order the French Republic to recognize the status of the building located at 42 avenue Foch in Paris as the property of the Republic of Equatorial Guinea, and as the premises of its diplomatic mission in Paris, and, accordingly, to ensure its protection as required by international law;

(d) In view of all the violations by the French Republic of international obligations owed to the Republic of Equatorial Guinea,

(i) to adjudge and declare that the responsibility of the French Republic is engaged on account of the harm that the violations of its international obligations have caused and are continuing to cause to the Republic of Equatorial Guinea;

(ii) to order the French Republic to make full reparation to the Republic of Equatorial Guinea for the harm suffered, the amount of which shall be determined at a later stage."

in the Reply:

"For the reasons set out in its Memorial and in this Reply, the Republic of Equatorial Guinea respectfully requests the International Court of Justice to adjudge and declare that:

(i) by entering the building at 42 avenue Foch in Paris used for the purposes of the diplomatic mission of the Republic of Equatorial Guinea in Paris, and by searching, attaching and confiscating that building, its furnishings and other property therein, the French Republic is in breach of its obligations under the Vienna Convention on Diplomatic Relations;

(ii) the French Republic must recognize the status of the building at 42 avenue Foch in Paris as premises of the diplomatic mission of the Republic of Equatorial Guinea, and, accordingly, ensure its protection as required by the Vienna Convention on Diplomatic Relations;

(iii) the responsibility of the French Republic is engaged on account of the violations of its obligations under the Vienna Convention on Diplomatic Relations;

(iv) the French Republic has an obligation to make reparation for the harm suffered by the Republic of Equatorial Guinea, the amount of which will be determined at a later stage."

On behalf of the Government of France,

in the Counter-Memorial:

"For the reasons set out in this Counter-Memorial, 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 of the claims made by the Republic of Equatorial Guinea."

in the Rejoinder:

"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."

24. At the oral proceedings, the following submissions were presented by the Parties:

On behalf of the Government of Equatorial Guinea,

"The Republic of Equatorial Guinea respectfully requests the International Court of Justice to adjudge and declare that:

(i) the French Republic, by entering the building located at 42 avenue Foch in Paris, which is used for the purposes of the diplomatic mission of the Republic of Equatorial Guinea in Paris, by searching, attaching and confiscating the said building, its furnishings and other property therein, has acted in violation of its obligations under the Vienna Convention on Diplomatic Relations;

(ii) the French Republic must recognize the status of the building located at 42 avenue Foch in Paris as the premises of the diplomatic mission of the Republic of Equatorial Guinea, and, accordingly, ensure its protection as required by the Vienna Convention on Diplomatic Relations;

(iii) the responsibility of the French Republic is engaged on account of the violations of its obligations under the Vienna Convention on Diplomatic Relations;

(iv) the French Republic has an obligation to make reparation for the harm suffered by the Republic of Equatorial Guinea, the amount of which will be determined at a later stage."

On behalf of the Government of France,

"For the reasons set out in its Counter-Memorial, its Rejoinder and the oral argument of its counsel during the hearings in the case concerning *Immunities and Criminal Proceedings* between Equatorial Guinea and France, the French Republic respectfully requests the International Court of Justice to reject all the claims made by the Republic of Equatorial Guinea."

* * *

I. Factual Background

25. The Court will begin with a brief description of the factual background to the present case, as previously recalled in its Judgment on preliminary objections of 6 June 2018 (*Immunities and Criminal Proceedings (Equatorial Guinea* v. *France), Preliminary Objections, Judgment, I.C.J. Reports 2018 (I)*, pp. 303-307, paras. 23-41). It will return to each of the relevant facts in greater detail when it comes to examine the legal claims relating to them.

26. On 2 December 2008, the association Transparency International France filed a complaint with the Paris Public Prosecutor against certain African Heads of State and members of their families in respect of allegations of misappropriation of public funds in their country of origin, the proceeds of which had allegedly been invested in France. This complaint was declared admissible by the French courts, and a judicial investigation was opened in 2010 in respect of "handling misappropriated public funds",

> "complicity in handling misappropriated public funds, complicity in the misappropriation of public funds, money laundering, complicity in money laundering, misuse of corporate assets, complicity in misuse of corporate assets, breach of trust, complicity in breach of trust and concealment of each of these offences".

The investigation focused, in particular, on the methods used to finance the acquisition of movable and immovable assets in France by several individuals, including Mr. Teodoro Nguema Obiang Mangue, the son of the President of Equatorial Guinea, who was at the time Minister of State for Agriculture and Forestry of Equatorial Guinea and who became Second Vice-President of Equatorial Guinea in charge of Defence and State Security on 21 May 2012.

27. The investigation more specifically concerned the way in which Mr. Teodoro Nguema Obiang Mangue acquired various objects of considerable value and a building located at 42 avenue Foch in Paris. On 28 September 2011, investigators conducted a search at 42 avenue Foch in Paris and seized luxury vehicles which belonged to Mr. Teodoro Nguema Obiang Mangue and were parked on the premises. On 3 October 2011, the investigators seized additional luxury vehicles belonging to Mr. Teodoro Nguema Obiang Mangue in neighbouring parking lots. On 4 October 2011, the Embassy of Equatorial Guinea in France sent a Note Verbale to the French Ministry of Foreign and European Affairs (hereinafter the "French Ministry of Foreign Affairs") stating that "[t]he 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". By a Note Verbale dated 11 October 2011, the Protocol Department of the French Ministry of Foreign Affairs indicated to the Embassy of Equatorial Guinea that the "building [located at 42 avenue Foch, Paris (16th arr.)] does not form

part of the premises of Equatorial Guinea's diplomatic mission. It falls within the private domain and is, accordingly, subject to ordinary law." The Protocol Department of the French Ministry of Foreign Affairs indicated in a communication of the same date addressed to the investigating judges of the Paris *Tribunal de grande instance* that "the building [located at 42 avenue Foch, Paris (16th arr.)] does not form part of the premises of the Republic of Equatorial Guinea's diplomatic mission, that it falls within the private domain and is, accordingly, subject to ordinary law".

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

29. From 14 to 23 February 2012, further searches of the building at 42 avenue Foch in Paris were conducted, during which additional items were seized and removed. By Notes Verbales dated 14 and 15 February 2012, describing the building as the official residence of the Permanent Delegate to UNESCO and asserting that the searches violated the Vienna Convention, Equatorial Guinea invoked the protection afforded by the said Convention for such a residence.

30. By a Note Verbale dated 12 March 2012, the Embassy of Equatorial Guinea asserted that the premises at 42 avenue Foch in Paris were used for the performance of the functions of its diplomatic mission in France. The Protocol Department of the French Ministry of Foreign Affairs responded on 28 March 2012, referring to its "constant practice" with respect to the recognition of the status of "premises of the mission" and reiterating that the building located at 42 avenue Foch in Paris could not be considered part of the diplomatic mission of Equatorial Guinea.

31. One of the investigating judges of the Paris *Tribunal de grande instance* found, *inter alia*, that the building at 42 avenue Foch in Paris had been wholly or partly paid for out of the proceeds of the alleged offences under investigation and that its real owner was Mr. Teodoro Nguema Obiang Mangue. He consequently ordered on 19 July 2012 the "attachment of the building" *(saisie pénale immobilière)*, a protective measure provided for by the French Code of Criminal Procedure which may be taken by a judge investigating a case in order to preserve the effectiveness of the potential confiscation of a building that might subsequently be ordered as a penalty. This decision was upheld on 13 June 2013 by the *Chambre de l'instruction* of the Paris *Cour d'appel*, before which Mr. Teodoro Nguema Obiang Mangue had lodged an appeal.

32. By a Note Verbale dated 27 July 2012, the Embassy of Equatorial Guinea in France informed the Protocol Department of the French Min-

istry of Foreign Affairs that "as from Friday 27 July 2012, the Embassy's offices are located at 42 avenue Foch, Paris (16th arr.), a building which it is henceforth using for the performance of the functions of its diplomatic mission in France".

33. By a Note Verbale dated 6 August 2012, the Protocol Department of the French Ministry of Foreign Affairs drew the Embassy's attention to the fact that the building located at 42 avenue Foch in Paris was the subject of an attachment order under the Code of Criminal Procedure, dated 19 July 2012, and that the attachment had been recorded in the mortgage registry *(Conservation des hypothèques)* on 31 July 2012. The Protocol Department stated that it was thus "unable officially to recognize the building located at 42 avenue Foch, Paris (16th arr.), as being the seat of the chancellery as from 27 July 2012".

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

35. On 2 January 2017, a hearing on the merits took place before the Paris *Tribunal correctionnel*. The President of the tribunal noted, *inter alia*, that, pursuant to the Order of the International Court of Justice of 7 December 2016, any confiscation measure that might be directed against the building located at 42 avenue Foch in Paris could not be executed until the conclusion of the international judicial proceedings.

36. The *Tribunal correctionnel* delivered its judgment on 27 October 2017, in which it found Mr. Teodoro Nguema Obiang Mangue guilty of money laundering offences committed in France between 1997 and October 2011. The tribunal ordered, *inter alia*, the confiscation of all the movable assets seized during the judicial investigation and of the attached building at 42 avenue Foch in Paris. Regarding the confiscation of this building, the tribunal, referring to the Court's Order of 7 December 2016 indicating provisional measures, stated that "the . . . proceedings [pending before the International Court of Justice] make the execution of any measure of confiscation by the French State impossible, but not the imposition of that penalty".

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

38. The Paris *Cour d'appel* rendered its judgment on 10 February 2020. It upheld, *inter alia*, the confiscation of the "property located in the

municipality of Paris, 16th arrondissement, 40-42 avenue Foch, attached by order of 19 July 2012". Mr. Teodoro Nguema Obiang Mangue lodged a further appeal *(pourvoi en cassation)* against this judgment. This appeal having a suspensive effect, no steps have been taken to enforce the sentences handed down to Mr. Teodoro Nguema Obiang Mangue.

II. Circumstances in which a Property Acquires the Status of "Premises of the Mission" under the Vienna Convention

39. In its Judgment on France's preliminary objections, the Court concluded that "it has jurisdiction to entertain the aspect of the dispute relating to the status of the building, including any claims relating to the furnishings and other property present on the premises at 42 avenue Foch in Paris" (*I.C.J. Reports 2018 (I)*, p. 334, para. 138). The Parties disagree on whether that building constitutes part of the premises of Equatorial Guinea's diplomatic mission in France and is thus entitled to the treatment afforded to such premises under Article 22 of the Vienna Convention. They also disagree on whether France, by the actions of its authorities in relation to the building, is in breach of its obligations under Article 22 (*ibid.*, pp. 315-316, para. 70).

40. Article 22 of the Vienna Convention states that:

> "1. The premises of the mission shall be inviolable. The agents of the receiving State may not enter them, except with the consent of the head of the mission.
>
> 2. The receiving State is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.
>
> 3. The premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment or execution."

41. The Court must first determine in which circumstances a property acquires the status of "premises of the mission" within the meaning of Article 1 *(i)* of the Vienna Convention. That Article provides that the "premises of the mission" are "the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used for the purposes of the mission including the residence of the head of the mission".

* *

42. In Equatorial Guinea's view, for a building to acquire "diplomatic status" and to benefit from the protections afforded by the Vienna Con-

vention, it is "generally sufficient" for the sending State to assign the building for the purposes of its diplomatic mission and notify the receiving State accordingly. The Applicant acknowledges that the definition of "premises of the mission" contained in Article 1 *(i)* of the Vienna Convention is silent as to the respective roles of the sending State and receiving State in the designation of diplomatic premises, but maintains that the text, context, and object and purpose of the Convention indicate that this role belongs to the sending State.

43. Equatorial Guinea contends that the object and purpose of the Vienna Convention is to create conditions that promote friendly relations between equal sovereign States, and it rejects the notion that the spirit of the Convention is rooted in mistrust or concerns about possible abuse. In light of this object and purpose, Equatorial Guinea argues that a sending State's contentions regarding the "diplomatic status" of property should be presumed valid. In its view, provisions of the Convention designed to address possible abuses — such as the power under Article 9 to declare mission staff *personae non gratae* — provide further evidence of this presumption of validity. According to Equatorial Guinea, these provisions exist because the Vienna Convention presupposes that diplomatic immunity will be respected, and not subject to evaluation, verification or approval by the receiving State in the first instance.

44. The Applicant takes the position that the Vienna Convention does not make the granting of the status of "diplomatic premises" subject to any explicit or implicit consent by the receiving State, as evidenced by the Convention's silence on this point. It argues that, when the drafters of the Vienna Convention considered it necessary for an act of the sending State to be made subject to the consent of the receiving State, they ensured that the Convention was explicit in this regard. Equatorial Guinea further contends that while Article 2 of the Vienna Convention provides that diplomatic relations can only be established by mutual consent, this does not mean that every aspect of those relations, once established, depends on such consent. In this regard, it notes several provisions of the Vienna Convention which require no consent on the part of the receiving State.

45. Equatorial Guinea points to the text of Article 12 of the Convention, which requires that the prior express consent of the receiving State be obtained before the sending State may establish offices forming part of its diplomatic mission in localities other than those in which the mission itself is established. In Equatorial Guinea's view, an *a contrario* reading of this provision confirms that the designation of premises within the locality in which the mission is established is not subject to the consent of the receiving State.

46. The Applicant takes issue with France's interpretation of Article 12, according to which the receiving State's implicit — if not express — consent must still be obtained even when opening new offices of a diplomatic mission in the same locality or transferring premises of the

mission within this locality. In Equatorial Guinea's view, such a concept of "implicit consent" would place the sending State in an uncertain and vulnerable position, as it would not know whether and when the premises of its mission would benefit from "diplomatic status".

47. Equatorial Guinea acknowledges that several States make the designation of the premises of diplomatic missions on their territory subject to some form of consent, and that this practice is not forbidden by the Vienna Convention. However, it contends that these States, by means of national legislation or clearly established practice, have explained their positions clearly and transparently to States which intend to establish or relocate diplomatic missions in their territory. Equatorial Guinea argues that any "control measure" the receiving State seeks to impose upon the designation of diplomatic premises by a sending State must be notified in advance to all diplomatic missions, must serve an appropriate objective that is consistent with the object and purpose of the Vienna Convention, and must be exercised in a reasonable and non-discriminatory manner. In the absence of such legislation or clearly established practice, the sending State's designation of the premises of the mission is "conclusive", and the receiving State may only object to this designation in co-ordination with the sending State *("en concertation avec l'Etat accréditant")*.

48. Equatorial Guinea asserts that France has no legislation or established practice which would require a sending State to obtain France's consent prior to designating property as premises of its diplomatic mission. In such circumstances, Equatorial Guinea considers that it is entitled to rely upon what it describes as a "long-standing bilateral and reciprocal" practice between itself and France, whereby the sending State's notification of the assignment of a building for the purposes of a diplomatic mission is sufficient for the building to acquire "diplomatic status".

49. Beyond the issue of consent, Equatorial Guinea argues that, even if there exists a requirement that property must be "effectively used for the purposes of the mission" in order to benefit from the status of "premises of the mission", this requirement is met where a building purchased or rented by a State is designated by that State as serving the purposes of its diplomatic mission and undergoes the necessary planning and refurbishment works to enable it to house the mission.

50. The Applicant rejects the notion that "actual" or "effective" assignment occurs only when a diplomatic mission has completely moved into the premises in question. In its view, such a position would not only be inconsistent with France's own practice but would constitute an extremely restrictive interpretation of the term "used for the purposes of the mission" in Article 1 *(i)* of the Vienna Convention. Equatorial Guinea further asserts that this interpretation would be unreasonable and would deprive the provision in Article 22 of the Vienna Convention on the inviolability of mission premises of *effet utile*, as the receiving State would be able to enter the premises of the sending State's diplomatic mission up

until the point at which the move was fully completed. Reviewing judicial practice in France and a number of other States, Equatorial Guinea contends that there is no evidence of a requirement that a mission fully move into a building before that building can be deemed "used for the purposes of the mission". Equatorial Guinea thus concludes that the notion of premises "used for the purposes of the mission" must encompass not only premises where a diplomatic mission is fully moved in, but also those which the sending State has assigned for diplomatic purposes.

51. Finally, Equatorial Guinea argues in the alternative that even if a receiving State enjoys discretion over the choice of premises of diplomatic missions in general, such discretion should be exercised in a manner that is reasonable, non-discriminatory and consistent with the requirements of good faith. In this respect Equatorial Guinea recalls Article 47 of the Vienna Convention, which provides that "[i]n the application of the provisions of the present Convention, the receiving State shall not discriminate as between States".

*

52. According to France, Equatorial Guinea incorrectly argues that a sending State can unilaterally impose its choice of premises for its diplomatic mission upon the receiving State. In France's view, the applicability of the Vienna Convention's régime of protection to a particular building is subject to compliance with "two cumulative conditions": first, that the receiving State does not expressly object to the granting of "diplomatic status" to the building in question, and, secondly, that the building is "actually assigned" for the purposes of the diplomatic mission.

53. France acknowledges that the Vienna Convention provides no details on the procedure for the granting of "diplomatic status" to the premises in which a sending State wishes to establish a diplomatic mission. It argues, however, that the ordinary meaning to be given to the definition of "premises of the mission" in Article 1 *(i)*, interpreted in light of the Convention's object and purpose, runs counter to Equatorial Guinea's argument that a sending State has "complete freedom in designating or changing the premises of its mission".

54. In developing this argument, France refers to what it characterizes as the "essentially consensual letter and spirit" of the Vienna Convention. It notes that Article 2 of the Convention provides that "[t]he establishment of diplomatic relations between States, and of permanent diplomatic missions, takes place by mutual consent". It further observes that while the receiving State must accept significant restrictions on its territorial sovereignty through the application of the Vienna Convention's inviolability régime, the sending State must use the rights conferred on

it in good faith. There exists, in France's view, the need for a "bond of trust" between the sending and receiving States. In keeping with this *ratio legis*, France contends, the designation of buildings as premises of the mission is not left to the sole discretion of the sending State.

55. France rejects Equatorial Guinea's *a contrario* reading of Article 12 of the Vienna Convention, noting that this provision refers only to "the express consent of the receiving State" being required for the establishment of mission offices in localities other than that in which the mission is located. In France's view, this provision does not indicate that the consent of the receiving State is not required for the designation of the premises of a diplomatic mission in the capital, but rather that consent in that case may be implicit.

56. France also invokes the practice of several States which it argues "make the establishment of premises of foreign diplomatic missions on their territory explicitly subject to some form of consent". In France's view, the fact that such practice exists, and that it is not considered to be contrary to the Vienna Convention, shows that the Convention does not confer upon the sending State any unilateral right to designate the buildings that are to house its mission. To the contrary, France maintains that nothing in the Vienna Convention prevents the receiving State from exercising some control over the designation of buildings that the sending State intends to use for its diplomatic mission. The fact that several States have adopted national practices to this effect corroborates, according to France, the "existence of a régime based on agreement between the parties, in accordance with the object and purpose of the Vienna Convention".

57. According to France, the absence of any instrument or text formalizing the practices of the receiving State is irrelevant from the point of view of international law. It asserts that many States which have not legally formalized their practices reserve the right to ascertain whether the sending State's choice of premises is acceptable both in fact and law, and that this is not considered to be contrary to the Vienna Convention.

58. Responding to Equatorial Guinea's assertion regarding the existence of a presumption of validity for the sending State's designation of diplomatic premises, France notes that Equatorial Guinea does not argue that such a presumption would be irrebuttable. Therefore, France considers that even if such a presumption did exist, it would mean that the receiving State would still possess the right to call into question the sending State's designation.

59. France further contends that a building constitutes diplomatic premises only if it is "effectively used" for the purposes of the sending State's diplomatic mission. In France's view, this results from the fact that Article 1 *(i)* defines the premises of the diplomatic mission as the buildings and lands "used for the purposes of the mission". The plain meaning of this definition, France contends, is that it is not sufficient for the building in question to have been chosen and designated by the sending State, but rather it is necessary for it to be actually assigned for the

purposes of the functions of the mission as defined in Article 3, paragraph 1, of the Vienna Convention. According to France, State practice confirms that this criterion of actual assignment ought to be met for a building to constitute "premises of the mission" within the meaning of the Vienna Convention. This practice is said to be evident in decisions of national and international courts, including those of France itself.

60. Finally, France does not deny that a receiving State must exercise the discretion it enjoys over the sending State's choice of diplomatic premises in a reasonable and non-discriminatory manner. However, it argues that, in order to demonstrate discriminatory treatment, the Applicant would at the very least have to establish that French authorities had reacted differently in a factual context similar to the present case. France contends that no other sending State has ever conducted itself in France as Equatorial Guinea did in the present case.

* *

61. The Court will interpret the Vienna Convention on Diplomatic Relations according to customary rules of treaty interpretation which, as it has repeatedly stated, are reflected in Articles 31 and 32 of the Vienna Convention on the Law of Treaties (see, for example, *Jadhav (India* v. *Pakistan), Judgment, I.C.J. Reports 2019 (II)*, pp. 437-438, para. 71; *Avena and Other Mexican Nationals (Mexico* v. *United States of America), Judgment, I.C.J. Reports 2004 (I)*, p. 48, para. 83). Under these rules of customary international law, the provisions of the Vienna Convention on Diplomatic Relations must be interpreted in good faith in accordance with the ordinary meaning to be given to their terms in their context and in the light of the object and purpose of the Convention. To confirm the meaning resulting from that process, to remove ambiguity or obscurity, or to avoid a manifestly absurd or unreasonable result, recourse may be had to subsidiary means of interpretation, which include the preparatory work of the Convention and the circumstances of its conclusion.

62. The Court considers that the provisions of the Vienna Convention, in their ordinary meaning, are of little assistance in determining the circumstances in which a property acquires the status of "premises of the mission". While Article 1 *(i)* of the Vienna Convention provides a definition of this expression, it does not indicate how a building may be designated as premises of the mission. Article 1 *(i)* describes the "premises of the mission" as buildings "used for the purposes of the mission". This provision, taken alone, is unhelpful in determining how a building may come to be used for the purposes of a diplomatic mission, whether there are any prerequisites to such use and how such use, if any, is to be ascertained. As both Parties have acknowledged, Article 1 *(i)* is silent as to the respective roles of the sending and receiving States in the designation of mission premises. Article 22 of the Vienna Convention provides no fur-

ther guidance on this point. The Court will therefore turn to the context of these provisions as well as the Vienna Convention's object and purpose.

63. Turning first to context, Article 2 of the Vienna Convention provides that "[t]he establishment of diplomatic relations between States, and of permanent diplomatic missions, takes place by mutual consent". In the Court's view, it is difficult to reconcile such a provision with an interpretation of the Convention that a building may acquire the status of the premises of the mission on the basis of the unilateral designation by the sending State despite the express objection of the receiving State.

64. Moreover, the provisions of the Convention dealing with the appointment and immunities of diplomatic personnel and staff of the mission illustrate the balance that the Convention attempts to strike between the interests of the sending and receiving States. Article 4 provides that the sending State's choice of head of mission is subject to the *agrément* of the receiving State. It further provides that the receiving State does not need to provide reasons for any refusal. On the other hand, the receiving State's prior approval is not generally required for the appointment of members of the mission's staff under Article 7. Pursuant to Article 39, those individuals who enjoy privileges and immunities enjoy them from the moment they arrive on the territory of the receiving State, or if they are already on the territory of the receiving State, from the moment their appointment is notified to the receiving State. However, these broad immunities are counterbalanced by the power of the receiving State, under Article 9, to declare members of a diplomatic mission *personae non gratae*.

65. In contrast, the Vienna Convention establishes no equivalent to the *persona non grata* mechanism for mission premises. If it were possible for a sending State unilaterally to designate the premises of its mission, despite objection by the receiving State, the latter would effectively be faced with the choice of either according protection to the property in question against its will, or taking the radical step of breaking off diplomatic relations with the sending State. Even in the latter situation, Article 45 of the Vienna Convention requires the receiving State to continue to respect and protect the premises of the mission together with its property and archives, prolonging the effects of the sending State's unilateral choice. In the Court's view, this situation would place the receiving State in a position of imbalance, to its detriment, and would go far beyond what is required to achieve the Vienna Convention's goal of ensuring the efficient performance of the functions of diplomatic missions.

66. As to the Vienna Convention's object and purpose, the preamble specifies the Convention's aim to "contribute to the development of friendly relations among nations". This is to be achieved by according sending States and their representatives significant privileges and immunities. The preamble indicates that "the purpose of such privileges and

immunities is not to benefit individuals but to ensure the efficient performance of the functions of diplomatic missions as representing States". The inclusion of this statement is understandable considering the restrictions of sovereignty imposed upon receiving States by the Vienna Convention's immunity and inviolability régime. The preamble thus reflects the fact that diplomatic privileges and immunities impose upon receiving States weighty obligations, which however find their *raison d'être* in the objective of fostering friendly relations among nations.

67. In light of the foregoing, the Court considers that the Vienna Convention cannot be interpreted so as to allow a sending State unilaterally to impose its choice of mission premises upon the receiving State where the latter has objected to this choice. In such an event, the receiving State would, against its will, be required to take on the "special duty" referred to in Article 22, paragraph 2, of the Convention to protect the chosen premises. A unilateral imposition of a sending State's choice of premises would thus clearly not be consistent with the object of developing friendly relations among nations. Moreover, it would leave the receiving State vulnerable to a potential misuse of diplomatic privileges and immunities, which the drafters of the Vienna Convention intended to avoid by specifying, in the preamble, that the purpose of such privileges and immunities is not "to benefit individuals". As the Court has emphasized,

> "[t]he rules of diplomatic law, in short, constitute a self-contained régime which, on the one hand, lays down the receiving State's obligations regarding the facilities, privileges and immunities to be accorded to diplomatic missions and, on the other, foresees their possible abuse by members of the mission and specifies the means at the disposal of the receiving State to counter any such abuse" (*United States Diplomatic and Consular Staff in Tehran (United States of America* v. *Iran), Judgment, I.C.J. Reports 1980*, p. 40, para. 86).

68. Equatorial Guinea contends that the Vienna Convention expressly states when the receiving State's consent is required, notably in Article 12, and that the lack of such a provision regarding the designation of the premises of the mission indicates that the receiving State's consent is not required in that context. The Court is not persuaded by this *a contrario* reasoning, since such an interpretation "is only warranted . . . when it is appropriate in light of the text of all the provisions concerned, their context and the object and purpose of the treaty" (*Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua* v. *Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2016 (I)*, p. 19, para. 37). In the present case, the Court does not consider such an *a contrario* reading to be consistent with the object and purpose of the Vienna Convention, as it would allow for the unilateral imposition of a sending State's choice of premises upon the receiving State and require

the latter to undertake the weighty obligations contained in Article 22 against its will. As the Court has observed, this would be detrimental to the development of friendly relations among nations and would leave receiving States without any appropriate and effective remedy in case of potential abuses. Moreover, with regard to Article 12 specifically, the fact that the Convention requires the express consent of the receiving State prior to the establishment of diplomatic offices outside the locality in which the mission is established is unsurprising, given that the receiving State would likely need to make special arrangements for the security of that office. However, this does not indicate that the receiving State cannot object to the sending State's assignment of a building to its diplomatic mission, thus preventing the building in question from acquiring the status of "premises of the mission".

69. State practice further supports this conclusion. Both Parties acknowledge that a number of receiving States, all of which are party to the Vienna Convention, expressly require sending States to obtain their prior approval to acquire and use premises for diplomatic purposes. For instance, Germany's Protocol Handbook of the Federal Foreign Office states that the "use for official purposes of property (land, buildings, and parts of buildings) for diplomatic missions and consular posts is possible only with the prior agreement of the Federal Foreign Office". Section 12 of South Africa's Diplomatic Immunities and Privileges Act of 2001 requires foreign missions to submit a written request to the Director-General of International Relations and Co-operation prior to undertaking a relocation. Brazil's 2010 Manual of Rules and Procedures on Privileges and Immunities provides that the establishment of seats of diplomatic missions, as well as the acquisition or lease of real property for that purpose, are subject to prior authorization by the Ministry of Foreign Affairs. France refers to this practice and to the similar practice of an additional 11 States in its written pleadings. Neither Equatorial Guinea nor France has suggested that such practice is inconsistent with the Vienna Convention, and the Court is unaware of any argument having been made to that effect. The Court does not consider that this practice necessarily establishes "the agreement of the parties" within the meaning of a rule codified in Article 31, paragraph 3 *(b)*, of the Vienna Convention on the Law of Treaties as regards the existence of a requirement of prior approval, or the modalities through which a receiving State may communicate its objection to the sending State's designation of a building as forming part of the premises of its diplomatic mission. Nevertheless, the practice of several States which clearly requires the prior approval of the receiving State before a building can acquire the status of "premises of the mission" — and the lack of any objection to such practice — are factors which weigh against finding a right belonging to the sending State under the Vienna Convention unilaterally to designate the premises of its diplomatic mission.

70. In the Court's view, the preparatory work of the Vienna Convention provides no clear indication of the circumstances in which a property may acquire the status of "premises of the mission" within the meaning of Article 1 *(i)*.

71. Equatorial Guinea itself recognizes that the receiving State may, in at least some circumstances, require that its prior approval be obtained before a given property may acquire the status of "premises of the mission" within the meaning of Article 1 *(i)*. However, it takes the position that "any control measure in the receiving State's domestic law must . . . be notified in advance to all diplomatic missions" and that "in the absence of formalities set out clearly and applied without discrimination, the designation of premises of the mission by the sending State is conclusive". It further states that, in the absence of legislation or established practice, the receiving State may only object to the designation by the sending State of its diplomatic premises in co-ordination with the sending State.

72. The Court considers that the conditions referred to by Equatorial Guinea do not exist under the Vienna Convention. Rather, if the receiving State may object to the sending State's choice of premises, it follows that it may choose the modality of such objection. To hold otherwise would be to impose a restriction on the sovereignty of receiving States that finds no basis in the Vienna Convention or in general international law. Some receiving States may, through legislation or official guidelines, set out in advance the modalities pursuant to which their approval may be granted, while others may choose to respond on a case-by-case basis. This choice itself has no bearing on the power of the receiving State to object.

73. The Court emphasizes, however, that the receiving State's power to object to a sending State's designation of the premises of its diplomatic mission is not unlimited. The Court has repeatedly stated that, where a State possesses a discretionary power under a treaty, such a power must be exercised reasonably and in good faith (see *Rights of Nationals of the United States of America in Morocco (France* v. *United States of America), Judgment, I.C.J. Reports 1952*, p. 212; *Certain Questions of Mutual Assistance in Criminal Matters (Djibouti* v. *France), Judgment, I.C.J. Reports 2008*, p. 229, para. 145). In light of the above-mentioned requirements, and the Vienna Convention's object and purpose of enabling the development of friendly relations among nations, the Court considers that an objection of a receiving State must be timely and not be arbitrary. Further, in accordance with Article 47 of the Vienna Convention, the receiving State's objection must not be discriminatory in character. In any event, the receiving State remains obliged under Article 21 of the Vienna Convention to facilitate the acquisition on its territory, in accordance with its laws, by the sending State of the premises necessary for its diplomatic mission, or otherwise assist the latter in obtaining accommodation in some other way.

74. Given the above considerations, the Court concludes that — where the receiving State objects to the designation by the sending State of certain property as forming part of the premises of its diplomatic mission, and this objection is communicated in a timely manner and is neither arbitrary nor discriminatory in character — that property does not acquire the status of "premises of the mission" within the meaning of Article 1 *(i)* of the Vienna Convention, and therefore does not benefit from protection under Article 22 of the Convention. Whether or not the aforementioned criteria have been met is a matter to be assessed in the circumstances of each case.

75. In view of these conclusions, the Court will proceed to examine whether, on the facts before the Court, France objected to the designation of the building at 42 avenue Foch in Paris as premises of Equatorial Guinea's diplomatic mission and whether any such objection was communicated in a timely manner, and was neither arbitrary nor discriminatory in character. If necessary, the Court will then examine the second condition which, according to France, must be met for a property to acquire the status of "premises of the mission", namely the requirement of actual assignment.

III. Status of the Building at 42 avenue Foch in Paris

1. Whether France Objected through Diplomatic Exchanges between the Parties from 4 October 2011 to 6 August 2012

76. Having determined that the objection of the receiving State prevents a building from acquiring the status of the "premises of the mission" within the meaning of Article 1 *(i)* of the Convention, the Court will now consider whether France objected to the designation of the building at 42 avenue Foch in Paris as premises of Equatorial Guinea's diplomatic mission.

77. First, the Court will take account of the diplomatic exchanges of the Parties in the period between 4 October 2011, when Equatorial Guinea first notified France that the property "form[ed] part of the premises of the diplomatic mission", and 6 August 2012, shortly after the "attachment of the building" *(saisie pénale immobilière)* on 19 July 2012. The Court recalls that Equatorial Guinea accepts that the claims it made with respect to the conduct of French authorities prior to 4 October 2011 "were based on the protection claimed for the building at 42 avenue Foch in Paris as property of a foreign State under the Palermo Convention". Accordingly, they fall outside the Court's jurisdiction under the Optional Protocol to the Vienna Convention.

78. The initial searches at the property by the French investigative authorities took place on 28 September 2011 and 3 October 2011, during

the course of which luxury vehicles belonging to Mr. Teodoro Nguema Obiang Mangue were seized (see paragraph 27 above). On 4 October 2011, the Embassy of Equatorial Guinea addressed a Note Verbale to the French Ministry of Foreign Affairs, which stated the following:

> "The Embassy of the Republic of Equatorial Guinea . . . 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 [Protocol] Department.
>
> 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 that the French State can ensure the protection of those premises, in accordance with Article 22 of the said Convention."

On the same date, paper signs were put up at the building marked "République de Guinée équatoriale — locaux de l'ambassade" (Republic of Equatorial Guinea — Embassy premises).

79. On 11 October 2011, the Protocol Department of the French Ministry of Foreign Affairs addressed a Note Verbale to the Embassy of Equatorial Guinea, which stated that "the . . . building [at 42 avenue Foch in Paris] does not form part of the premises of Equatorial Guinea's diplomatic mission. It falls within the private domain and is, accordingly, subject to ordinary law."

80. On 17 October 2011, the Embassy of Equatorial Guinea addressed a Note Verbale to the French Ministry of Foreign Affairs. This Note Verbale informed the Ministry that the term of the previous Ambassador of Equatorial Guinea to France had ended, and that pending the arrival of a new Ambassador, the diplomatic mission of Equatorial Guinea to France would be headed (as Chargée d'affaires *ad interim*) by Ms Mariola Bindang Obiang, the Permanent Delegate of the Republic of Equatorial Guinea to UNESCO. The Note went on to state 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, Paris, which is at the disposal of the Republic of Equatorial Guinea".

81. On 31 October 2011, the Protocol Department of the French Ministry of Foreign Affairs responded in a Note Verbale addressed to the Embassy of Equatorial Guinea. The Ministry referred back to its Note Verbale of 11 October 2011, reiterating that the building at 42 avenue Foch in Paris "is not a part of the mission's premises, has never been recognized as such, and accordingly is subject to ordinary law". Additionally, the Note Verbale stated that the appointment of Ms Bindang Obiang as Chargée d'affaires *ad interim* was contrary to Article 19 of the Convention, as she was not a member of Equatorial Guinea's diplomatic mission in France. It also observed that any change of address of the

Permanent Delegate to UNESCO should be communicated directly to the Protocol Department of UNESCO, and not to the Protocol Department of the Ministry.

82. Between 14 and 23 February 2012, the French authorities conducted further searches of the building at 42 avenue Foch in Paris, in the course of which various items were seized and removed (see paragraph 29 above). On 14 February 2012, the Equatorial Guinean Ministry of Foreign Affairs addressed a Note Verbale to the French Ministry of Foreign Affairs to express regret about France's actions regarding the building, which was identified as "the residence of the Chargée d'affaires and Permanent Representative of Equatorial Guinea to UNESCO in Paris". On the same day, the Embassy addressed a Note Verbale to the French Ministry of Foreign Affairs protesting against the search of the building, which it described as the "the place of residence of the Permanent Delegation of the Republic of Equatorial Guinea to UNESCO". On the following day, the Embassy protested again, through a second Note Verbale, against the searches and seizures in the building, which it considered inviolable premises under the Convention, being "the official residence of the Chargée d'affaires heading the Embassy of Equatorial Guinea in France". Also on 14 February 2012, the President of Equatorial Guinea wrote to his French counterpart, stating that the building at 42 avenue Foch in Paris

> "is a property that was lawfully acquired by the Government of Equatorial Guinea and is currently used by the Representative to UNESCO, who is in charge of the Embassy's property. The said property is afforded legal and diplomatic protection under the Vienna Convention and the bilateral agreements signed by the two States."

Additionally, on the same date, the Permanent Delegation of Equatorial Guinea to UNESCO addressed a Note Verbale to UNESCO informing it that the official residence of the Permanent Delegate was located at 42 avenue Foch in Paris. UNESCO transmitted a copy of this Note to the French Ministry of Foreign Affairs.

83. On 20 February 2012, the Protocol Department of the French Ministry of Foreign Affairs responded in a Note Verbale addressed to the Embassy of Equatorial Guinea. France recalled its previous Notes Verbales of 11 October 2011 and 31 October 2011, reiterating that it did not recognize the building as the official residence of Ms Bindang Obiang. France stated that

> "[t]he Protocol Department recalls that it 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.

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

The Note Verbale concluded by stating that the Note Verbale sent by UNESCO, transmitting Equatorial Guinea's Note Verbale of 14 February to UNESCO "[could] not be taken into account because the date of 14 February [was] the date on which searches of that same building began".

84. On 9 March 2012, the Minister of Justice of Equatorial Guinea wrote to his French counterpart, stating that the building at 42 avenue Foch in Paris was "assigned to [Equatorial Guinea's] diplomatic mission and declared as such . . . by Note Verbale No. 365/11 of 4 October 2011". On 12 March 2012, the Embassy of Equatorial Guinea addressed a Note Verbale to the French Ministry of Foreign Affairs, in which it contested France's position, expressed in the latter's Note Verbale of 11 October 2011, that the building at 42 avenue Foch in Paris did not form part of the premises of its diplomatic mission.

85. On 28 March 2012, the Protocol Department of the French Ministry of Foreign Affairs addressed a Note Verbale to the Embassy of Equatorial Guinea, referring to the latter's Note Verbale of 12 March 2012. The Ministry stated the following:

> "The building located at 42 avenue Foch in Paris (16th arr.) cannot be considered as part of the premises of the diplomatic mission, since it has not been recognized as such by the French authorities, given that it has not been assigned for the purposes of the mission or as the residence of the head of the mission in accordance with . . . Article 1, paragraph *(i)*, of the Vienna Convention."

86. On 25 April 2012, the Embassy of Equatorial Guinea addressed a Note Verbale to the French Ministry of Foreign Affairs, reiterating that "its premises at 42 avenue Foch are indeed assigned for the use of its diplomatic mission" and should have enjoyed the benefit of diplomatic protection as from 4 October 2011. On 2 May 2012, the Protocol Department of the French Ministry of Foreign Affairs responded, referring the Embassy to its previous Note Verbale of 28 March 2012.

87. An investigating judge in the proceedings referred to in paragraph 26 above ordered the "attachment of the building" *(saisie pénale immobilière)* on 19 July 2012 (see paragraph 31 above). On 27 July 2012, the Embassy of Equatorial Guinea addressed a Note Verbale to the French Ministry of Foreign Affairs, informing it 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" (see paragraph 32 above).

88. On 2 August 2012, the Embassy addressed a further Note Verbale to the French Ministry of Foreign Affairs, stating that "it hereby confirms that its chancellery is indeed located at . . . 42 avenue Foch, Paris (16th arr.), a building that it uses as the official offices of its diplomatic mission in France". In a Note Verbale of 6 August 2012, the Protocol Department of the French Ministry of Foreign Affairs replied to the Embassy's Note Verbale of 27 July 2012, stating that

> "the building located at 42 avenue Foch, Paris (16th arr.), was the subject of an attachment order *(ordonnance de saisie pénale immobilière)*, dated 19 July 2012. The attachment was recorded and entered in the mortgage registry on 31 July 2012.
>
> 3. The Protocol Department [of the Ministry] is thus unable officially to recognize the building located at 42 avenue Foch, Paris (16th arr.), as being the seat of the chancellery as from 27 July 2012.
>
> *The seat of the chancellery thus remains at 29 boulevard de Courcelles, Paris (8th arr.)*, the only address recognized as such." (Emphasis in the original.)

89. The facts recounted above demonstrate that, between 11 October 2011 and 6 August 2012, France consistently expressed its objection to the designation of the building at 42 avenue Foch in Paris as part of the premises of Equatorial Guinea's diplomatic mission.

2. Whether the Objection of France Was Timely

90. The Court now turns to the examination of whether France's objection was made in a timely manner. On 11 October 2011, France notified Equatorial Guinea in clear and unambiguous terms that it did not accept this designation. France communicated its objection promptly, exactly one week after Equatorial Guinea first asserted the building's status as premises of its diplomatic mission in its Note Verbale of 4 October 2011. In the Note Verbale of 17 October 2011, Equatorial Guinea again asserted that the building formed part of the premises of its diplomatic mission, and also that it housed the residence of the Permanent Delegate of Equatorial Guinea to UNESCO, who it indicated would henceforth also serve as Chargée d'affaires *ad interim* of its diplomatic mission to France. In its Note Verbale of 31 October 2011, France reiterated its objection to accept Equatorial Guinea's designation of the building as part of the premises of its diplomatic mission in France.

91. When the new searches commenced at the building at 42 avenue Foch in Paris on 14 February 2012, Equatorial Guinea sent a number of diplomatic communications to France complaining against the actions of the French authorities. Responding on 20 February 2012, France refused

again to recognize the status of the building and indicated the procedure to be followed in order for a property to acquire the status of premises of a diplomatic mission. On 9 March and 12 March 2012, two Notes Verbales were addressed to France by Equatorial Guinea which again asserted that the building formed part of the premises of its diplomatic mission in France. France again clearly rejected this claim on 28 March 2012. On 25 April 2012, Equatorial Guinea reiterated its claim; on 2 May 2012, France reiterated its objection. Following the "attachment of the building" *(saisie pénale immobilière)* on 19 July 2012, Equatorial Guinea sent two further Notes Verbales to France on 27 July 2012 and 2 August 2012 asserting the status of the building as premises of its diplomatic mission; France responded on 6 August 2012, again expressly refusing to recognize that the building formed part of the premises of Equatorial Guinea's diplomatic mission.

92. Assessing this record overall, the Court notes that France promptly communicated its objection to the designation of the building at 42 avenue Foch in Paris as premises of Equatorial Guinea's diplomatic mission following the notification of 4 October 2011. France then consistently objected to each assertion, on the part of Equatorial Guinea, that the building constituted the premises of the diplomatic mission, and maintained its objection to the designation of the building as premises of Equatorial Guinea's diplomatic mission. The Court considers that, in the circumstances of the present case, France objected to the designation by Equatorial Guinea of the building as premises of its diplomatic mission in a timely manner.

3. Whether the Objection of France Was Non-arbitrary and Non-discriminatory

93. The Court now turns to the question whether France's objection to the designation by Equatorial Guinea of the building at 42 avenue Foch in Paris as premises of its diplomatic mission was non-arbitrary and non-discriminatory in character. In Equatorial Guinea's view, four factors indicate that the conduct of France was of an arbitrary and discriminatory character.

94. First, Equatorial Guinea submits that the initial refusal by France to recognize the status of the building as premises of its diplomatic mission was based on "manifest errors of fact and law". Equatorial Guinea refers to the Note Verbale of 11 October 2011, in which France stated that the building "f[ell] within the private domain and [was], accordingly, subject to ordinary law". Equatorial Guinea interprets the Note Verbale as stating that recognition of the building's status as premises of Equatorial Guinea's diplomatic mission was refused because the building was privately owned. According to Equatorial Guinea, this conclusion was based on an error of fact, because Equatorial Guinea had acquired ownership of the building on 15 September 2011. In addition, the conclusion rested on an error of law, because it reflected an assessment of the build-

ing's ownership status, even though the "premises of the mission" under Article 1 *(i)* of the Convention are those used for the purposes of the mission, "irrespective of ownership".

95. Second, Equatorial Guinea complains that France failed to observe the procedure which France itself had laid out for the recognition of the status of the premises. In a communication addressed to the investigating judges of the Paris *Tribunal de grande instance* on 11 October 2011, the Protocol Department of the French Ministry of Foreign Affairs stated that a building is recognized as enjoying the status of premises of the mission "[o]nce it has been verified that the building is actually assigned to a diplomatic mission". According to Equatorial Guinea, no such process of "verification" ever took place between Equatorial Guinea's notification on 4 October 2011 and France's refusal on 11 October 2011. In this connection, Equatorial Guinea considers that the searches of 28 September 2011 and 3 October 2011 cannot be regarded as verification, because the French authorities did not enter the interior of the building.

96. Third, Equatorial Guinea considers that France should have sought to co-ordinate with Equatorial Guinea before refusing the latter's claim that the building at 42 avenue Foch in Paris enjoyed the status of premises of the mission.

97. Fourth, Equatorial Guinea contends that France's position on the conditions to be met and the procedures to be followed for a building to acquire the status of premises of the mission has varied over time, at least as far as Equatorial Guinea is concerned. Equatorial Guinea points out that the communication sent by the Protocol Department of the French Ministry of Foreign Affairs to the investigating judges of the Paris *Tribunal de grande instance* on 11 October 2011 suggests that effective use of the premises for diplomatic purposes ought to precede the notification of the French authorities, which in turn precedes the process of "verification", the final step prior to recognition. According to Equatorial Guinea, this contradicts a Note Verbale by the Protocol Department of the French Ministry of Foreign Affairs that it received on 28 March 2012, which suggested that notification of France ought to take place prior to the acquisition of the intended property; after this follows actual use of the premises, which is in turn followed by the recognition by France of the status of the building as premises of the mission, without any need for prior "verification". Additionally, making reference to a Note Verbale sent by the Protocol Department of the French Ministry of Foreign Affairs to the Embassy of Equatorial Guinea on 6 July 2005 concerning the official residence of the Ambassador, Equatorial Guinea considers that France had indicated that the intention to use the premises exclusively as the official residence of the Ambassador sufficed for the property to acquire the status of official residence. According to Equatorial Guinea, France's inconsistent position indicates that its conduct was targeted against Equatorial Guinea, singling it out from other sending States in an arbitrary and discriminatory way.

98. Relatedly, Equatorial Guinea submits that France's position with respect to the status of the building has been inconsistent. Equatorial Guinea observes that France's current position is contradicted by an interim order of the *Tribunal de grande instance* of Paris of 22 October 2013, which affirmed the status of the building as premises of Equatorial Guinea's diplomatic mission. Equatorial Guinea stresses that it promptly notified the French Ministry of Foreign Affairs of the tribunal's order but that the Ministry did not protest. Equatorial Guinea also contends that, while France refuses expressly to recognize the building as the premises of the diplomatic mission, French officials have visited the building, on the instructions of the French Ministry of Foreign Affairs, for the purpose of obtaining visas, and the French authorities have granted protection to the premises when necessary during a demonstration in 2015 and the presidential elections in Equatorial Guinea in 2016. It also refers to four letters sent by the French Ministry of Foreign Affairs to the Embassy of Equatorial Guinea in 2019, which were addressed to 42 avenue Foch in Paris. Equatorial Guinea argues that these instances "can only be interpreted as tacit recognition by France of the building's diplomatic status" which, in turn, demonstrates France's "arbitrary and discriminatory conduct".

*

99. France refutes these arguments. With respect to the letter of 11 October 2011 addressed to Equatorial Guinea, France submits that its conclusion that the building "f[ell] within the private domain" should not be read as referring to the building's ownership status but rather to France's assessment that the building was not then used for the purposes of the diplomatic mission and therefore did not attract the protection of "premises of the mission" within the meaning of Article 1 *(i)* of the Convention. According to France, the term *domaine public* in French law describes the domain composed of the property assigned either to public use or to a public service and subject as such to a special legal régime, while *domaine privé* refers to the domain which is composed, in principle, of all other property and is subject to ordinary law. France considers that ownership of a building is irrelevant for the purposes of acquiring the status of premises of the mission under the Convention. Moreover, it contends that the building at 42 avenue Foch in Paris is owned not by Equatorial Guinea itself but rather by five Swiss companies, whose shares Equatorial Guinea attempted unsuccessfully to acquire under French law.

100. Furthermore, France submits that its assessment as to the status of a building as premises of the mission does not rely on "verification" through physical or coercive means of investigation but instead on verified information evidencing the transfer of the sending State's mission from old into new premises by providing documentation (for example, as

to the sale or end of tenancy of the previous premises, with supporting documents), usually in advance of the move. France asserts that Equatorial Guinea was aware of this process and had followed it in the past when it installed its Embassy in different premises, but it failed to approach the French authorities with such documentation in relation to its move to 42 avenue Foch in Paris. In this connection, France recalls that, at the time it refused to recognize the building's status as premises of Equatorial Guinea's diplomatic mission, it possessed sufficient evidence to indicate that the building was not used for diplomatic purposes. France further recalls that the building was targeted in ongoing criminal proceedings.

101. In response to Equatorial Guinea's accusations that France failed to co-ordinate with the sending State, the latter contends that Equatorial Guinea itself sought unilaterally to impose its position with respect to the status of the building without previously co-ordinating with France as the receiving State. France draws attention to the fact that the Ambassador of Equatorial Guinea in France addressed a letter to the French Ministry of Foreign Affairs on 28 September 2011, in which he made no mention of Equatorial Guinea's wish to install its diplomatic mission at 42 avenue Foch in Paris, and that he was received, at his request, at the Ministry on 30 September 2011. France asserts that "the situation of 42 avenue Foch was discussed on several occasions during this period", as well as during a meeting between the two Parties at the French Ministry of Foreign Affairs on 16 February 2012.

102. Additionally, France submits that its position with respect to the status of the building has never varied. It communicated its refusal to recognize the building at 42 avenue Foch in Paris as premises of Equatorial Guinea's diplomatic mission on 11 October 2011 and maintained its position in subsequent diplomatic exchanges on 28 March 2012 and on 6 August 2012. France considers that the interim order of 22 October 2013 of the *Tribunal de grande instance* of Paris, on which Equatorial Guinea relies, is of limited value because it was issued in the context of urgent proceedings, without knowledge of the French Note Verbale of 11 October 2011; that it ought to be weighed against the assessment made by other French authorities repeatedly and consistently; and thus that no conclusions can be drawn from the fact that the French Ministry of Foreign Affairs did not protest following the transmission of the tribunal's order.

103. In general, France accepts that, while the resolution of the dispute is pending, it 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". According to France, it was essential for the French authorities to engage with the visa office located at 42 avenue Foch in Paris in order to enable visits and exchanges but, in doing so, France did not depart from its posi-

tion of principle. Similarly, according to France, the protection of the building when necessary has been a "pragmatic measure" implemented out of goodwill pending the resolution of the dispute and, since the Court's Order of 7 December 2016, mandated under that Order. France stresses that it took such measures after the dispute between the Parties had already arisen, and while consistently maintaining its position that it refuses to recognize the building as housing the premises of the diplomatic mission of Equatorial Guinea. France further submits that the four letters adduced by Equatorial Guinea originating from certain departments of the French Ministry of Foreign Affairs were addressed to "42 avenue Foch" by mistake and should not be relied on.

104. Finally, France submits that, in order to demonstrate discriminatory treatment, Equatorial Guinea bears the onus "to establish that, in response to a claim similar to the one made on 4 October 2011, the French authorities had reacted differently". France argues that Equatorial Guinea has failed to adduce evidence to demonstrate that France, in response to a claim comparable to that of Equatorial Guinea in the present case, has reacted differently. France considers that the exceptional circumstances of the present case render impossible any comparison and therefore prevent any finding of discrimination on the part of France.

* *

105. The Court will examine the complaints made by Equatorial Guinea in turn, with a view to ascertaining whether, in the particular circumstances of the case, the objection by France to Equatorial Guinea's designation of the building as premises of its diplomatic mission was arbitrary and discriminatory in character.

106. The Court recalls that the Note Verbale of 11 October 2011, which stated that the building at 42 avenue Foch in Paris "f[ell] within the private domain", was sent in response to a Note Verbale sent by Equatorial Guinea on 4 October 2011. In that Note Verbale, Equatorial Guinea made no reference to the ownership of the building. Instead, Equatorial Guinea claimed that it "ha[d] for a number of years had at its disposal" the building in question, which it "use[d] for the performance of the functions of its diplomatic mission". Seen as a response to that notification, the French Note Verbale cannot be interpreted as referring to the ownership status of the building: the object of the Note Verbale was to contest Equatorial Guinea's assertion that the building was used for diplomatic purposes, and hence that it fell within the "public domain".

107. The Court considers that France's conclusion that the building fell within the private domain was not without justification. In the context of the ongoing criminal investigation with respect to Mr. Teodoro Nguema Obiang Mangue, which had been initiated some years earlier, the French authorities had visited the surroundings of the building on

28 September 2011 and 3 October 2011, seizing private property belonging to Mr. Teodoro Nguema Obiang Mangue (see paragraph 27 above). Equatorial Guinea has not furnished evidence that could have led the French authorities conducting the on-site inspection to conclude that the premises were being used, or were being prepared for use, as premises of Equatorial Guinea's diplomatic mission. In fact, Equatorial Guinea, despite now claiming that it had already intended to use, or was indeed already using the building as premises of its diplomatic mission at the time the investigations took place, did not state this in its protests of 28 September 2011 against the investigations, and did not indicate at that time that the building was being used, or was being prepared for use, as premises of its diplomatic mission.

108. Nor has Equatorial Guinea established that the building was being used, or was being prepared for use, as premises of its diplomatic mission during the period between 4 October 2011 and 27 July 2012. Equatorial Guinea acknowledges that none of the moveable property seized by the French authorities in the searches between 14 and 23 February 2012 belonged to the diplomatic mission, which strongly suggests that the use of the building as premises of the mission had not then commenced. Moreover, Equatorial Guinea's Note Verbale of 27 July 2012 stated that it was "*henceforth* using [the building at 42 avenue Foch in Paris] for the performance of the functions of its diplomatic mission in France" (see paragraph 32 above; emphasis added), which indicates that the building was not used for diplomatic purposes before that date. Equatorial Guinea has stated that as of 15 February 2012 two officials from Equatorial Guinea's Ministry of Foreign Affairs were supervising preparations for the effective occupation of the building by the mission, and that the relocation of the Embassy's offices was a gradual process, culminating in the final establishment of all Embassy offices in the building from 27 July 2012. However, in its Note Verbale of 4 October 2011 (see paragraph 27 above), Equatorial Guinea did not claim that the building was being prepared for use as the premises of its mission, but that it was actually being used as such. Equatorial Guinea has not submitted to the Court any documentation or other evidence of the preparation of the building for diplomatic use, nor of the process and timing of the relocation of the Embassy's offices.

109. The Court considers that, at the time it received Equatorial Guinea's notification on 4 October 2011, France possessed sufficient information to provide a reasonable basis for its conclusion with respect to the status of the building at 42 avenue Foch in Paris. As well as being in a position to conclude that the building was not being used, or being prepared for use, for diplomatic purposes at the time of Equatorial Guinea's notification, France had an obvious additional ground justifying its objection to the designation of the building as premises of the diplomatic mission as of 4 October 2011. The building had been searched only a few days earlier, on 28 September 2011 and 3 October 2011, in the context of

criminal proceedings which were still ongoing. Therefore, it was reasonable for France to assume that further searches in the building, or other measures of constraint, might be necessary before the criminal proceedings were terminated. If France had acceded to Equatorial Guinea's assignment of the building to its diplomatic mission, thereby assuming obligations to ensure the inviolability and immunity of the building under the Convention, it might have hindered the proper functioning of its criminal justice system. In this connection, the Court notes that Equatorial Guinea was aware of the ongoing criminal proceedings, as evidenced in a letter sent by its Embassy to the French Ministry of Foreign Affairs on 28 September 2011. In that letter, Equatorial Guinea complained of the "searches and attachments targeting the person of its Minister for Agriculture [Mr. Teodoro Nguema Obiang Mangue]". Equatorial Guinea further submits that "the French police and judicial authorities entered the building . . . to conduct searches on 28 September and 3 October 2011" as part of the criminal investigation. Accordingly, Equatorial Guinea was aware, or could not have been unaware, on 4 October 2011 that the building had been searched in the context of the ongoing criminal proceedings. The Court observes that this ground justifying France's objection on 11 October 2011 has persisted long after that date. Whether or not it was being prepared for use, or was being used, for the purposes of Equatorial Guinea's diplomatic mission at some point after 27 July 2012, the building at 42 avenue Foch in Paris was still a target in ongoing criminal proceedings which are pending to this date. When it reiterated its objection in its Note Verbale of 6 August 2012, France explicitly referred to the attachment ordered in the course of the ongoing criminal proceedings.

110. In these circumstances, the Court concludes that there existed reasonable grounds for France's objection to Equatorial Guinea's designation of the building as premises of Equatorial Guinea's diplomatic mission. These grounds were known, or should have been known, to Equatorial Guinea. In light of these grounds, the Court does not consider that the objection by France was arbitrary in character.

111. Furthermore, the Court is of the view that France was not required to co-ordinate with Equatorial Guinea before communicating its decision not to recognize the status of the building as premises of the mission on 11 October 2011. As the Court has already observed (see paragraph 72 above), the Vienna Convention establishes no obligation to co-ordinate with a sending State before a receiving State may object to the designation of a building as premises of a diplomatic mission.

112. The Court turns to the question whether France's position with respect to the status of the building has been inconsistent. As the Court has already observed (see paragraph 109 above), France possessed sufficient information as to the status of the building when it reached its conclusion. In all of the diplomatic correspondence invoked by Equatorial

Guinea, France consistently asserted that acquiring the status of premises of the mission was contingent on two conditions: absence of objection of the receiving State and actual assignment of the premises for diplomatic use.

113. The Court observes that France has maintained its explicit objection to the designation of the building as premises of Equatorial Guinea's diplomatic mission, long after the Note Verbale of 6 August 2012. In a Note Verbale of 27 April 2016 concerning the otherwise unrelated topic of voting in France for the presidential elections in Equatorial Guinea, France "avail[ed] itself of this opportunity to recall that the Ministry of Foreign Affairs and International Development does not consider the building located at 42 avenue Foch in Paris (16th arr.) as forming part of the premises of Equatorial Guinea's diplomatic mission in France". Additionally, the Embassy of Equatorial Guinea sent a Note Verbale to the French Ministry of Foreign Affairs on 15 February 2017 citing the provisional measure adopted by the Court in its Order of 7 December 2016 and complaining that it had not yet received a Note by France recognizing the status of the mission located at 42 avenue Foch in Paris. In response, France sent a Note Verbale on 2 March 2017, which stated that

> "[i]n keeping with its consistent position, France does not consider the building located at 42 avenue Foch in Paris (16th arr.) to form part of the premises of the diplomatic mission of the Republic of Equatorial Guinea in France.
>
> In accordance with the Order made by the International Court of Justice on 7 December 2016, and pending the Court's final decision in the case, France will ensure that the premises located at 42 avenue Foch receive treatment equivalent to that required by Article 22 of the Vienna Convention on Diplomatic Relations, in order to ensure their inviolability."

114. The instances adduced by Equatorial Guinea do not demonstrate that France tacitly recognized the building as "premises of the mission" under the Convention. The Court does not consider that the acquisition of visas at 42 avenue Foch in Paris leads to the conclusion that the premises were recognized as constituting the premises of a diplomatic mission. Similarly, the protection provided on the occasion of events that may foreseeably cause harm to persons or property within a State's territory, such as demonstrations or presidential elections, does not necessarily suggest tacit recognition of the building as "premises of the mission", within the meaning of the Convention. Moreover, the protection afforded by France since 7 December 2016 can be explained as offered in compliance with the Court's Order of the same date (*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 (I)). The four letters adduced by Equatorial Guinea, which were addressed to 42 avenue Foch in Paris, while not irrelevant, are insufficient to displace the other-

wise consistent position of France. The same is true for the order of 22 October 2013 of the *Tribunal de grande instance* relied on by Equatorial Guinea (see paragraph 98 above), which was issued in the context of urgent proceedings without knowledge of France's position of principle and was contradicted both by previous and subsequent practice emanating from organs of France.

115. Additionally, the evidence does not establish that France has failed to object to the designation of a building by another sending State as premises of its diplomatic mission in circumstances comparable to those in the present case. In the circumstances, Equatorial Guinea has not demonstrated that France, in objecting to the designation of the building at 42 avenue Foch in Paris as the premises of Equatorial Guinea's diplomatic mission, has acted in a discriminatory manner.

116. Finally, the Court notes that the conduct by France did not deprive Equatorial Guinea of its diplomatic premises in France: Equatorial Guinea already had diplomatic premises in Paris (at 29 boulevard de Courcelles), which France still recognizes officially as the premises of Equatorial Guinea's diplomatic mission. Therefore, France's objection to the Embassy's move to 42 avenue Foch in Paris did not prevent Equatorial Guinea from maintaining a diplomatic mission in France, nor from retaining the diplomatic premises it already had elsewhere in Paris. This constitutes a further factor which tells against a finding of arbitrariness or discrimination.

117. On the basis of all of the above considerations, the Court considers that France objected to Equatorial Guinea's designation of the building as premises of its diplomatic mission in a timely manner, and that this objection was neither arbitrary nor discriminatory in character.

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118. For these reasons, the Court concludes that the building at 42 avenue Foch in Paris has never acquired the status of "premises of the mission", within the meaning of Article 1 *(i)* of the Convention.

IV. Consideration of Equatorial Guinea's Final Submissions

119. The Court now turns to Equatorial Guinea's final submissions (see paragraph 24 above).

120. Equatorial Guinea requests the Court to declare that France has breached its obligations under Article 22 of the Convention "by entering the building located at 42 avenue Foch in Paris [and] by searching, attaching and confiscating the said building, its furnishings and other property therein".

121. As the Court concluded that the building at 42 avenue Foch in Paris has never acquired the status of "premises of the mission" under the Vienna Convention, the acts complained of by Equatorial Guinea cannot constitute a breach by France of its obligations under that Convention. Accordingly, France has not breached its obligations under the Vienna Convention.

122. Equatorial Guinea further asks the Court to declare that the responsibility of France is engaged on account of the breach of its obligations under the Vienna Convention and that France has an obligation to make reparation for the harm suffered by Equatorial Guinea. As there has been no breach by France of its obligations under the Vienna Convention, these submissions of Equatorial Guinea cannot be upheld.

123. Equatorial Guinea also requests the Court to declare that

> "the French Republic must recognize the status of the building located at 42 avenue Foch in Paris as the premises of the diplomatic mission of the Republic of Equatorial Guinea, and, accordingly, ensure its protection as required by the Vienna Convention on Diplomatic Relations".

124. The Court recalls that an objection by a receiving State to the designation of property as forming part of the premises of a foreign diplomatic mission prevents that property from acquiring the status of the "premises of the mission", within the meaning of Article 1 *(i)* of the Vienna Convention, provided that this objection is communicated in a timely manner and is neither arbitrary nor discriminatory in character (see paragraph 74 above). The Court has found that the objection by France in the present case meets these conditions.

125. In the light of the above conclusions, the Court cannot uphold the submission of Equatorial Guinea that it declare that France must recognize the status of the said building as premises of the diplomatic mission of Equatorial Guinea.

* * *

126. For these reasons,

THE COURT,

(1) By nine votes to seven,

Finds that the building at 42 avenue Foch in Paris has never acquired the status of "premises of the mission" of the Republic of Equatorial Guinea in the French Republic within the meaning of Article 1 *(i)* of the Vienna Convention on Diplomatic Relations;

IN FAVOUR: *Judges* Tomka, Abraham, Bennouna, Cançado Trindade, Donoghue, Crawford, Gevorgian, Salam, Iwasawa;

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

(2) By twelve votes to four,

Declares that the French Republic has not breached its obligations under the Vienna Convention on Diplomatic Relations;

IN FAVOUR: *President* Yusuf; *Judges* Tomka, Abraham, Bennouna, Cançado Trindade, Donoghue, Gaja, Sebutinde, Crawford, Gevorgian, Salam, Iwasawa;

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

(3) By twelve votes to four,

Rejects all other submissions of the Republic of Equatorial Guinea.

IN FAVOUR: *President* Yusuf; *Judges* Tomka, Abraham, Bennouna, Cançado Trindade, Donoghue, Gaja, Sebutinde, Crawford, Gevorgian, Salam, Iwasawa;

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

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

(Signed) Abdulqawi Ahmed YUSUF,
President.

(Signed) Philippe GAUTIER,
Registrar.

President YUSUF appends a separate opinion to the Judgment of the Court; Vice-President XUE appends a dissenting opinion to the Judgment of the Court; Judge GAJA appends a declaration to the Judgment of the Court; Judge SEBUTINDE appends a separate opinion to the Judgment of the Court; Judges BHANDARI and ROBINSON append dissenting opinions to the Judgment of the Court; Judge *ad hoc* KATEKA appends a dissenting opinion to the Judgment of the Court.

(Initialled) A.A.Y.

(Initialled) Ph.G.