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International Court of Justice

THE HAGUE

Cour internationale de Justice

LA HAYE

YEAR 2024

Public sitting

held on Monday 30 September 2024, at 10 a.m., at the Peace Palace,

President Salam presiding,

***in the case concerning* Land and Maritime Delimitation and Sovereignty over Islands (Gabon/Equatorial Guinea)**

VERBATIM RECORD

ANNÉE 2024

Audience publique

tenue le lundi 30 septembre 2024, à 10 heures, au Palais de la Paix,

sous la présidence de M. Salam, président,

***en l'affaire de la* Délimitation terrestre et maritime et souveraineté sur des îles (Gabon/Guinée équatoriale)**

COMPTE RENDU

Present:	President	Salam
	Vice-President	Sebutinde
	Judges	Tomka
		Yusuf
		Xue
		Iwasawa
		Nolte
		Charlesworth
		Brant
		Gómez Robledo
		Cleveland
		Aurescu
	Judges *ad hoc*	Wolfrum
		Pinto
	Registrar	Gautier

Présents :	M.	Salam, président
	M^me^	Sebutinde, vice-présidente
	MM.	Tomka
		Yusuf
	M^me^	Xue
	MM.	Iwasawa
		Nolte
	M^me^	Charlesworth
	MM.	Brant
		Gómez Robledo
	M^me^	Cleveland
	M.	Aurescu, juges
	M.	Wolfrum
	M^me^	Pinto, juges *ad hoc*
	M.	Gautier, greffier

The Government of the Gabonese Republic is represented by:

HE Mr Régis Onanga Ndiaye, Minister for Foreign Affairs, in charge of Sub-Regional Integration and Gabonese Living Abroad;

HE Mr Paul-Marie Gondjout, Minister of Justice, Keeper of the Seals;

HE Ms Marie-Madeleine Mborantsuo, Honorary President of the Constitutional Court,

as Agent;

HE Mr Guy Rossatanga-Rignault, Secretary General of the Office of the President of the Republic,

as Co-Agent, Counsel and Advocate;

HE Mr Serge Mickoto Chavagne, Ambassador of the Gabonese Republic to the Kingdoms of Belgium and the Netherlands, to the Grand Duchy of Luxembourg and to the European Union,

as Co-Agent;

Mr Ben Juratowitch, KC, member of the Bar of England and Wales, member of the Paris Bar, Essex Court Chambers, London,

Ms Alina Miron, Professor of International Law, University of Angers, member of the Paris Bar, Founding Partner of FAR Avocats,

Mr Daniel Müller, member of the Paris Bar, Founding Partner of FAR Avocats,

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

Ms Isabelle Rouche, member of the Paris Bar, Asafo & Co.,

Ms Camille Strosser, member of the Paris Bar and of the Bar of the State of New York, Freshfields Bruckhaus Deringer LLP,

Mr Romain Piéri, member of the Paris Bar, Founding Partner of FAR Avocats,

Ms Élise Ruggeri Abonnat, Senior Lecturer, University of Lille,

Mr Ysam Soualhi, PhD candidate, Faculty of Law, University of Angers,

Mr David Swanson, David Swanson Cartography, LLC,

Mr Samir Moukheiber, trainee lawyer, Freshfields Bruckhaus Deringer LLP,

as Counsel and Advocates.

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S. Exc. M. Paul-Marie Gondjout, ministre de la justice, garde des sceaux ;

S. Exc. M^me^ Marie-Madeleine Mborantsuo, présidente honoraire de la Cour constitutionnelle,

comme agente ;

S. Exc. M. Guy Rossatanga-Rignault, secrétaire général de la présidence de la République,

comme coagent, conseil et avocat ;

S. Exc. M. Serge Mickoto Chavagne, ambassadeur de la République gabonaise près les Royaumes de Belgique et des Pays-Bas, le Grand-Duché de Luxembourg et auprès de l'Union européenne,

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The Government of the Republic of Equatorial Guinea is represented by:

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HE Mr Carmelo Nvono Ncá, Ambassador of the Republic of Equatorial Guinea to the French Republic, the Principality of Monaco and the United Nations Educational, Scientific and Cultural Organization,

as Co-Agent;

HE Mr Simeón Oyono Esono Angué, Minister of State for Foreign Affairs, International Cooperation and Diaspora,

HE Mr Pastor Micha Ondó Bile, Adviser to the Presidency of the Government,

HE Mr Juan Olo Mba Nseng, Adviser to the Presidency of the Government,

HE Mr Rafael Boneke Kama, Adviser to the Presidency of the Government,

HE Mr Lamberto Esono Mba, Secretary General of the Ombudsman, Lawyer at the Malabo Bar Association,

HE Ms Rosalía Nguidang Abeso, Director General of Borders, Lawyer at the Malabo Bar Association,

HE Mr Pascual Nsue Eyi Asangono, Director General of Consular, Cultural, Legal and Diaspora Affairs, Lawyer at the Malabo Bar Association,

HE Mr Miguel Oyono Ndong Mifumu, Ambassador of the Republic of Equatorial Guinea to the Kingdom of Belgium,

Mr Francisco Moro Nve, State Attorney, member of the Malabo Bar Association,

Mr Aquiles Nach Dueso, Lawyer at the Malabo Bar Association,

HE Mr Domingo Esawong Ngua, official in the Ministry of National Defence,

Mr Asensi Buanga Beaka, official in the Ministry of Hydrocarbons and Mining Development,

as Members of the Delegation;

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HE Mr Anatolio Nzang Nguema Mangue, Attorney General of the Republic of Equatorial Guinea, Lawyer at the Malabo Bar Association,

Mr Dapo Akande, Chichele Professor of Public International Law, University of Oxford, Barrister, member of the Bar of England and Wales, Essex Court Chambers, member of the International Law Commission,

Mr Pierre d'Argent, Full Professor, Université catholique de Louvain, member of the Institut de droit international, Foley Hoag LLP, member of the Bar of Brussels,

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S. Exc. M. Juan Olo Mba Nseng, conseiller auprès de la présidence du Gouvernement,

S. Exc. M. Rafael Boneke Kama, conseiller auprès de la présidence du Gouvernement,

S. Exc. M. Lamberto Esono Mba, secrétaire général du bureau du défenseur des droits, juriste, barreau de Malabo,

S. Exc. M^me^ Rosalía Nguidang Abeso, directrice générale des frontières, juriste, barreau de Malabo,

S. Exc. M. Pascual Nsue Eyi Asangono, directeur général des affaires consulaires, culturelles, juridiques et de la diaspora, juriste, barreau de Malabo,

S. Exc. M. Miguel Oyono Ndong Mifumu, ambassadeur de la République de Guinée équatoriale auprès du Royaume de Belgique,

M. Francisco Moro Nve, avocat de l'État, membre du barreau de Malabo,

M. Aquiles Nach Dueso, juriste, barreau de Malabo,

S. Exc. M. Domingo Esawong Ngua, fonctionnaire au ministère de la défense nationale,

M. Asensi Buanga Beaka, fonctionnaire au ministère des hydrocarbures et du développement minier,

comme membres de la délégation ;

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S. Exc. M. Anatolio Nzang Nguema Mangue, procureur général de la République de Guinée équatoriale, juriste, barreau de Malabo,

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Ms Elena Sotnikova, Foley Hoag LLP,

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M. Yuri Parkhomenko, avocat au cabinet Foley Hoag LLP, membre du barreau du district de Columbia,

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M^me^ Gretchen Sanchez, cabinet Foley Hoag LLP,

M^me^ Nancy Lopez, cabinet Foley Hoag LLP,

comme assistantes.

The PRESIDENT: Please be seated. The sitting is open. For reasons made known to me, Judges Abraham and Tladi are unable to sit with us today. For reasons made known to me as well, Judge Bhandari is unable to be present on the Bench for the duration of these hearings.

Before we start our judicial proceedings today, I would first like to pay solemn tribute to the memory of three esteemed former judges of the Court who sadly passed away in August: Judges Vereshchetin and Elaraby, and Judge *ad hoc* Verhoeven.

Judge Vladlen Stepanovich Vereshchetin was a Member of the Court from 1995 to 2006. Before joining the Bench, he enjoyed a distinguished and wide-ranging career in international law. Having graduated with honours from the International Law Faculty of the Moscow Institute of International Relations in 1954 and obtained his doctorate degree at the same Institute, he began his professional career at the Presidium of the USSR Academy of Sciences. In 1967, he was appointed First Vice-Chairman and Legal Counsel of the Academy's Council on International Cooperation in relation to the Exploration and Use of Outer Space — also known as *Intercosmos*. He subsequently became the Head of the International Law Department of the Academy of Sciences' Institute of State and Law. He was a renowned expert on the law of the sea and space law in particular, published extensively and lectured at universities and institutes around the world. He was elected a member of the International Law Commission in 1992 and became Chairman of the Commission in 1994, in which position he remained until his election to the Court. As a Member of the Court, I am told by my colleagues who had the privilege to work along with him, that he was a greatly respected jurist and a charming peer. He invariably sought solutions with a sound conceptual and theoretical basis while never overlooking the need to provide States parties in cases before the Court with a practical and workable solution to their differences. This twofold objective underpinned each and every opinion and declaration appended by him to the decisions of the Court. Above all, he was a modern-minded and independent thinker who yet thrived on collegial debate and interaction — qualities which made his contribution to the work of the Court all the more precious. He leaves behind him a lasting and illustrious legacy.

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Let me now pay tribute to our esteemed late colleague, Judge Nabil Elaraby, who was a Member of the Court from 2001 to 2006. Prior to his election to the Court, Judge Elaraby pursued a distinguished career as a diplomat and high-ranking Legal Adviser. After completing his law degree at Cairo University in 1955 and subsequently obtaining his doctorate degree at New York University Law School, Judge Elaraby took on various important posts within the Egyptian Government, including serving as Ambassador for more than 20 years, including as the Permanent Representative of Egypt to the United Nations, initially in Geneva, then in New York. In that capacity, during the 1990s, he was elected Vice-President of the General Assembly and served as President of the Security Council. Judge Elaraby was a member of the International Law Commission and a member of numerous United Nations committees. As a Member of the Court, he is remembered for his intellectual rigour and great integrity, as well as for his warm and charismatic personality. He brought to bear his extensive knowledge of law to the many multi-faceted cases under deliberation during his time in office. Upon leaving the Court, Judge Elaraby acted as Minister for Foreign Affairs in Egypt in 2011 before being appointed that same year as Secretary-General of the Arab League, where he served until 2016. Throughout his life, Judge Elaraby dedicated himself to international law and justice with unwavering commitment — he will be sorely missed.

Permettez-moi de dire quelques mots au sujet du juge Joe Verhoeven, qui a siégé en qualité de juge *ad hoc* en l'affaire des *Activités armées sur le territoire du Congo (République démocratique du Congo c. Ouganda)*. Le juge Verhoeven a été professeur émérite à l'Université catholique de Louvain et à l'Université Paris 2 Panthéon-Assas. Il a également été directeur de l'Institut des hautes études internationales et secrétaire général de l'Institut de droit international. Pendant sa longue et illustre carrière universitaire, il a publié de nombreux ouvrages marquants sur le droit international et a été un conférencier très prisé auprès de diverses enceintes universitaires. En 2002, il a donné le cours général de droit international public à l'Académie de droit international de La Haye, enseignant de manière stimulante et dynamique, sans même avoir à consulter ses notes. Il a également pris part à des procédures arbitrales internationales. À la Cour, le juge Verhoeven était grandement respecté et apprécié par ses collègues, tant d'un point de vue professionnel que personnel. Son remarquable esprit aiguisé et son professionnalisme, empreints de douceur et de modestie, resteront gravés dans

nos mémoires. Il a été un juge exemplaire, un juriste international de premier plan et un enseignant talentueux qui a enrichi la vie de tous ceux qui ont eu la chance de le côtoyer.

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En mon nom et au nom des membres de la Cour, du greffier et de tous les fonctionnaires du Greffe, permettez-moi d'adresser nos sincères condoléances à la famille et aux proches des juges Vereshchetin et Elaraby et du juge *ad hoc* Verhoeven. Véritables sources d'inspiration et fidèles à leurs principes, chacun d'entre eux a consacré sa vie, à sa façon, au droit international et à bâtir un monde meilleur pour les générations à venir.

I invite you now to stand and observe a minute of silence in their memory.

[The Court observed a minute of silence.]

I shall now turn to the judicial proceedings before the Court today. The Court meets this morning and will meet in the coming few days to hear the oral arguments of the Parties on the merits in the case concerning *Land and Maritime Delimitation and Sovereignty over Islands (Gabon/Equatorial Guinea)*.

I note that, in addition to interpretation from and into the Court's two official languages, English and French, interpretation from Spanish is available, in accordance with specific arrangements made at the request of Equatorial Guinea.

Since the Court does not include upon the Bench a judge of the nationality of either of the Parties, both Parties have availed themselves of the right, under Article 31, paragraph 3, of the Statute, to choose a judge *ad hoc*. Gabon chose Ms Mónica Pinto and Equatorial Guinea, Mr Rüdiger Wolfrum.

Article 20 of the Statute provides that "[e]very Member of the Court shall, before taking up his duties, make a solemn declaration in open court that he will exercise his powers impartially and conscientiously". Pursuant to Article 31, paragraph 6, of the Statute, that same provision applies to judges *ad hoc*. Notwithstanding that Mr Wolfrum has been a judge *ad hoc* and made a solemn

declaration in a previous case, Article 8, paragraph 3, of the Rules of Court provides that he must make a further solemn declaration in the present case.

Before inviting Mr Wolfrum and Ms Pinto to make their solemn declarations, I shall first, in accordance with custom, say a few words about their careers and qualifications.

Mr Wolfrum, of German nationality, studied law at the Universities of Bonn and Tübingen and subsequently obtained his doctorate degree in international law from the University of Bonn in 1973. During his illustrious academic career, spanning over thirty years, he first taught national public law and international public law at the faculties of the Universities of Mainz and Kiel in the 1980s and 1990s. From 1993 to 2012, he was Professor at the Faculty of Law at Heidelberg University, as well as Director of the Max Planck Institute for Comparative Public Law and International Law. He was subsequently appointed Managing Director of the Max Planck Foundation for International Peace and the Rule of Law, of which he is currently an Honorary Director. Alongside his distinguished career as a scholar, Mr Wolfrum has extensive judicial experience, having served as a judge at the International Tribunal for the Law of the Sea from 1996 to 2017, during which time he was elected by his colleagues to serve as Vice-President and as President. He has also been chosen as a judge *ad hoc* in the case concerning *Arbitral Award of 3 October 1899 (Guyana* v. *Venezuela)*, currently pending before the Court. Mr Wolfrum, in addition, is an experienced arbitrator, having been a member of numerous international arbitral tribunals, as well as sitting on the Timor Sea Conciliation Commission between Timor-Leste and Australia.

Mr Wolfrum is a member of the Institut de droit international. He is the recipient of a great many academic awards and has published widely, covering in an authoritative manner diverse areas of international law, as well as national and comparative public law.

M^me^ Pinto, de nationalité argentine, a étudié le droit à l'Université de Buenos Aires, où elle a obtenu son doctorat en droit en 1983. En 1994, elle est devenue professeure de droit international public à la même université, avant d'occuper le poste de doyenne de la faculté de droit de 2010 à 2018. Elle est aujourd'hui professeure émérite et directrice du programme de maîtrise en droit international des droits de l'homme à la faculté de droit de l'Université de Buenos Aires. En 2007, elle a enseigné à l'Académie de droit international de La Haye, et a été invitée à y dispenser le cours général à l'occasion de la session d'hiver de l'année à venir — 2025. M^me^ Pinto a également été

professeure invitée à la Columbia Law School, à l'Université Paris 2 Panthéon-Assas, à l'Université Paris 1 Panthéon-Sorbonne, et à l'Université de Rouen. En dehors de son travail universitaire, M[me] Pinto a acquis une vaste expérience en tant que praticienne. Elle a participé à des procédures devant la Cour et divers organes des droits de l'homme, en tant que conseil et avocate. Elle a également été arbitre et est membre de divers comités *ad hoc* d'annulation, dans le domaine des investissements internationaux, devant le Centre international pour le règlement des différends relatifs aux investissements (CIRDI). Elle a été juge et présidente du Tribunal administratif de la Banque mondiale et juge et présidente du Tribunal administratif de la Banque interaméricaine de développement. Elle a également occupé le poste de vice-présidente et de membre de la Commission consultative pour l'examen des candidatures de la Cour pénale internationale. Depuis 2022, elle est membre de la Cour permanente d'arbitrage.

M[me] Pinto est membre de l'Institut de droit international. Elle s'est vu décerner de nombreux prix et distinctions, dont des doctorats honorifiques. Elle est l'auteure de nombreuses publications renommées en droit international. Elle a également rédigé plusieurs rapports pour les Nations Unies en sa qualité de rapporteuse spéciale sur l'indépendance des juges et des avocats et d'experte indépendante sur la situation des droits de l'homme au Guatemala et au Tchad.

I shall now invite Mr Wolfrum to make the solemn declaration prescribed by the Statute, and I request all those present to rise.

Mr WOLFRUM: Thank you, Mr President.

> "I solemnly declare that I will perform my duties and exercise my powers as judge honourably, faithfully, impartially and conscientiously."

The PRESIDENT: Thank you, Mr Wolfrum. J'invite maintenant M[me] Pinto à faire la déclaration solennelle prescrite par le Statut.

M[me] PINTO :

> « Je déclare solennellement que je remplirai mes devoirs, exercerai mes attributions de juge en tout honneur et dévouement, en pleine et parfaite impartialité et en toute conscience. »

The PRESIDENT: Thank you, Ms Pinto. Please be seated. I take note of the solemn declaration made by Mr Wolfrum and Ms Pinto and declare them duly installed as judges *ad hoc* in the case.

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Je vais à présent retracer les principales étapes de la procédure en l'espèce.

Le 5 mars 2021, la République de Guinée équatoriale a officiellement notifié à la Cour le « compromis entre la République gabonaise et la République de Guinée équatoriale » signé à Marrakech le 15 novembre 2016, par lequel la République gabonaise et la République de Guinée équatoriale sont convenues de soumettre à la Cour un différend les opposant sur la « délimitation de leurs frontières maritime et terrestre communes » et sur la « souveraineté sur les îles Mbanié, Cocotiers et Conga ».

Par ordonnance du 7 avril 2021, la Cour, eu égard aux dispositions du compromis relatives aux pièces de procédure et à l'accord conclu entre les Parties quant à l'ordre dans lequel elles souhaitaient déposer leurs premières pièces, a fixé au 5 octobre 2021 et au 5 mai 2022, respectivement, les dates d'expiration des délais pour le dépôt d'un mémoire par la Guinée équatoriale et d'un contre-mémoire par le Gabon. Le mémoire et le contre-mémoire ont été déposés dans les délais ainsi fixés.

Par ordonnance du 6 mai 2022… Bon, je crois qu'il y a un problème de traduction. Excusez-moi, on va s'arrêter quelques instants pour s'assurer que la traduction est rétablie. C'est bon ? Excusez-moi, il paraît que c'est bon maintenant.

Par ordonnance du 6 mai 2022, la Cour a fixé au 5 octobre 2022 et au 6 mars 2023, respectivement, les dates d'expiration des délais pour le dépôt d'une réplique par la Guinée équatoriale et d'une duplique par le Gabon. La réplique et la duplique ont été déposées dans les délais ainsi fixés.

After ascertaining the views of the Parties, the Court decided, pursuant to Article 53, paragraph 2, of its Rules, that copies of the written pleadings and the documents annexed thereto would be made accessible to the public on the opening of the oral proceedings. In accordance with

the Court's practice, the pleadings and documents annexed will be put on the Court's website from today.

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I note the presence at the hearing of the Agents, counsel and advocates of both Parties. In accordance with the arrangements for the organization of the proceedings which have been decided by the Court, the hearings will comprise a first and a second round of oral argument. The first round of oral argument will begin today, with the statement of Equatorial Guinea, and will close on Wednesday 2 October, following Gabon's first round of oral argument. Each Party has been allocated a period of five hours for the first round. The second round of oral argument will begin on the afternoon of Thursday 3 October and come to a close on Friday 4 October. Each Party will have a maximum of three hours to present its reply.

In this first sitting, Equatorial Guinea may, if required, avail itself of a short extension beyond 1 p.m., in view of the time taken up by the opening part of these oral proceedings.

I now give the floor to His Excellency Mr Domingo Mba Esono, Agent of Equatorial Guinea. You have the floor Sir.

Mr MBA ESONO:

SPEECH OF THE AGENT OF EQUATORIAL GUINEA
[English translation provided by Equatorial Guinea]

1. Mr President, distinguished Members of the Court, it is a great honour and privilege for me to appear before you on behalf of my country.

2. On 5 March 2021, Equatorial Guinea submitted the present dispute to the Court, formally notifying it of the Special Agreement concluded with Gabon on 15 November 2016.

3. Equatorial Guinea appears before the Court in a spirit of friendship towards Gabon, and with the desire to strengthen the bilateral relationship, based on mutual respect, good neighbourliness, and the rule of law. We are convinced that the Court's judgment will help our countries resolve their outstanding disputes over sovereignty and borders, laying a sustainable foundation for their relations to flourish.

4. The dispute submitted to the Court arose in 1972, twelve years after Gabon's independence and four years after Equatorial Guinea's. That year, Gabon, for the first time, changed its position and claimed the island of Mbañe, in Corisco Bay. In August 1972, Gabon, with the use of force, invaded this territory under Equatoguinean sovereignty, occupying it illegally ever since.

5. Shortly thereafter, in 1974, Gabon for the first time contested the land border established decades ago by the colonial powers of both countries, again invading our territory, this time on the western bank of the Kie River.

6. The purpose of Gabon's conduct is clear: to nullify the territorial situation existing at the time of the independence of both nations.

7. In response to Gabon's illegal occupation of Mbañe and the assertion of other territorial claims, Equatorial Guinea refrained from using force to recover its sovereign territory. Instead, my country has committed itself to resolve its dispute with Gabon peacefully, based exclusively on international law.

8. Regrettably, Equatorial Guinea's diplomatic efforts between 1972 and 2003 did not produce any results.

9. Then, in May 2003, at a meeting of the *ad hoc* Border Commission between the two countries, Gabon suddenly invoked, for the first time, what it claimed was a "Convention on the demarcation of the land and maritime borders of Equatorial Guinea and Gabon, signed in Bata on 12 September 1974 between President Macías and President Bongo."

10. Not once until then had Gabon mentioned such a document — neither during negotiations between the Parties, nor when the two countries granted permits for oil exploration and exploitation in Corisco Bay or asserted maritime claims and fixed their maritime borders with third States.

11. The document presented by Gabon in May 2003 took the members of the Equatorial Guinea delegation completely by surprise. None of them had seen or heard of this so-called "Agreement".

12. Moreover, the document submitted was not an original, but merely an unauthenticated photocopy. The Equatoguinean representatives asked Gabon to submit the original Spanish and French versions of the document. Gabon replied that it did not have the original document. For its part, Equatorial Guinea questioned the legitimacy of the document and insisted that Gabon submit

an original and authenticated version of it. Since then, more than 20 years have passed, Gabon has not submitted anything.

13. Gabon's insistence on this document prevented the Parties from reaching an agreement. Equatorial Guinea then proposed to submit the dispute to the Court for a final resolution. Gabon refused.

14. In July 2003, the Parties requested the mediation of the Secretary-General of the United Nations. He appointed Mr Yves Fortier as mediator, and mediation sessions were held in 2003, 2004 and 2006. Again, no agreement was reached.

15. Subsequently, at the initiative of Equatorial Guinea once again, the Parties agreed to explore the possibility of submitting the matter to the Court. In June 2008, the mediation entered into a new phase, aimed at defining the terms of the Parties' Special Agreement before the Court. With the assistance of United Nations Secretary-General Ban Ki-moon, and his special adviser and mediator, Nicolas Michel of Switzerland, the Parties negotiated this issue between 2009 and 2016.

16. Equatorial Guinea proposed to empower the Court to definitively resolve all aspects of the dispute between the Parties, from the determination of sovereignty over the islands of Mbañe, Cocoteros and Conga, to the delimitation of their land and maritime borders. Gabon, once again, objected.

17. Finally, in 2016, the Parties reached an agreement on the Special Agreement. However, the most that Gabon agreed to was to refer to the Court the question of which legal titles apply to determine sovereignty over the disputed islands and the land and maritime boundaries. Given the circumstances, Equatorial Guinea agreed to grant the Court jurisdiction to identify the applicable legal titles.

18. On 15 November 2016, the Presidents of both countries signed the Special Agreement, which, in its Article 1, requests the Court to determine whether the legal titles, treaties and international conventions invoked by the Parties have the force of law between them, in so far as they relate to sovereignty over the islands of Mbañe, Cocoteros and Conga and to the delimitation of their common land and maritime boundaries.

19. In its written submissions, Equatorial Guinea has established the existence and applicability of its legal titles, treaties and conventions applicable to the sovereignty and delimitation

disputes between the Parties. Gabon has offered nothing to refute the extensive evidence provided by Equatorial Guinea.

20. Instead, ignoring the irrefutable evidence presented by my country, Gabon continues to invoke the unauthenticated 2003 document as the *dominant legal title* to, among other things, the territory and islands that Gabon forcibly took from Equatorial Guinea in 1972.

21. Mr President, Members of the Court, Equatorial Guinea respectfully considers that Gabon's position is factually and legally untenable, as its distinguished counsel will demonstrate today:

(a) At the outset, Dr Smith will summarize the dispute that brings us before you today.

(b) Next, Professor d'Argent will demonstrate that the Court is competent to determine *all* applicable legal titles, including those arising under international law by effect of the principle of succession of States; and that Gabon is wrong to assert that Article 1 of the Special Agreement limits the Court's jurisdiction to determining only the applicability of legal titles that take the form of written documents, such as treaties and conventions.

(c) Following that, Professor Sands and Mr Parkhomenko will demonstrate that the unauthenticated 2003 document has no force of law between the parties and does not establish any title.

(d) Then — and this will conclude the morning session — Mr Reichler will address the legal titles to the islands of Mbañe, Cocoteros and Conga, showing that the applicable title belongs to Equatorial Guinea on the basis of its succession to Spain in 1968; and that Gabon, and France before Gabon, never had title to these islands.

(e) The afternoon session will begin with Professor Akande, who will address the importance of the 1900 Convention, which both Parties recognize as a valid source of legal title to determine sovereignty over the disputed territory.

(f) Afterwards, Mr Loewenstein, Ms Pasipanodya and HE Mr Nzang Nguema will address the legal titles applicable to the various parts of the land boundary.

(g) And to conclude the first round of presentations by Equatorial Guinea, Ms MacDonald will address the titles applicable to the maritime boundaries.

22. Mr President: Equatorial Guinea hopes and trusts that, by identifying the applicable legal titles, the Court's Judgment will enable our two States to resolve their dispute in a definitive manner.

23. With this I conclude my presentation. Mr President, Members of the Court, I thank you for your kind attention and ask that you call Professor Derek Smith to the lectern.

The PRESIDENT: I thank His Excellency Mr Domingo Mba Esono, Agent of Equatorial Guinea, for his statement. I now invite Mr Derek Smith to take the floor. You have the floor, Sir.

Mr SMITH:

THE ORIGIN OF THE PARTIES' SOVEREIGNTY AND BOUNDARY DISPUTE

1. Thank you. Mr President, Madam Vice-President, Members of the Court, it is my great honour to be before you on behalf of the Republic of Equatorial Guinea.

2. I will address today the origin of the sovereignty and boundary dispute between Equatorial Guinea and Gabon. This will provide the context for the Court's decision on the issues that the Parties have decided to put before you in Article 1 of the Special Agreement.

3. I will start with "the 'photograph' of the territorial situation" existing at independence, to use the Court's words from *Burkina Faso* v. *Mali*[1]. You can see this photograph on the screen now and in your folders at tab 2. This map shows the territorial situation at the independence of the Parties. The Spanish territories, noted in red, included Bioko Island, Annobón Island, and *all* of the islands in Corisco Bay, as well as the continental region of Rio Muni.

4. The evidence shows that, at the time of Gabon's independence, Spain and France had no territorial disputes, and Gabon and Spain equally had no territorial disputes at the time of Equatorial Guinea's independence in 1968. At the moment of decolonization, the territorial relationship was settled.

5. In the continental region, seen on the next map, Spain and France delimited the boundary in their 1900 Convention and through adjustments made in accordance with Article 8 and Appendix 1 of that Convention. The territorial situation was not in dispute when Gabon and Equatorial Guinea attained their independence and succeeded to the colonial legal titles. Indeed, as Mr Nzang

[1] *Frontier Dispute (Burkina Faso/Republic of Mali), Judgment, I.C.J. Reports 1986*, p. 568, para. 30.

Nguema Mangue will discuss this afternoon, outside these proceedings, Gabon and Equatorial Guinea continue to respect this boundary today.

6. In addition to its continental territory, Spain held undisputed legal title to ten islands off the west African coast[2]: these islands, as you can see on the screen, included all eight of the islands in Corisco Bay. Looking at the map on the screen, the Corisco Bay islands are, going from north to south, the larger islands of Elobey Chico, Elobey Grande and Corisco as well as the islets of Leva, Hoco, Mbañe, Cocoteros and Conga. As Mr Reichler will discuss later this morning, Spain acquired title to these islands in the nineteenth century and maintained it until the independence of Equatorial Guinea in 1968[3]. France, for its part, did not hold title to or even claim any of the islands in the region, and it expressly recognized Spain's title to all ten islands, including, importantly, the islands in Corisco Bay[4]. The evidence further shows that following its independence, Gabon accepted Spain's sovereignty over all of these islands and later accepted Equatorial Guinea's acquisition of Spain's legal titles by succession[5].

7. Despite its international law obligations to respect this inherited situation, Gabon began efforts to alter the territorial map in 1970, after Spain had withdrawn its armed forces that protected Equatorial Guinea, and after oil companies had reported significant hydrocarbon prospects in the maritime areas adjacent to Mbañe, Cocoteros and Conga.

8. Gabon made its first move in May 1970 by unilaterally expanding the northern limits of the Libreville Marin petroleum concession[6]. As you can see on the map on the screen, Gabon awarded this concession in 1967, and reissued it in 1969, and when it did this it respected the equidistance line between its continental coast and the Spanish and Equatoguinean Corisco Bay islands. This equidistance line was constructed using Spanish basepoints on Mbañe, Cocoteros and Conga[7]. But, as you can see on the next map showing new limits to Gabon's concession, just one year later, Gabon

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[2] Memorial of Equatorial Guinea ("MEG"), Vol. I, paras. 6.10-6.16; Reply of Equatorial Guinea ("REG"), Vol. I, paras. 4.8-4.43.

[3] MEG, Vol. I, paras. 6.11-6.12; REG, Vol. I, para 4.44.

[4] MEG, Vol. I, paras. 6.12-6-14, 3.17, 3.19, 3.26, 3.32-3.33; REG, Vol. I, paras. 4.4, 4.9-4.33.

[5] MEG, Vol. I, paras. 3.85-3.101; REG, Vol. I, paras. 4.37-4.42.

[6] MEG, Vol. I, para. 4.3.

[7] MEG, Vol. I, para. 3.98.

radically changed its position, encroaching on Equatorial Guinea's territorial sea[8] and affecting half of the southernmost block of Equatorial Guinea's petroleum exploration permits.

9. Next, on 12 August 1970, Gabon extended its territorial sea from 12 nautical miles to 25 nautical miles[9] and further confirmed this extension in October 1970[10]. This claim drew objections from Equatorial Guinea and many other States, including the United States, the United Kingdom, the Netherlands and the Soviet Union[11].

10. But those objections did not deter Gabon. In January 1972, Gabon further extended its territorial sea from 25 nautical miles to 30 nautical miles to arrogate even more maritime areas in, and beyond, Corisco Bay[12].

11. Gabon's increasingly aggressive claims raised serious concerns for Equatorial Guinea, and to address them, the Parties met in March 1972. It was during these meetings that Gabon, for the first time, claimed sovereignty over islands in Corisco Bay[13]. Gabon confirmed its recognition of Equatorial Guinea's sovereignty over Corisco, Elobey Grande and Elobey Chico[14]. But with respect to the Corisco dependencies, Gabon suddenly alleged that Mbañe, Cocoteros and Conga were Gabon's territory[15]. It justified this new claim by asserting that the islets are "located on the

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[8] The Gabonese Republic, *Decree 689/70* (14 May 1970). MEG, Vol. VI, Annex 184.

[9] MEG, Vol. I, para. 4.4; *Telegram from* the US Embassy in Libreville *to* the US Department of State (13 August 1970), p. 1. MEG, Vol. VI, Annex 152; *Letter from* the Ambassador of Spain in Libreville *to* the Spanish Ministry of Foreign Affairs (18 August 1970), p. 1. MEG, Vol. VI, Annex 153; *Cable from* UN *to* Permanent Missions (14 September 1970), *enclosing Communication from* Mr Manadou D'Niaye, Charge d'Affaires of the Republic of Gabon *to* the Secretary-General of the United Nations Announcing the Extension of Gabonese Territorial Waters by Presidential Decree (20 August 1970), p. 1. MEG, Vol. III, Annex 22; *Airgram from* the US Department of State regarding Protest of Gabon's Extension of Territorial Waters (12 November 1970), p. 1. MEG, Vol. VI, Annex 156.

[10] MEG, Vol. I, para. 4.4; The Gabonese Republic, *Order No. 55-70-PR-MTAC* (5 October 1970), p. 1. MEG, Vol. VI, Annex 187.

[11] *Telegram from* the US Embassy in Libreville *to* the US Department of State (13 August 1970), p. 1. MEG, Vol. VI, Annex 152; *Letter from* the Permanent Mission of the Netherlands to the United Nations *to* the UN Secretary-General (14 October 1970), p. 1. MEG, Vol. III, Annex 24; MEG, Vol. VI, Annex 157, p. 1; Permanent Mission of the Republic of Equatorial Guinea to the United Nations, *Statement Before the United Nations Security Council by His Excellency Mr Jesus Alfonso Oyono Alogo* (September 1972) (excerpt), p. 3. MEG, Vol. III, Annex 28.

[12] MEG, Vol. I, para. 4.7; *Airgram No. A-011 from* the Embassy of the United States to the Gabonese Republic *to* the US Department of State (8 February 1972), p. 1. MEG, Vol. VI, Annex 159; *Letter from* the Permanent Representative of the Gabonese Republic to the United Nations *to* the UN Secretary-General (1 March 1972), p. 3. MEG, Vol. III, Annex 25.

[13] MEG, Vol. I, para. 4.7.

[14] *Report Prepared by the Gabon-Equatorial Guinea Joint Commission After the Meeting in Libreville from March 25 to 29, 1972*, Libreville (25-29 March 1972), p. 51. MEG, Vol. VII, Annex 199.

[15] MEG, Vol. I, para. 4.7.

continental shelf . . . constituting the natural extension of the Gabonese territory"[16]. That is the only argument Gabon had for its sovereignty. Equatorial Guinea reminded Gabon that its claim was inconsistent with Gabon's prior recognition of Spain's — and then Equatorial Guinea's — sovereignty over these islands[17]. Gabon must have known that it was reversing the position that it, and France before it, had held for over 100 years. Against the background of Gabon's new claims and the sovereignty dispute it created, the Parties agreed to refrain from further unilateral action in the disputed area[18].

12. Gabon did not wait long before breaching this agreement. In July 1972 — for the third time in less than two years — Gabon extended its territorial sea from 30 nautical miles to 100 nautical miles[19]. Equatorial Guinea and other States, of course, protested again[20].

13. These exorbitant maritime claims were not enough for Gabon. The following month, on 26 August 1972, Gabon sent its military forces to seize and occupy Mbañe Island[21] and reasserted its claim that this island was part of Gabon's territory. Gabon misleadingly seeks to downplay this

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[16] *Report Prepared by the Gabon-Equatorial Guinea Joint Commission After the Meeting in Libreville from March 25 to 29, 1972*, Libreville (25-29 March 1972), p. 5. MEG, Vol. VII, Annex 199.

[17] *Report Prepared by the Gabon-Equatorial Guinea Joint Commission After the Meeting in Libreville from March 25 to 29, 1972*, Libreville (25-29 March 1972), pp. 1, 5-6. MEG, Vol. VII, Annex 199; *Minutes Drawn up by the Gabonese-EquatoGuinean Delegation Following the Meeting in Libreville from March 25-29, 1971[2]*, Libreville (29 March 197[2]), p. 3. MEG, Vol. VII, Annex 197.

[18] MEG, Vol. I, para. 4.7; *Minutes of the Joint Gabon-Equatorial Guinea Commission's Meeting in Libreville* (25-29 March 1972), pp. 3, 8, points 2.1, 8.2. MEG, Vol. VII, Annex 198.

[19] MEG, Vol. I, para. 4.8; *Letter from* the Ambassador of the Gabonese Republic to the United Nations *to* the UN Secretary-General (28 August 1972), p. 1. MEG, Vol. VI, Annex 161; The Gabonese Republic, *Ordonnance No. 58/72 Extending the Outer Limit of Gabon's Territorial Waters to 100 Nautical Miles* (16 July 1972), p. 3, art. 1. MEG, Vol. VI, Annex 188; *Telegram No. 546 from* the Embassy of the United States to the Gabonese Republic *to* the US Department of State (2 September 1972), p. 1. MEG, Vol. VI, Annex 162.

[20] The Gabonese Republic, *Ordonnance No. 58/72 Extending the Outer Limit of Gabon's Territorial Waters to 100 Nautical Miles* (16 July 1972), p. 3. MEG, Vol. VI, Annex 188; *Letter from* the Permanent Mission of the Republic of Equatorial Guinea to the United Nations *to* the Permanent Missions and Offices of Permanent Observers to the United Nations (5 September 1972). MEG, Vol. III, Annex 26; *Telegram No. 190230 from* the US Department of State *to* the Embassies of the United States of America to the Gabonese Republic, the United Kingdom, The French Republic, the Union of Soviet Socialist Republics, Japan, the United Nations, and The United Republic of Cameroon (18 October 1972), p. 1. MEG, Vol. VI, Annex 170; Telegram No. 282 from the Embassy of the United States of America to the Kingdom of the Netherlands to the US Department of State (26 October 1972). MEG, Vol. VI, Annex 171.

[21] MEG, Vol. I, para. 4.9; *Note Verbale from* the Permanent Mission of the Republic of Equatorial Guinea *to* the United Nations to the UN Secretary General (11 September 1972). MEG, Vol. III, Annex 27; Permanent Mission of the Republic of Equatorial Guinea to the United Nations, *Statement Before the United Nations Security Council by His Excellency Mr Jesus Alfonso Oyono Alogo* (September 1972). MEG, Vol. III, Annex 28; *Telegram from* Equatorial Guinea's Minister of Foreign Affairs *to* the Permanent Representative of the Republic of Equatorial Guinea to the United Nations (11 September 1972). MEG, Vol. VI, Annex 164; T*elegram No. 644 from* the Embassy of the United States of America to the Gabonese Republic *to* the US Department of State (11 September 1972). MEG, Vol. VI, Annex 165; REG, Vol. I, para. 3.3.

territorial conquest, calling it a police action[22], but this was blatant armed aggression undertaken with the intention to acquire the sovereign territory of another State.

14. On 11 September 1972, Equatorial Guinea brought Gabon's violation of Equatorial Guinea's territorial sovereignty to the United Nations Security Council[23]. To avoid Security Council action, Gabon agreed to submit the dispute to the Organisation of African Unity (OAU) for mediation[24]. Nevertheless, shortly after the Parties' agreement on 17 September 1972 to "settle their dispute . . . by peaceful means"[25], the Gabonese President made clear that he would not respect the request of the mediators to withdraw his troops from Mbañe, pending resolution of the dispute. "I am here, and I am staying here"[26], he stated.

15. On 13 November 1972, in Brazzaville, with the assistance from the OAU mediators, the Parties signed a Joint Communiqué, agreed to "the neutralization of the disputed zone in the Corisco Bay" and to the delimitation of their maritime boundary by an *ad hoc* OAU commission[27]. But Gabon refused to withdraw its troops from Mbañe and continued to assert a right to the territory it had illegally seized.

16. Gabon's military aggression did not end there. In June 1974, less than two years after invading Mbañe, Gabon sent troops across the Kie River boundary in the north-east of Equatorial Guinea's continental territory near the city of Ebebiyin[28]. The title to this area was held by Spain

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[22] Counter-Memorial of Gabon ("CMG"), Vol. I, paras. 6, 2.49, 2.50.

[23] MEG, Vol. I, para. 4.10; *Note Verbale from* the Permanent Mission of the Republic of Equatorial Guinea *to* the United Nations to the UN Secretary General (11 September 1972). MEG, Vol. III, Annex 27; Permanent Mission of the Republic of Equatorial Guinea to the United Nations, *Statement Before the United Nations Security Council by His Excellency Mr Jesus Alfonso Oyono Alogo* (September 1972). MEG, Vol. III, Annex 28.

[24] MEG, Vol. I, para. 4.10; *Routine Telegram No. 434 from* Kinshasa (15 September 1972). MEG, Vol. VI, Annex 167; *Letter from* Gabon *to* Secretary of the United Nations (13 September 1972). MEG, Vol. VI, Annex 166.

[25] Conference of the Heads of State and Government of Central and East Africa, Dar es Salaam, 7-9 September 1972, *Joint Communiqué on the Work of the Conference on Settlement of the Dispute Between Equatorial Guinea and Gabon,* as recorded by the Embassy of the United States to the Republic of Zaire (18 September 1972). MEG, Vol. VII, Annex 200.

[26] "Gabon-Equatorial Guinea: Next Meeting on 30 September," *Fraternité Matin : Le Grand Quotidien Ivoirien News* (20 September 1972). MEG, Vol. VII, Annex 228; *see also* MEG, Vol. I, para. 4.11; *Telegram from* US Embassy in Libreville *to* US Department of State (19 September 1972), p. 2. MEG, Vol. VI, Annex 168; *Letter from* the Embassy of Spain in Abidjan *to* the Minister of Foreign Affairs in Madrid (30 September 1972). MEG, Vol. VI, Annex 169; News Article, "Dateline Africa: Gabon Frontier Dispute Settled," *West Africa* (29 September 1972). MEG, Vol. VII, Annex 229.

[27] Conference of the Heads of State and Government of Central and East Africa, Second Session, *Final Communiqué Regarding the Dispute Between Equatorial Guinea and Gabon* (13 November 1972), p. 2. MEG, Vol. VII, Annex 201.

[28] REG, Vol. I, paras. 3.4, 5.76; *Message Text from* the US Department of State EO Systematic *concerning* Equatorial Guinea-Gabon Land Border Problem (20 June 2005), p. 2. REG, Vol. IV, Annex 52.

pursuant to the 1900 Convention and the 1919 Governors' Agreement[29], and then by Equatorial Guinea as the successor State[30]. Under international pressure, Gabon withdrew from the Kie River area. But, true to President Bongo's words, Gabon stayed on Mbañe Island. In the image on the screen from 2022, taken from Gabon's pleadings, you can see the installation Gabon has built on Mbañe to consolidate its 50-year occupation of Equatorial Guinea's territory[31].

17. As the Agent of Equatorial Guinea noted, since 1972, the invasion of Mbañe has been at the heart of the dispute between the Parties, and this is the principal reason we are before you today. All of Equatorial Guinea's prior efforts to find a peaceful resolution to this dispute have been stymied by Gabon's insistence that it acquired legal title to Mbañe after its invasion.

18. Now that the Parties are finally before the highest international judicial body to help resolve this dispute, Equatorial Guinea simply requests the Court to affirm the legal titles conferred on the Party by succession at independence. For its part, Gabon, alleging a dubious legal title, asks the Court to change the territorial situation at independence and legitimate its acquisition of another State's sovereign territory by military force.

19. Mr President, Madam Vice-President, Members of the Court, I thank you for your kind attention. May I request, Mr President, that you call Professor d'Argent to the podium. Thank you.

The PRESIDENT: I thank Derek Smith. J'appelle maintenant à la barre le professeur Pierre d'Argent. Vous avez la parole.

M. D'ARGENT : Merci, Monsieur le président.

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[29] MEG, Vol. I, paras. 3.67-3.69, 6.36; *Letter from* the Governor-General of Spanish Territories of Africa *to* the Governor of French Gabon (22 November 1917), pp. 2-3. MEG, Vol. IV, Annex 65; *Letter from* French Minister of Colonies *to* Minister of Foreign Affairs (24 November 1919), pp. 2-3. MEG, Vol. IV, Annex 68; *Letter No. []3 from* the Governor-General of French Equatorial Africa *to* the Governor-General of the Spanish Territories of the Gulf of Guinea (24 January 1919), p. 1. MEG, Vol. IV, Annex 66; *Letter from* Spanish Governor General of Spanish Guinea *to* His Excellency the French Governor General of French Equatorial Africa (1 May 1919), p. 7. MEG, Vol. IV, Annex 67; REG, Vol. I, paras. 5.51-5.61.

[30] MEG, Vol. I, para. 6.1.

[31] CMG, Vol. II, Annex P4 (Aerial view of Mbanié Island from the northwest, taken on 17 March 2022, at 9:58 a.m. at low tide).

LA PORTÉE DU COMPROMIS

1. Monsieur le président, Madame la vice-présidente, Mesdames et Messieurs les juges : c'est toujours un honneur de prendre la parole devant la Cour et c'est un honneur particulier de le faire, ce matin, au soutien de la Guinée équatoriale.

2. Il me revient d'aborder la question de la portée du compromis du 15 novembre 2016 dont vous trouverez le texte intégral, ainsi que la traduction anglaise établie par le Greffe, sous l'onglet n° 3.1 de votre dossier d'audience.

3. D'emblée, je tiens à souligner, comme notre agent l'a rappelé, que la mission confiée à la Cour par le compromis ne consiste pas à tracer la frontière terrestre ou maritime entre les Parties, pas plus qu'à dire pour droit qui, de la Guinée équatoriale ou du Gabon, est souverain sur les îles de Mbanié, Cocotiers et Conga. Le Gabon a consacré une grande partie de ses écritures à cette question[32], comme si la Guinée équatoriale attendait de la Cour qu'elle outrepasse les termes clairs du compromis. Cela n'a jamais été le cas et je ne m'attarderai donc pas davantage sur ce point au sujet duquel il n'y a en réalité aucune divergence entre Parties.

4. Mais comme vous le savez, les Parties s'opposent toutefois au sujet des « titres juridiques » qu'elles peuvent invoquer dans le cadre du présent différend et au sujet desquels la Cour est appelée à statuer : le Gabon soutient que seuls des titres documentaires, tels que des traités et des conventions, peuvent vous être présentés et que la Cour ne peut pas se prononcer sur l'applicabilité d'un titre juridique invoqué par une Partie si ce titre ne se présente pas sous la forme d'un document[33] ; la Guinée équatoriale soutient que cette lecture restrictive du compromis est erronée car il résulte clairement de son article premier qu'en plus des titres manifestés par un *instrumentum* documentaire, chaque Partie peut soumettre à votre examen tout titre juridique qui, selon elle, fonde sa souveraineté sur les trois îles, ou délimite les droits de chaque Partie au sujet de la frontière terrestre ou de la frontière maritime.

5. J'aborderai cette question qui divise les Parties en rappelant tout d'abord que la notion de « titres juridiques » doit se comprendre au regard de la mission confiée par le compromis à la Cour (**I**). Dans un deuxième temps, j'exposerai tout à la fois les errements interprétatifs du Gabon et

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[32] Contre-mémoire de la République gabonaise (ci-après, « CMG »), par. 5.5-5.62.

[33] *Ibid.*, par. 5.69.

la correcte interprétation du compromis (**II**). Et je terminerai, dans un troisième temps, en abordant la place de la succession d'États, des effectivités, de la convention des Nations Unies sur le droit de la mer et de certaines règles de droit coutumier dans les soumissions de la Guinée équatoriale (**III**).

I. Les titres juridiques invoqués par les Parties et la mission de la Cour

6. Monsieur le président, Mesdames et Messieurs les juges : pour comprendre le sens des termes « titres juridiques » qui apparaissent, au pluriel, aux paragraphes 1 et 4 de l'article premier du compromis, il faut revenir à la mission confiée à la Cour. Et cette mission consiste — je cite l'article premier, paragraphe 1, du compromis — à « dire si les titres juridiques, traités et conventions internationales *invoqués* par les Parties font droit dans les relations entre [elles] s'agissant de la délimitation de leurs frontières maritime et terrestre communes et de la souveraineté sur les îles Mbanié, Cocotiers et Conga » (les italiques sont de nous).

7. Au regard de la mission ainsi confiée à la Cour, le paragraphe 4 de l'article premier consacre quant à lui « le droit » de chaque Partie, au cours de la procédure, « d'*invoquer* d'autres titres juridiques » (les italiques sont de nous) que ceux mentionnés aux paragraphes 2 et 3 de l'article premier, lesquels explicitent, respectivement pour le Gabon et pour la Guinée équatoriale, les ou la convention(s) que chaque Partie, en ce qui la concerne, « reconnaît comme applicable[s] au différend ». Ces paragraphes 2 et 3 sont introduits par les mots « [à] cette fin », c'est-à-dire qu'ils énoncent dans le compromis les conventions qui sont d'ores et déjà « invoqué[e]s par les Parties » au sens du paragraphe 1 — mais, comme le rappelle le paragraphe 4, chaque Partie demeure libre d'invoquer d'autres titres juridiques.

8. Comme on le voit, le compromis utilise les termes « titres juridiques », ainsi que « traités » et « conventions internationales » pour viser ce que les Parties « invoqu[ent] » devant la Cour. Le verbe « invoquer » décrit donc l'action procédurale, et ainsi la prétention substantielle, de chaque Partie. Selon le paragraphe 2, « [à] cette fin », le Gabon invoque le document présenté en 2003, et c'est bien à son sujet que se situe, vous le savez, le nœud principal du présent différend. Mais bien sûr, ce document n'est ni un titre juridique, ni un traité, ni une convention au sens propre de ces termes aussi longtemps que la Cour n'a pas dit qu'il faisait droit dans les relations entre les Parties. Ce n'est qu'alors et à cette condition seulement que le document présenté en 2003 sera — *quod*

non — une convention applicable entre Parties ; avant cela, il n'est rien d'autre qu'une prétendue convention « invoqué[e] » par le Gabon. Avant votre arrêt à venir, cette prétendue convention n'est même pas un titre documentaire au sens où l'entend le Gabon puisque la question de savoir si elle constitue un titre conventionnel liant le Gabon et la Guinée équatoriale, et opposable à ces États, est précisément au cœur de ce différend. Il est donc parfaitement possible qu'à l'issue de la procédure — et c'est d'ailleurs ce que la Guinée équatoriale vous demande de constater — le document présenté en 2003 ne soit en rien un « titre juridique » — et pourtant, bien sûr, le Gabon est en droit de l'invoquer.

9. Donc, les Parties invoquent ce que chacune d'elles considère comme étant des titres juridiques, y compris des traités et des conventions, et la Cour décide si chacun de ces titres, traités et conventions ainsi invoqués fait droit entre Parties. Et pour s'acquitter de cette tâche, ainsi que le précise l'article 2 du compromis, la Cour applique les sources du droit international visées à l'article 38, paragraphe 1, du Statut.

10. Monsieur le président, Mesdames et Messieurs les juges, cette lecture toute simple et de bon sens du compromis fondée sur le sens ordinaire de ses termes est toutefois rejetée par le Gabon sur la base d'une approche conceptuelle inutilement compliquée et totalement artificielle. Le Gabon soutient en effet que vous ne pourriez pas dire pour droit que certains titres juridiques invoqués par la Guinée équatoriale font ou ne font pas droit dans les relations entre les Parties car lesdits titres ne seraient pas des titres documentaires.

11. Monsieur le président : la lecture gabonaise du compromis revient à y insérer une sorte de condition de recevabilité des prétentions de chaque Partie qui ne s'y trouve pas. En effet, faute de satisfaire à la qualification de « titre documentaire », un titre juridique invoqué comme tel par une partie ne pourrait prétendument pas être examiné par la Cour aux fins de déterminer s'il fait droit entre parties[34]. L'interprétation gabonaise impose donc à la Cour de procéder en deux temps : tout d'abord de faire le tri au sein des « titres » invoqués par les Parties entre ceux qui sont documentaires et ceux qui ne le seraient pas ; et ensuite, examinant seulement les titres dits documentaires, de déterminer si ces derniers font droit entre les Parties. Selon le Gabon, la Cour n'aurait donc pas le

[34] Duplique de la République gabonaise (ci-après, « DG »), par. 1.55.

pouvoir de statuer sur l'applicabilité d'un titre juridique invoqué par une partie si celui-ci n'est pas un titre documentaire.

12. L'interprétation gabonaise est erronée tout d'abord parce qu'elle attribue à la Cour un pouvoir différent de celui que le compromis prévoit : la compétence de la Cour est d'examiner *toutes* les prétentions des Parties au sujet de *tous* les « titres juridiques, traités et conventions internationales *invoqués* » (les italiques sont de nous) par elles et de déterminer si — c'est-à-dire dans quelle mesure — ceux-ci « font droit dans le[ur]s relations ». La Cour n'a pas d'autre pouvoir. Si la Cour conclut qu'un titre invoqué fait droit entre Parties, alors ce titre sera à proprement parler un titre *juridique* ; la prétention de la Partie à cet égard sera reconnue et validée par la Cour. Mais il ne saurait être question d'écarter un titre invoqué par une Partie comme titre juridique, sans examiner s'il fait droit entre Parties, sous prétexte qu'il ne serait pas un « titre documentaire ». Faire cela, ce serait s'écarter de la mission confiée à la Cour, laquelle n'est pas de refuser d'examiner un titre invoqué par une Partie comme titre juridique sous prétexte qu'il ne serait pas un « titre documentaire » ; la mission confiée à la Cour est de dire *si* les titres juridiques invoqués par les Parties comme tels font droit entre elles, c'est-à-dire dire s'ils sont effectivement des titres juridiques.

13. J'ajoute que si la Cour rejette la prétention du Gabon au sujet du document présenté en 2003, mais retient par ailleurs son interprétation « documentaire » et restrictive de la notion de « titres juridiques », *votre office* serait très largement privé de toute utilité. En effet, dans ce cas de figure, la Cour ne pourrait même pas dire dans quelle mesure la convention de Paris de 1900 s'applique entre Parties puisque son applicabilité de principe en tant que « document » ne faisait pas l'objet d'un différend au moment de la saisine de la Cour, comme cela ressort clairement du compromis. Or, ainsi que vous l'avez souligné dans l'affaire *Burkina Faso/Niger*, la fonction judiciaire de la Cour est, conformément à l'article 38 du Statut, de régler les différends qui existent au moment de sa saisine, ce qui signifie que, même par accord, les parties ne peuvent pas disposer de cette fonction en lui demandant d'entériner un accord existant entre elles[35]. Et c'est bien la raison pour laquelle la Cour est appelée à dire dans quelle mesure la convention de Paris fait droit entre Parties, ce qui exige de

[35] *Différend frontalier (Burkina Faso/Niger), arrêt, C.I.J. Recueil 2013*, p. 69-70, par. 46-50.

se pencher sur les titres juridiques qui s'y greffent en termes d'accords subséquents, d'effectivités *infra legem* et d'acquiescement, et que la Guinée équatoriale invoque.

14. Monsieur le président, Mesdames et Messieurs les juges, voyons le fond des choses et ne nous y trompons pas : l'interprétation gabonaise est essentiellement formulée afin de vous pousser à valider le document présenté en 2003. En effet, si l'interprétation gabonaise du compromis devait être retenue, compte tenu de la jurisprudence *Burkina Faso/Niger* que je viens de rappeler, vous n'auriez rien à dire au sujet de la convention de Paris puisque, en tant que titre documentaire, elle ne fait l'objet, au jour de la saisine, d'aucun différend entre Parties. Mais tout cela est évidemment erroné : rejeter l'interprétation gabonaise du compromis permettra à la Cour de faire œuvre utile entre Parties, quelle que soit sa décision au sujet du document présenté en 2003. En revanche, retenir l'interprétation gabonaise du compromis aboutirait à imposer à la Cour de ne pas pouvoir retenir comme applicables un ensemble de titres juridiques invoqués par la Guinée équatoriale, *non pas* pour le motif qu'ils ne feraient pas droit entre Parties, mais parce que ces titres ne seraient pas « documentaires », au sens où le Gabon l'entend, alors que le compromis n'impose en rien cette restriction.

15. Le Gabon invente donc à des fins stratégiques une question interprétative nourrie de distinguos conceptuels qui, à la lumière du texte clair du compromis et de la mission de la Cour au regard du droit des Parties d'invoquer des titres juridiques, n'ont pas lieu d'être.

II. L'interprétation du compromis

16. Monsieur le président, Mesdames et Messieurs de la Cour, même s'il devait être nécessaire de procéder à une approche conceptuelle du compromis, l'interprétation proposée par le Gabon est erronée à la lumière des règles coutumières reflétées aux articles 31 et 32 de la convention de Vienne sur le droit des traités.

17. D'emblée, il y a lieu de relever que rien n'indique que les termes « titres juridiques » utilisés aux paragraphes 1 et 4 de l'article premier du compromis — et qui ont évidemment le même sens dans les deux paragraphes — devraient s'entendre dans un sens particulier. En effet, il n'est

nullement établi que l'intention des Parties ait été de donner un sens particulier, différent du sens ordinaire, à ces termes[36]. Et d'ailleurs, le Gabon ne semble pas en disconvenir.

18. S'agissant dès lors du sens ordinaire des termes du compromis, le Gabon s'attache à démontrer que le contentieux dont la Cour est saisie n'est pas un contentieux de délimitation[37]. Mais comme je l'ai rappelé, cela n'est nullement contesté par la Guinée équatoriale. Toutefois, cela ne permet en rien d'affirmer que la notion de « titre[] juridique[] » employée dans le compromis serait identique à celle de « traité[] et convention[] internationale[] » et limitée à la notion de titre documentaire. Le compromis vise cumulativement les « titres juridiques, [*virgule*] traités *et* conventions internationales invoqués par les Parties » (les italiques sont de nous). Le texte du compromis n'est pas « les titres juridiques, c'est-à-dire les traités et conventions internationales ». La virgule qui sépare « titres juridiques » et « traités » a bien sûr tout son sens. Elle signifie que le compromis mentionne les « titres juridiques » *en plus* des « traités et conventions internationales » et non comme synonyme à ces derniers. Les « titres juridiques » invoqués par les Parties sont donc, à côté des traités et conventions, une catégorie supplémentaire plus large de sources de droits en matière de délimitation et de souveraineté insulaire que la Cour est appelée à examiner à la demande de la Partie les ayant invoqués.

19. Quant au contexte dans lequel les termes « titres juridiques, traités et conventions internationales » apparaissent au paragraphe 1 de l'article premier, les paragraphes 2, 3 et 4 qui suivent sont particulièrement éclairants.

20. En précisant que les Parties se réservent le droit d'invoquer « d'*autres* titres juridiques » (les italiques sont de nous), le paragraphe 4 indique certes que les conventions visées aux paragraphes 2 et 3 sont des titres juridiques invocables par chacune des Parties — et d'ores et déjà invoqués par elles comme le signale la locution introductive « [à] cette fin » —, mais les termes des paragraphes 2 à 4 n'impliquent en rien que seuls des titres juridiques se présentant sous la forme de traités ou conventions peuvent être invoqués.

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[36] Convention de Vienne sur le droit des traités, *Recueil des traités (RTNU)*, vol. 1155, par. 4, art. 31, p. 363.

[37] CMG, par. 5.5-5.62.

21. D'une part, il est évident — et le Gabon à nouveau n'en disconvient pas[38] — que tous les traités et toutes les conventions internationales qui existent ne sont pas des titres juridiques.

22. Mais, d'autre part, il est tout aussi clair qu'un titre juridique en matière de souveraineté et de délimitation peut être autre chose qu'un traité ou une convention et n'est pas nécessairement documentaire. Dans l'affaire *Burkina Faso/Mali*, la Chambre souligna que ce n'est que dans le contexte de l'opposition entre « titres juridiques » et « effectivités » que, fort logiquement, « l'expression "titre[s] juridique[s]" semble se référer exclusivement à l'idée de preuve documentaire ». Cette affirmation est évidemment liée au contexte spécifique d'opposition entre titres juridiques et effectivités *contra legem* qui était en cause dans cette affaire car la Chambre a souligné aussitôt — je cite à nouveau — : « Il est à peine besoin de rappeler que ce n'est pas là la seule acception du mot "titre". » En effet, selon la Chambre, — je cite à nouveau — « la notion de titre peut également et plus généralement viser aussi bien tout moyen de preuve susceptible d'établir l'existence d'un droit que la source même de ce droit »[39]. Dans l'affaire *El Salvador/Honduras*, la Chambre a approuvé et réitéré cette position en expliquant : « [E]n général le mot "titre" ne renvoie pas uniquement à une preuve documentaire, mais "peut … viser aussi bien tout moyen de preuve susceptible d'établir l'existence d'un droit que la source même de ce droit". »[40] Dans cette même affaire, la succession à la Couronne espagnole constituait le « "titre" d'El Salvador ou du Honduras …, au sens de source de leurs droits sur le plan international »[41]. Et aussi, selon le *Dictionnaire de la terminologie du droit international* qui date de 1960, le terme « titre juridique » désigne « tout fait, acte ou situation qui est la cause et le fondement d'un droit »[42].

23. Donc, ce n'est pas parce que la notion de « titre juridique » englobe certains traités et certaines conventions que cette notion ne recouvre *que* des traités ou des conventions, c'est-à-dire des titres constitués par des « preuves documentaires ». Comme le Gabon en convient — et je cite le paragraphe 1.50 de sa duplique —, les « "traités et conventions internationales" … font, très

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[38] DG, par. 1.49.

[39] *Différend frontalier (Burkina Faso/République du Mali), arrêt, C.I.J. Recueil 1986*, p. 564, par. 18.

[40] *Différend frontalier terrestre, insulaire et maritime (El Salvador/Honduras ; Nicaragua (intervenant)), arrêt, C.I.J. Recueil 1992*, p. 388-389, par. 45.

[41] *Ibid.*, p. 389, par. 45.

[42] J. Basdevant, *Dictionnaire de la terminologie du droit international*, Sirey, Paris, 1960, p. 604, reproduit dans la réplique de la Guinée équatoriale (ci-après, « RGE »), vol. V, annexe 59, p. 104.

évidemment, *partie* des titres juridiques invocables » (les italiques sont de nous)[43]. Nous sommes tout à fait d'accord, mais si tel est le cas, c'est bien parce que la notion de « titre juridique » ne se réduit pas aux seuls titres documentaires que sont les traités et les conventions.

24. Pour tenter néanmoins de vous convaincre que seuls des titres juridiques documentaires tels que des traités ou des conventions peuvent être invoqués, le Gabon soutient encore que leur compromis aurait « exactement la même signification que l'on y inclue la mention des "traités et conventions internationales" ou qu'on l'en ampute »[44]. Alors, cela est certes exact puisque les traités et conventions constituent seulement une *partie* des titres juridiques invocables. Mais c'est confondre la partie avec le tout que d'affirmer que si la partie est mentionnée, c'est parce que le tout s'y réduirait. Le Gabon fait à cet égard une évidente erreur de logique. Ainsi, la théorie de l'effet utile dans l'interprétation des traités exige, non pas de s'interroger sur la signification du compromis en l'absence des termes « traités et conventions internationales » (lesquels constituent la partie), mais sur la signification du compromis en l'absence des termes « titres juridiques » (lesquels constituent le tout). Si les auteurs du compromis avaient souhaité que la Cour ne se prononce que sur des titres documentaires tels que des traités et des conventions, ils n'auraient pas inclus la référence aux « titres juridiques ». L'effet utile de l'énumération cumulative « titres juridiques, traités et conventions internationales » impose donc de ne pas réduire la notion de « titres juridiques » aux seuls traités et conventions ou aux autres titres se présentant sous la forme d'un document conventionnel puisque ces derniers font *partie* des titres juridiques.

25. C'est donc en vain et de manière — nous semble-t-il — parfaitement contradictoire avec la proposition élémentaire selon laquelle les traités et conventions font *partie* de la catégorie plus large des titres juridiques que le Gabon soutient que, lors de la négociation du compromis, l'adjonction à sa demande des mots « traités et conventions internationales » à l'expression « titres juridiques » aurait visé « à préciser la catégorie des titres juridiques pouvant être invoqués par les Parties — en les *limitant* aux seuls traités et conventions » (les italiques sont de nous)[45]. Bien au contraire, cet ajout signifie que la notion de « titres juridiques » est distincte et ne se limite pas aux

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[43] DG, par. 1.50.

[44] *Ibid.*

[45] *Ibid.*, par. 1.55.

« traités et conventions internationales », c'est-à-dire tout document conventionnel, mais qu'elle ne s'y réduit pas.

26. Monsieur le président, pour conclure sur ce point, j'ajouterais que la position de la Guinée équatoriale est parfaitement conforme à l'objet et au but du compromis, dont le préambule précise qu'il est intervenu alors que « plusieurs années d'efforts consacrés à la recherche d'une solution par voie de négociation n'ont pas permis d'atteindre le résultat escompté ». Durant ces négociations, différents titres juridiques autres que documentaires ont été invoqués par les Parties, y compris par le Gabon ainsi que mes collègues le souligneront[46]. Les termes du *compromis* reflètent cette réalité et ils doivent donc être compris en en tenant compte. J'ajoute que retenir l'interprétation gabonaise serait imposer aux Parties de reprendre des négociations au sujet de la pertinence de certains de ces titres juridiques déjà invoqués lors de ces négociations, alors que les Parties avaient des vues à ce point inconciliables quant à leur applicabilité que le recours à la Cour fut nécessaire. L'objet et le but du compromis sont de permettre aux Parties de régler complètement ce vieux différend territorial et insulaire en étant éclairées par le futur arrêt de la Cour. Pour que cet objectif puisse être rempli, l'interprétation restrictive du compromis avancée par le Gabon doit être rejetée.

27. Et selon la Guinée équatoriale, vous l'avez compris, il n'y a pas de doute quant au sens du compromis, mais même s'il devait y avoir un doute à cet égard, l'interprétation gabonaise ne peut être retenue. En effet, comme nous le savons depuis 1929 — et je cite l'affaire des *Zones franches* : « dans le doute, les clauses d'un compromis par lequel la Cour est saisie d'un différend doivent, si cela n'est pas faire violence à leurs termes, être interprétées d'une manière permettant à ces clauses de déployer leurs effets utiles »[47].

III. La succession d'États, les effectivités, la convention des Nations Unies sur le droit de la mer et le droit coutumier dans les soumissions de la Guinée équatoriale

28. Monsieur le président, j'aborde le troisième point et dernier point de ma plaidoirie. L'interprétation erronée du compromis proposée par le Gabon l'amène à contester que la Guinée équatoriale puisse invoquer des titres juridiques sur la base de la succession d'États, des effectivités,

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[46] *Commission* ad hoc *des frontières, Gabon/Guinée équatoriale, Libreville du 29 au 31 janvier 2001, Procès-verbal*, reproduit dans MEG, vol. VII, annexe 212 ; voir aussi CR 2024/29 (Parkhomenko).

[47] *Zones franches de la Haute-Savoie et du Pays de Gex, ordonnance du 19 août 1929, C.P.J.I. série A n° 22*, p. 13.

de la convention des Nations Unies sur le droit de la mer et du droit coutumier[48]. Et le Gabon conteste que la Cour puisse statuer à cet égard.

29. Mesdames et Messieurs les juges, je ne vais évidemment pas anticiper ce que mes collègues qui vont me suivre à la barre vous exposeront, mais vous constaterez chaque fois qu'en invoquant la succession d'États, qu'en invoquant des effectivités *infra legem*, qu'en invoquant un acquiescement, qu'en invoquant la convention des Nations Unies sur le droit de la mer ou certains principes de droit coutumier, la Guinée équatoriale a simplement reflété non seulement les termes du compromis mais aussi ce que la Chambre de la Cour a dit pour droit dans l'affaire du *Golfe du Maine*, à savoir que le « "titre juridique" … est toujours et uniquement l'effet d'une opération juridique »[49]. En d'autres termes, il n'y a pas de titre juridique sans opération juridique et prétendre détacher le titre de l'opération qui en est la cause est absurde car c'est cette opération qui, au sens propre, *constitue* le titre. Étant « toujours et uniquement l'effet d'une opération juridique », le « titre juridique » en est donc indissociable ; c'est cette opération qui fait le titre — et c'est bien la raison pour laquelle, pour citer à nouveau l'arrêt *Burkina Faso/Mali*, comme l'a dit la Cour, « la notion de titre peut … plus généralement viser aussi bien tout moyen de preuve susceptible d'établir l'existence d'un droit que la source même de ce droit ».

30. Monsieur le président, Mesdames et Messieurs les juges, je conclus : l'exigence fondamentale d'interpréter un traité de bonne foi suivant le sens ordinaire des termes qui y sont utilisés, dans leur contexte et à la lumière de l'objet et du but de l'accord conduit naturellement à ne pas assimiler la notion de « titre[] juridique[] » à celle de « traité[] et convention[] internationale[] » et à ne pas limiter aux seuls « titres documentaires » les titres pouvant être *invoqués* par les Parties et ainsi valablement soumis à l'examen de la Cour. L'interprétation du compromis proposée par le Gabon doit être rejetée.

31. Je vous remercie pour votre bienveillante attention, Mesdames et Messieurs les juges, et puis-je vous demander, Monsieur le président, de bien vouloir appeler le professeur Sands à la barre ?

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[48] CMG, par. 5.95.

[49] *Délimitation de la frontière maritime dans la région du golfe du Maine (Canada/États-Unis d'Amérique), arrêt, C.I.J. Recueil 1984*, p. 296, par. 103.

Le PRÉSIDENT : Je remercie le professeur Pierre d'Argent. I call now Professor Sands. You have the floor, Sir.

Mr SANDS:

THE DOCUMENT PRESENTED BY GABON IN 2003 DOES NOT ESTABLISH LEGAL TITLE OR HAVE FORCE OF LAW IN THE RELATIONS BETWEEN THE PARTIES

1. Mr President, Madam Vice-President, Members of the Court, it is an honour for me to appear before you on behalf of the Republic of Equatorial Guinea.

2. I am going to address a key issue of the case put by Gabon: the document that Gabon first brought to the attention of Equatorial Guinea in May 2003. The two-page document had five notable characteristics: *first*, it was a photocopy, not an original; *second*, it was partly illegible; *third*, it was dated 12 September 1974; *fourth*, Equatorial Guinea's negotiators had never seen it before, despite the passage of nearly thirty years; and *fifth*, Gabon never once mentioned it in any negotiations.

3. In these proceedings, Gabon invites the Court to declare that this document — copied, partly illegible and disappeared for nearly three decades — somehow gives rise to its claim to legal title. This is despite the fact that Gabon made no mention of its belief that there was in place with Equatorial Guinea a binding agreement on their respective sovereign territories for some 10,477 days — total silence.

4. With great respect, the claim is wholly implausible, absurd even. I am going to explain why in four steps. First, there are the points of agreement between the Parties as to the two pages, as emerged from two rounds of written pleadings. Second, Gabon has failed completely to discharge its burden of proving that the two pages on which it relies can somehow produce legal effects. Third, the two pages are not a complete and authentic copy of any alleged "convention". And fourth, even on its own terms, the two pages are not — and cannot be — a final delimitation treaty.

5. Gabon invites this Court to rule these scraps of paper should somehow be dispositive of this case, but they are not. For the Court to accede to its invitation, very frankly, is to enter into the world of implausibility and ridicule. You are being asked to rule that a State can rely on a photocopy of a photocopy of a purported document, the original of which cannot be found, and of which no mention

was made, or any reliance placed, for three decades. The consequence of this claim for the stability and certitude of our legal order is obvious.

I. Points of agreement

6. Mr President, let us begin with the evidence that is actually before the Court. It indicates eight points of agreement, not in dispute.

7. *First*, there is no dispute that before May 2003 Gabon never *once* referred to, invoked or sought to rely on a supposed agreement signed in 1974. The evidence makes clear that it was only at the May 2003 meeting of the Equatorial Guinea–Gabon *ad hoc* Boundary Commission that Gabon first introduced a poor quality and partially illegible photocopy of a treaty it now says was signed 28 years and 8 months earlier[50].

8. *Second*, there is no evidence before you — literally nothing — to indicate that at any point between 1974 and 2003 did Gabon's President Bongo, who is said to be a signatory of the supposed document and was in office throughout that period, ever mention any supposed agreement with Equatorial Guinea's President Macías. Nor did he, or his government, ever publish or produce a copy of the lately produced document.

9. *Third*, Gabon has still not produced an original version of the document. What does Gabon say? As you can see, despite "best efforts" it has "not been able to locate in its archives an original" of the 2003 document[51]. I have never seen an original version, and Equatorial Guinea has instructed us that it has no copy and it has never had a copy.

10. In its Rejoinder, Gabon states that it relies on what it calls "deux ampliations", by which it seems to mean two *certified* true copies. It claims that these were transmitted by President Bongo to the French Ambassador in Gabon on 28 October 1974[52]. But, the evidence before you does *not* indicate that a *certified true copy* exists or was in fact sent. What the evidence does show is that President Bongo sent photocopies to the French Ambassador, not one or more certified copies[53].

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[50] Republic of Equatorial Guinea, *Minutes of the Ad-hoc Commission on Equatorial Guinea-Gabon Borders*, Malabo (23 May 2003), p. 9. MEG, Vol. VII, Annex 213.

[51] CMG, Vol. I, para. 3.12.

[52] RG, Vol. I, para. 2.2 (b).

[53] Lettre nº 12/AL de l'ambassadeur de France au Gabon au ministre des Affaires étrangères, de la Coopération et de la Francophonie gabonais, 6 janvier 2004, p. 404, CMG, Vol. V, Annex 172.

Indeed, there is no evidence at all before this Court that any certified copy exists or was ever prepared. There is only a photocopy of a photocopy, with nothing certified. And, it must be said, it is a very poor and incomplete photocopy: you will note, as I have said, the document is partly illegible, and the Spanish version is cut off at the bottom of the signature page, where the names of the signatories are to be found — we will come back to this. We simply do not know what else may have been cut off.

11. *Fourth*, the evidence before the Court has Gabon relying on different versions of the document, each with material differences. Let me just give one example, on the left is Article 4 of the photocopy sent by Gabon to the UN Secretary-General on 5 February 2004, this one states that the alleged maritime boundary lies "*1.3* miles to the *west*" ("1,3 millas al oeste") of the Elobey Islands[54]. Now look at Article 4 on the right, the transcribed version Gabon registered with the UN Secretary-General, a little later in 2004: the alleged maritime boundary seems to have moved, it is now to be found "*1.5* miles to the *coast*" ("1,5 millas al coste") of Elobey Islands[55]. Gabon relies on both versions, they are both in Spanish. How does Gabon explain this material difference, or the error which replaces the word "oeste" with "coste"? It doesn't. Which is the correct of the two versions? We have no idea. Gabon says only that these differences "have no impact on the existence of the Bata Convention or its validity" and it says, almost remarkably, that the French and Spanish versions are "equally authoritative"[56] whilst at the same time offering no explanation at all for the inconsistencies. We honestly look forward to counsel for Gabon's guidance as to what a Court is to do faced with a supposed treaty that exists in different versions, with no original to be found, and of which no mention has been made for nearly thirty years.

12. *Fifth*, the version of the document that was registered with the United Nations on 5 February 2004 was registered 29 years late. This prompted an immediate objection from Equatorial Guinea. Can the passage of 29 years amount to registration, as Article 102 of the UN Charter requires, "as soon as possible"? No.

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[54] Lettre du ministre d'État gabonais au secrétaire général des Nations Unies, 5 février 2004. CMG Vol. V, Annex 174.

[55] The Republic of Equatorial Guinea and The Gabonese Republic, *Convention Delimiting the Land and Maritime Boundaries of Equatorial Guinea and Gabon* (12 September 1974) (Retyped Spanish-language version, as published in the *UNTS*). MEG, Vol. VII, Annex 216.

[56] RG, Vol. I, para. 2.2 (e).

13. *Sixth*, the document has never been put before Gabon's parliament for ratification. That is required by its Constitution for any treaty that affects its territory[57] — but it didn't happen.

14. *Seventh*, for almost three decades after Gabon says the supposed document was signed, the Parties conducted themselves on the basis, mutually, that there was no agreement. Their practice maintained pre-1974 claims to the disputed islands, and land and maritime areas, by reference to *other* legal titles. Gabon has only been able to find one — a single reference to an alleged "Convention", mentioned in passing in an unsigned memo dated 1984 from the French Embassy in Malabo[58]. Crucially, however, Gabon has not put before the Court any example of either Party ever making even one reference to the document in the course of more than ten thousand days of negotiations. Nor has it been able to explain to you why it was silent for ten thousand days. The reasonable inference is that throughout this period Gabon did not believe — or did not know — it had signed a supposedly binding document in 1974, and that was because there was no agreement signed. Throughout that period, Gabon argued for respect for colonial boundaries, for the 1900 Convention, for UNCLOS. These were the only legal bases upon which the negotiations proceeded. This is not in dispute.

15. *Eighth*, the various versions of the document refer to the specific steps to be taken by the Parties to resolve their disputes concerning land and maritime boundaries. Is there any evidence before this Court that any of those steps were taken? Again, there is none. Gabon took none of the steps provided for by the document on which it now relies, and the Parties never did reach any agreement thereafter.

16. Mr President, these are the facts, they are not in dispute. Against the background of the evidence, there is, frankly, good reason to treat Gabon's claim as utterly unpersuasive, to say the least, or hopeless, if I am going to put the boot in. Let me turn now to the points of disagreement.

17. Gabon argues that the document is a treaty covered by Article 1 (1) of the Special Agreement. Is it a legal title, treaty or international convention that has the force of law in relations between the Parties on the issues of delimitation and sovereignty before the Court? It is not, and it is very plainly not.

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[57] MEG, Vol. I, para. 7.12.

[58] RG, Vol. I, para. 2.12.

18. Yet somehow, Gabon invites this Court to say that there is a treaty. It argues:

— *one*, a treaty was adopted on 12 September 1974 with the consent of both Presidents;

— *two*, the document it relies on is an authentic copy of that alleged treaty; and

— *three*, somehow, it has the force of law between the two countries.

19. There is no merit to any of these arguments.

II. Gabon has manifestly failed to discharge its burden of proof

20. Was a treaty adopted in 1974? The burden of proof — on the facts and on the law — is on Gabon. As the Court has long recognized, "it is the duty of the party which asserts certain facts to establish the existence of such facts"[59]. It is for Gabon to prove that on 12 September 1974 the two heads of State signed a treaty with binding legal effect.

21. What are "the particular circumstances" in which Gabon tells you the document was drawn up[60]? Well, the evidence before you — including contemporaneous views and all subsequent practice — does not establish that the Parties reached a final agreement and signed a treaty on 12 September 1974, or that they "definitively settle[d]" their disputes over the land and maritime boundary, and sovereignty over the islands of Mbañe, Cocoteros and Conga[61].

22. Mr Smith has described what transpired in Bata, in Equatorial Guinea, on 12 September 1974. The meeting of the Presidents took place against the backdrop of Gabon's seizure of Equatorial Guinea's insular and continental territory, and Equatorial Guinea's protests. The idea that two heads of State in those circumstances could negotiate and conclude a final and binding treaty in less than a day is, at the very least, for those with experience, and that includes all of you, counterintuitive. The total absence of any preparatory material is very telling.

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[59] Case concerning *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay), Judgment, I.C.J. Reports 2010 (I)*, p. 71, para. 162; case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America)*, *Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1984*, p. 392, para. 101; case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro), Judgment, I.C.J. Reports 2007 (I)*, p. 43, para. 204; *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine)*, *Judgment, I.C.J. Reports 2009*, p. 61, para. 68; case concerning *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo), Compensation, Judgment, I.C.J. Reports 2012 (I)*, p. 324, para. 15.

[60] *Aegean Sea Continental Shelf Case (Greece* v. *Turkey), Judgment, I.C.J. Reports 1978*, p. 3, para. 96; case concerning *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar* v. *Bahrain), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1994*, p. 112, para. 23.

[61] CMG, Vol. I, para. 7.13.

23. There are no minutes of any meeting. There is no official public statement to confirm the preparation or the adoption of a treaty. Gabon knows this, so what it does is distort the evidence. It quotes selectively from the accounts of foreign diplomats. It invokes statements by President Bongo that do not refer to any treaty. It introduces video footage of a statement made by President Bongo at Libreville Airport on 12 or 13 September 1974. It is well worth watching. Does the President of Gabon refer to a treaty or a convention? No, he does not. Does the reporter in the video refer to the signing of a treaty or a convention? No, he does not: he speaks only of a "final communiqué". Mr President, a "final communiqué" is not a treaty or a convention, and it is not — and it cannot be — a source of legal title under Article 1 of this Special Agreement.

24. Gabon relies on a few photographs. Do they provide evidence that any treaty was signed? No, they do not! Here is a photograph from the Gabonese newspaper *L'Union*, apparently the only photograph that purports to provide a description of what is depicted. Does that description say that a treaty was being signed? It does not, as Gabon itself recognized. Gabon says, "[a]ccording to the description of this photograph it is of the signing of the 'final communiqué'". There is no reference anywhere in this image to a treaty[62]. Gabon tells you that President Bongo reportedly said that "everything is settled" — "tout est réglé"[63]. Why then, if "tout est réglé", did President Bongo and Gabon spend the next 10,477 days trying to negotiate an agreement on boundaries with Equatorial Guinea? Gabon does not answer the question. "Curiouser and curiouser", said Alice in Wonderland[64].

25. What followed the events of September 1974? Five days after the meeting, the French Ambassador to Equatorial Guinea confirmed reports that "a joint communiqué" was signed. He did not say anything about a treaty[65], and there is no evidence before you that he even had a copy of the communiqué. The French Ambassador also stated that as at 17 September 1974 "no one had the slightest indication of the result" of President Bongo's state visit, and "no specific common ground

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[62] CMG, Vol. I, para. 3.11.

[63] CMG, Vol. II, Appendix V2; "'Tout est réglé !' avec la Guinée Équatoriale" ("'Everything is settled!' with Equatorial Guinea"), *L'Union* (20 September 1974), p. 1. CMG, Vol. V, Annex 150.

[64] L. Carroll, *Alice's Adventures in Wonderland*, M. Burstein (ed.), Princeton University Press 2015, p. 14.

[65] *Letter No. 38/DA/DM from* the Embassy of the French Republic to Equatorial Guinea *to* the French Ministry of Foreign Affairs *concerning* the State Visit of President Bongo, 9/12 September 1974 (17 September 1974), pp. 4-5. REG, Vol. IV, Annex 33.

on the question of boundaries could be found"[66]. That is the French Ambassador. What did the Ambassador conclude? "The two presidents thus apparently left without signing any communiqué, all the contentious questions between the two countries remaining unresolved pending new and hypothetical meetings."[67]

26. For France, the document was no more than a "projet d'Accord" — a "draft agreement" — which "was, in the end, not signed"[68]. That is not evidence of a treaty having been signed. Quite the contrary.

27. The Spanish Ambassador to Equatorial Guinea also reported that discussions held in September 1974 did not result in an agreement. On 25 September 1974, less than two weeks after the meeting, he wrote that it was — as you can see on the screen — "*fundamentally false* that Equatorial Guinea will cede even a single portion of national territory"[69].

28. These conclusions are fully consistent with the views expressed by representatives of both countries at the time. On 2 October 1974 Gabon's Ambassador to Equatorial Guinea reported that "no definitive decision" was reached at the meeting in Bata. He then refers to a subsequent attempt — a week later — to achieve a "definitive result" (« *un résultat définitif* »), but that did not bear fruit[70]. He made clear that a treaty settling the Parties' sovereignty and boundary disputes had not been concluded in Bata on 12 September 1974. What does Gabon have to say about this contemporaneous evidence? Nothing.

29. What did President Macías have to say? He told the French Ambassador to Equatorial Guinea that "general principles of an agreement" could be defined but that "final decisions" (« *décisions finales* ») were yet to be taken[71]. He evoked a *hypothetical* future agreement, and spoke

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[66] *Ibid.*

[67] *Letter No. 38/DA/DM from* the Embassy of the French Republic to Equatorial Guinea *to* the French Ministry of Foreign Affairs *concerning* the State Visit of President Bongo, 9/12 September 1974 (17 September 1974), pp. 4-5. REG, Vol. IV, Annex 33.

[68] *Report from* Ministry of Foreign Affairs of the French Republic *concerning* the Gabon-Equatorial Guinea Point of Cooperation (1986-1994), p. 1. REG, Vol. IV, Annex 45.

[69] *Letter No. 509/74 from* the Spanish Ambassador in Malabo *to* the Spanish Minister of Foreign Affairs *concerning* the Conflict with Gabon (25 Sept 1974). REG, Vol. IV, Annex 34.

[70] *Dépêche d'actualité No. 40/DA/DAM-2* de l'ambassadeur de France en Guinée Équatoriale *à* la direction des Affaires africaines et malgaches du ministère des Affaires étrangères français (2 Oct. 1974). CMG, Vol. V, Annex 152.

[71] *Ibid.*, p. 5.

of the "*impasse* in which we *currently* find ourselves"[72]. This is three weeks *after* Gabon now tells you that an agreement was somehow concluded.

30. Throughout the rest of 1974, Equatorial Guinea consistently denied the existence of any agreement with Gabon. President Macías repeatedly stressed that the Parties did no more than agree on the general principles of a *future* agreement, and possible "*envisaged* provisions" (*« les dispositions envisagées »*)[73]. He made no mention of any agreement with Gabon, and he stated clearly that the "conflict" between the Parties "has not yet been resolved"[74]. No final decisions were taken. There was no final treaty.

31. President Macías' account is also consistent with the contemporaneous understandings expressed by other countries. For example, a telegram from the United States Embassy in Libreville dated 29 April 1975 — less than eight months after the Bata meeting — reported that the "Gabonese-Equatorial Guinean border problem [is] far from solved and may indeed be heating up"[75].

32. As set out in the pleadings, the Parties and the former colonial Powers shared the view that there was no agreement reached on 12 September 1974. This is confirmed by the Parties' own actions: they proceeded to engage in negotiations.

33. Eleven days after the meeting, on 23 September 1974, a high-level Equatoguinean delegation travelled to Libreville to "continue negotiations to resolve the boundary conflict with Gabon"[76]. Those talks yielded no agreement. The next day, a Gabonese delegation travelled to Malabo to continue the negotiations. As it did so, in seeking documents from Spain, Equatorial Guinea indicated that engineers would have to delimit the land boundary *pursuant to the 1900 Convention*. No reference was made to any agreement signed, purportedly, two weeks earlier[77].

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[72] *Dépêche d'actualité No. 43/DA/DAM-2 de* l'ambassadeur de France en Guinée Équatoriale *à* la direction des Affaires africaines et malgaches du ministère des Affaires étrangères français (14 Oct. 1974). CMG, Vol. V, Annex 153, p. 267.

[73] *Dépêche d'actualité No. 40/DA/DAM-2 de* l'ambassadeur de France en Guinée Équatoriale *à* la direction des Affaires africaines et malgaches du ministère des Affaires étrangères français (2 Oct.1974). CMG, Vol. V, Annex 152, p. 253.

[74] *Letter No. 524/74 from* the Ambassador of Spain *to* the Spanish Minister of Foreign Affairs *concerning* Meeting in Bata with the President for Life (2 Oct. 1974), p. 4, point 25. REG, Vol. IV, Annex 38.

[75] *Télégramme No. 621* de l'ambassade des États-Unis au Gabon (29 Apr. 1975). CMG, Vol V, Annex 159, p. 307.

[76] *Letter No. 509/74 from* the Spanish Ambassador in Malabo *to* the Spanish Minister of Foreign Affairs *concerning* the Conflict with Gabon (25 Sept. 1974), REG, Vol. IV, Annex 34, p. 179.

[77] *Letter No. 125 from* the Spanish Ambassador in Malabo *to* the Spanish Minister of Foreign Affairs (27 Sept. 1974), REG, Vol. IV, Annex 35, p. 189.

34. The following month, in October 1974, the Parties continued to negotiate, and they did so on the basis of no agreement. President Macías told the diplomatic community in Malabo that a lack of agreement on delimitation of territorial waters in Corisco Bay had prevented signature[78].

35. Mr President, Members of the Court, I have taken you through the record of evidence that is before you, that is not disputed. The evidence confirms only one thing: the continued *disagreement* between the Parties, and their *failure* to conclude an agreement in 1974 or, indeed, at any point subsequently. Mr President, I wonder if this is a good moment for a quick break?

The PRESIDENT: Sure, that is exactly what I wanted to suggest. Let's take a 15-minute break now and we will resume in 15 minutes. The sitting is adjourned.

The Court is adjourned from 11.45 a.m. to 12 noon

The PRESIDENT: Okay, please be seated. Professor Sands.

Mr SANDS: Thank you. Just before the break, I was making my second point, which is that Gabon has manifestly not met the burden of proving the existence of a treaty.

III. Gabon has failed to prove that the 2003 document is an authentic copy of a treaty signed on 12 September 1974

36. I turn to the third issue of my submissions: can the evidence before the Court satisfy it that it has before it a complete and authentic copy of an alleged "convention"? We say plainly not.

37. It seems, Gabon is well aware of its own evidential quandary: in its Rejoinder, it seeks to shift the burden of proof, arguing that "it is incumbent on [Equatorial Guinea] to provide proof of its inauthenticity"[79].

38. This is a curious proposition, one that relies on two authorities. The first is *Sovereignty over Certain Frontier Land (Belgium/Netherlands)*[80]. But that case is about reconciling discrepancies between competing versions of a document the authenticity of which is not in dispute.

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[78] *Letter No. 582/74 from* the Spanish Embassy in Malabo *to* the Spanish Minister of Foreign Affairs *concerning* Statements by the President for Life Before Heads of Missions Accredited Here (16 Oct. 1974), p. 6, point 10. REG, Vol. IV, Annex 40, p. 242.

[79] RG, Vol. I, para. 2.2 *(a)*.

[80] RG, Vol. I, para. 2.2 *(a)*; *Sovereignty over Certain Frontier Land (Belgium/Netherlands), Judgment*, *I.C.J. Reports 1959*, p. 224.

39. The second authority on which Gabon relies is the judgment of the Iran-US Claims Tribunal in *Golshani*, which concerned a dispute over the authenticity of a deed that was alleged to be a forgery[81]. The Rules of Procedure of the Iran-US Claims Tribunal specify that "[e]ach party shall have the burden of proving the facts relied on to support his claim or defence"[82]. As the respondent in that case contended that the deed in question was fabricated, it bore the burden of proving that fact. The *Golshani* decision is of course easily distinguishable. Equatorial Guinea accepts that the document Gabon has put before the Court is a copy of a photocopied document found in the archives of a third State, France. Consequently, it is for Gabon to prove that the document it relies upon is a true and exact copy of the alleged treaty which it says was signed on 12 September 1974. We say it has manifestly failed to meet that burden. The Tribunal in *Golshani* made clear that a party that seeks to rely on a document must "first . . . demonstrate *prima facie* that the Deed is authentic"[83]. The Tribunal in that case concluded that the claimant had failed to discharge that burden[84].

40. We say Gabon has manifestly failed to discharge its own *prima facie* burden. It has not given you an original copy, it has not told you where an original copy could be found, it has not even said that an original copy even exists. It has not told you what may have become of the original. And very strikingly, it has provided no witness testimony that could support the drafting, negotiation, conclusion or adoption of a treaty. It has not even provided witness testimony to confirm that the photocopy is an authentic copy of a treaty. Gabon has very obviously not proved authenticity.

41. What Gabon has done is to present different versions of the document, in Spanish and French and this is very striking. There appear to be at least *three* different Spanish-language versions:

— On your screen, you can see what I will call Version 1, in Spanish, the copy sent by Gabon to the UN Secretary-General on 5 February 2004. As you can see, it is the version that is cut off on

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[81] *Abrahim Rahman Golshani* v. *Government of the Islamic Republic of Iran*, Final Award No. 546-812-3, 2 March 1993, para. 49.

[82] Iran-US Claims Tribunal, Tribunal Rules of Procedure, 3 May 1983, Article 24 (1) (Evidence and Hearings).

[83] *Abrahim Rahman Golshani* v. *Government of the Islamic Republic of Iran*, Final Award No. 546-812-3, 2 March 1993, para. 49 (emphasis added).

[84] *Ibid*., para. 122.

the final page at the bottom, with only partial signatures, no names of the signatories, and significantly, no *nota bene*[85].

— Now, next to it, let us look at Version 2, as submitted by Gabon to the United Nations a month later, on 2 March 2004. This was described as a "*retranscription*" of Spanish and French versions of the document, and what we see here is that the names of the signatories somehow magically appear[86].

— And now let us look at Version 3, the one relied upon by Gabon in these proceedings, at Annex 155 of its Counter Memorial[87]. It is again different.

42. The three versions are different. We ask our friends, which of these three versions is the correct version? Because we have no idea.

43. As to Version 2, Gabon told the UN Office of Legal Affairs that this was its own "*retranscription*" and a certified true copy, and that the Parties "did not formulate any reservations or objections to the agreement"[88]. These statements are not correct. As mentioned, Version 2 adds a signature line, and it also adds a *nota bene*, elements which did not appear in Version 1. This is re-writing. This is not retranscription! And it is wholly wrong to say that there was no "objection" to the document when it was presented. As you can see on the screen, Equatorial Guinea immediately "refutes and denies" the existence of such a treaty and the validity of the document presented by Gabon[89].

44. What about Version 3? It is different from Version 2, the so-called "*retranscription*": in Version 3 the *nota bene* under the names of the signatories has just disappeared, and instead new handwriting appears in the margin of Version 3 that was not present in Version 1 or Version 2. Interestingly, the *nota bene* in Version 2 on the left side and the margin text in Version 3 on the

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[85] *Lettre du* ministre d'État gabonais *au* secrétaire général des Nations Unies (5 February 2004). CMG, Vol. V, Annex 174.

[86] The Republic of Equatorial Guinea and The Gabonese Republic, *Convention Delimiting the Land and Maritime Boundaries of Equatorial Guinea and Gabon* (12 September 1974) (Retyped Spanish-language version, as published in the *UNTS*). MEG, Vol. VII, Annex 216.

[87] RG, Vol. I, para. 2.2 *(b)*; *Lettre* du président du Gabon *à* l'ambassadeur de France au Gabon (28 October 1974), CMG, Vol. V, Annex 155.

[88] *Letter from* the Assistant Secretary-General of the United Nations *to* the Permanent Representative of the Republic of Equatorial Guinea to the United Nations (22 March 2004). MEG, Vol. III, Annex 32.

[89] Republic of Equatorial Guinea, *Minutes of the Ad-hoc Commission on Equatorial Guinea-Gabon Borders*, Malabo (23 May 2003), p. 9. MEG, Vol. VII, Annex 213, p. 249.

right-hand side do both mention Article 4, but they do so in materially different ways, as you can see on your screens. Version 2, on the left, says: "The two heads of State agree to subsequently proceed with a new drafting of Article 4 in order to bring it into conformity with the 1900 Convention". But Version 3, on the right-hand side, says something different: "Article 4 will be examined by the two Heads of State, pursuant [to] the 1900 Convention". Well, which version is the original? We do not know. Gabon tells you that *both* versions are certified true copies of the same document, in the same language[90]. But how can that possibly be? Perhaps counsel for Gabon will explain.

45. The differences do not end there. I invite you to look carefully at the signature line in Version 2, on the left[91]. Now look at the signature line in Version 3, on the right. What do you notice? They are not the same. Version 2, from 2004, shows "Albert-Bernard BONGO" on the left, and "Don Francisco Macías NGUEMA BIYOGO" on the right. Version 3, on the other hand, produced by Gabon for these proceedings, gives Mr Bernard Bongo a new name; he has now become "Alberto". It is not exactly the same name. And the name of the other signatory, which is no longer legible, is now on the left. It just gets curiouser and curiouser. How can two different documents be identical? How can two different documents both be authentic?

46. Mr President, while we are on the subject of the two Presidents, it is worth asking: did they have authority under their respective laws and constitutions to conclude a final and binding agreement that could affect the extent of their countries' sovereign territories?

47. They did not. Equatorial Guinea's Constitution provided that a treaty that infringed or diminished the country's jurisdiction or sovereignty over "any portion whatsoever" of its territory would be illegal and invalid[92]. The conclusion of an agreement with Gabon that ceded territory would have required an amendment to the Constitution. There is no evidence before the Court that any such amendment was ever discussed, proposed, drafted, prepared or adopted. It did not happen.

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[90] MEG, Vol. III, Annex 32, p. 413 ("certified true copy"); RG, Vol. I, para. 2.1 ("ampliation").

[91] The Republic of Equatorial Guinea and The Gabonese Republic, *Convention Delimiting the Land and Maritime Boundaries of Equatorial Guinea and Gabon* (12 September 1974) (Retyped Spanish-language version, as published in the *UNTS*). MEG, Vol. VII, Annex 216.

[92] *Letter No. OR 511 EQGU from* the Permanent Representative of the Republic of Equatorial Guinea in the United Nations *to* the Secretary-General of the United Nations *concerning* the Distribution of the Constitution of the Republic of Equatorial Guinea of 4 August 1973 (13 December 1973), p. 5, art. 7. REG, Vol. III, Annex 7.

48. And what about Gabon? Its Constitution prohibited President Bongo from concluding any agreement entailing cession, exchange or addition of territory without parliamentary ratification and a public referendum[93]. Again, there is no evidence before the Court that such procedures were proposed or adopted. Indeed, in February 1977, the Foreign Minister of Gabon acknowledged that the document was never put before the Parliament of Gabon or ratified. He said: "It has fallen by the wayside for now."[94]

49. Mr President, the evidence before the Court — and the evidence that is not before the Court — points inexorably only to one conclusion: no agreement was signed in 1974.

IV. The document invoked by Gabon is not, even on its own terms, a final treaty

50. I turn to my fourth and final point, and in so doing I invite you to suspend disbelief. Even if an alleged "convention" existed — which it plainly did not and does not — on its own terms the piece of paper put forward to you by Gabon cannot provide a basis on which to adjudicate the Parties' boundaries and entitlements within the meaning of Article 1 (1) of the Special Agreement.

51. Whichever of the many versions of Gabon's documents you take, it does not on its face purport to be a definitive settlement of the sovereignty and boundary disputes between the Parties. This is because each version is contingent in different ways on the Parties taking future steps to resolve their disputes and establish their boundaries. Gabon makes a half-hearted attempt to persuade you otherwise[95], but it accepts that the Parties did not take any of these steps[96].

52. Take Article 1 of the document. This purports to define the general course of the land boundary, but it takes almost word for word from the 1900 Convention. Article 2 describes, in general terms, supposed exceptions to the lines referred to in Article 1. Gabon argues that this amounts to an agreement on delimitation, with only *demarcation* to be carried out at a later date[97].

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[93] The Gabonese Republic, *Constitution of The Gabonese Republic* (29 July 1972), Article 52, MEG, Vol. VI, Annex 189, p. 331.

[94] *Letter No. 85 from* the Director General of the Ministry of Foreign Affairs *to* the Spanish Ambassador in Malabo (25 February 1977), REG, Vol. IV, Annex 44, p. 276.

[95] RG, Vol. I, para. 2.23.

[96] CMG, Vol. I, para. 4.3.

[97] RG, Vol. I, para. 2.2 *(f)*.

But that cannot be right: the locations and limits of areas referred to in Article 2 are not defined. That is a matter that requires a future delimitation of undefined boundaries.

53. This is also confirmed by Article 7. As you can see, it states that "[p]rotocols shall be made, both to determine the surface area and exact limits of the land area ceded" by each of the Parties and "to specify the terms and conditions of the application of the present Convention"[98]. This makes crystal clear that the areas referred to in Article 2 were *not* agreed, and that the Parties did not agree on the "terms and conditions of the application" referred to in that supposed document. These matters were left to be determined by future protocols, and there are no future protocols.

54. In its Rejoinder, Gabon argues that a meeting of the Parties on 23 September 1974 was undertaken specifically, as it puts it, "to determine the boundaries of portions of territory ceded between the Parties along the land border"[99]. Yet there is no evidence before the Court that the talks on 23 September were concerned with a document allegedly signed on 12 September 1974. Rather, the evidence shows that the later meeting, and all the other meetings that followed, were negotiations that sought to reach an agreement on the substance. As Gabon recognizes, those negotiations failed[100].

55. Relatedly, Article 8 requires the boundary to be subsequently defined by representatives of Gabon and Equatorial Guinea. Gabon offers no evidence that any team of representatives, technicians or observers were established to carry out the "materialization of the boundaries"[101]. Gabon seeks to equate the term "materialization" with an agreement to demarcate an already delimited boundary.

56. That argument is not supported by the French version of Article 8, which Gabon says is equally authoritative[102]. As you can see, that states that "[l]a matérialisation des frontières *sera*

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[98] The Republic of Equatorial Guinea and The Gabonese Republic, *Convention Delimiting the Land and Maritime Boundaries of Equatorial Guinea and Gabon* (12 September 1974) (Retyped Spanish-language version, as published in the *UNTS*). MEG, Vol. VII, Annex 216, p. 292.

[99] RG, Vol. I, para. 2.37.

[100] *Ibid*.

[101] The Republic of Equatorial Guinea and The Gabonese Republic, *Convention Delimiting the Land and Maritime Boundaries of Equatorial Guinea and Gabon* (12 September 1974) (Retyped Spanish-language version, as published in the *UNTS*), MEG, Vol. VII, Annex 216, p. 292.

[102] RG, Vol. I, p. 42, note 110.

faite" — in English: "the material delimitation *shall be carried out*"[103]. This document, even if authentic, which it is not, is no more than an agreement to undertake certain steps in the future with a view to delimiting the Parties' land and maritime boundaries. As Gabon must accept, none of those steps were ever taken.

57. Nor is the argument of Gabon supported by Article 4 of the document, which purports to provide a definition of the maritime boundary. You will recall the *nota bene* that appeared after the signatures on Version 2, as translated in French, which stated that the two Heads of State were to "subsequently proceed with a new drafting of Article 4 in order to bring it into conformity with the 1900 Convention"[104]. Variations of that language appear in Versions 2 and 3, in Spanish, but what they all have in common, notwithstanding their differences, is that they refer to a future activity.

58. Gabon argues — somewhat meekly, it must be said — that the *nota bene* merely refers to *potential* future redrafting. But whichever version you take, that is not what the words say. What the words say is: "The two heads of State *agree* to subsequently proceed with a new drafting"[105]. Or in the alternative version, "Article 4 *will be* examined"[106]. On either version, the text of Article 4 was to be redrafted, to bring it into conformity with the 1900 Convention. There is no evidence before you that any such redrafting ever took place.

V. Conclusions

59. Mr President, Members of the Court, I can conclude briefly. There is no evidence before this Court to allow it to conclude that the various pieces of paper that Gabon unexpectedly has conjured up since May 2003, and offered in different versions, could be said to constitute an agreement by two States that is binding under international law to give rise to titles. The original of the document, if it ever existed, is not before you. There is no contemporaneous evidence of any

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[103] The Republic of Equatorial Guinea and The Gabonese Republic, *Convention Delimiting the Land and Maritime Boundaries of Equatorial Guinea and Gabon* (12 September 1974) (Retyped French-language version, as published in the *UNTS*), MEG, Vol. VII, Annex 214.

[104] The Republic of Equatorial Guinea and The Gabonese Republic, *Convention Delimiting the Land and Maritime Boundaries of Equatorial Guinea and Gabon* (12 September 1974) (French-language photocopy). MEG, Vol. VII, Annex 215, p. 287.

[105] The Republic of Equatorial Guinea and The Gabonese Republic, *Convention Delimiting the Land and Maritime Boundaries of Equatorial Guinea and Gabon* (12 September 1974) (Retyped Spanish-language version, as published in the *UNTS*), MEG, Vol. VII, Annex 216, p. 283.

[106] *Lettre* du président du Gabon *à* l'ambassadeur de France au Gabon (28 October 1974), CMG, Vol. V, Annex 155, p. 285.

alleged "convention" being prepared or signed or having entered into force. There is no evidence that the future steps envisaged by the document itself ever took place. There is no evidence of any subsequent practice premised on the existence of an agreement.

60. It is on this last issue that Mr Parkhomenko will now address the Court. For 10,477 days after 12 September 1974, Gabon said nothing about any agreement signed that year. For 10,477 days the Parties engaged in bilateral negotiations to resolve their continuing sovereignty and boundary disputes. For 10,477 days both Parties proceeded on the basis that their territorial and sovereignty disputes remained unresolved. Gabon now asks you to just set aside and ignore those 10,477 days and to rule that somehow an agreement was entered into. It asks you to ignore the inconsistencies between the various versions, to ignore the total absence of contemporaneous evidence, to ignore the absence of an original copy, and to ignore nearly 30 years of subsequent practice on which you will now hear more.

61. Mr President, Members of the Court, with great respect, the argument is totally hopeless. I thank you for your kind attention and invite you now to bring Mr Parkhomenko to the Bar.

The PRESIDENT: I thank Professor Sands for his statement. I now invite Mr Parkhomenko to take the floor.

Mr PARKHOMENKO:

THE PARTIES' CONDUCT SINCE 1974 CONFIRMS THAT THE DOCUMENT PRESENTED BY GABON IN 2003 HAS NO FORCE OF LAW AND ESTABLISHES NO LEGAL TITLE IN THE RELATIONS BETWEEN THE PARTIES

I. Introduction

1. Thank you. Mr President, Madam Vice-President, Members of the Court, it is an honour to appear before you again.

2. I will show that until 2003 Gabon never invoked any treaty that it now alleges was concluded in September 1974. Rather, for nearly 30 years the Parties continued their negotiations to resolve the very same disputes based on other treaties, legal titles and legal principles. Such conduct makes clear that the document Gabon first presented in 2003 cannot have any legal force or support any claim to title.

II. The Parties' conduct between 1974 and 2003

3. The Parties had no negotiations between 1974 and 1979. When a new government in Equatorial Guinea came to power in 1979, the Parties resumed their negotiations the same year.

4. For the next five years, they sought to negotiate a provisional solution, in the form of a joint development zone, to access oil and gas in still disputed maritime areas. Gabon misleadingly alleges that "none of those [negotiations] called into question the maritime boundary provided in the Bata Convention"[107]. Well, they did. Gabon itself did it. This is confirmed by the jointly signed negotiation minutes. When proposing a joint development zone in September 1984, Gabon stated:

> "As a result of the overlapping sovereignty in these waters, the Gabonese Party understands that this zone would be best suited for joint development, regardless of any determination of maritime boundaries between the two countries, which determination will be made in due time by other competent entities."[108]

5. These are Gabon's words. Gabon admitted that it believed that the Parties had overlapping sovereignty claims. Gabon also admitted that a maritime boundary was yet to be determined. These admissions refute the claim Gabon makes now that the Parties had resolved their sovereignty and boundary disputes by a treaty in 1974.

6. Equatorial Guinea had the same understanding. According to the minutes, it proposed a joint development zone depicted on this map in hatched pink. To support its proposal, Equatorial Guinea relied on UNCLOS and its Constitution, which describes its territory as including the islands in Corisco Bay[109]. It argued that the application of those legal instruments "means that the zone proposed by" Gabon, depicted on this map in green "is located entirely within territory that falls under the sovereignty of Equatorial Guinea"[110]. Like Gabon, Equatorial Guinea proceeded on the basis that there was no treaty concluded in 1974 or thereafter.

7. In 1984, Gabon did not claim otherwise. Rather, Gabon itself relied on UNCLOS "to reaffirm its sovereignty" over the disputed area and accepted that its "principles . . . give[] rise to overlapping sovereignty"[111]. Of greatest significance is the fact that, at no time prior to or during the

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[107] RG, Vol. I, para. 5.13 *(b).*

[108] *Minutes of the Second Session of the Ad Hoc Commission on the Review of the Oil Cooperation Agreement Between the Republic of Equatorial Guinea and The Gabonese Republic,* Malabo (10–13 Sept. 1984), p. 139. MEG, Vol. VII, Annex 205.

[109] *Ibid*., p. 140.

[110] *Ibid*.

[111] *Ibid*., p. 141.

five-year period between 1979 and 1984 did Gabon even mention a document concluded in 1974; nor did it claim that a treaty existed between the States.

8. After failing to agree on a joint development zone, the Parties continued their diplomatic efforts. In November 1985, they agreed to establish "a sub-commission of experts . . . to study in detail the delimitation of the maritime boundaries"[112]. The jointly signed negotiation minutes record that "[b]oth parties have reaffirmed a series of principles and basic criteria to be used in delimiting the maritime boundary between [them]"[113], and these principles include:

> "*(a)* The principle of acceptance of the borders inherited from the former colonial powers (Treaty of Paris of 1900).
>
> *(b)* The principle of applying law of the sea international conventions that have been ratified and accepted by the States.
>
> *(c)* Respect for States' sovereignty over their respective national territories."[114]

9. Did these principles refer to a 1974 treaty? They do not. During that meeting, Gabon did claim Mbañe, Conga, Cocoteros, Leva and Hoco as "an integral part of Gabonese territory", but it did not invoke any legal title or any treaty to justify that claim[115]. In particular, it did not claim that a treaty had been concluded in 1974.

10. Let us go forward five years to May 1990, when Gabon protested an oil exploration permit granted by Equatorial Guinea in Corisco Bay. Gabon recognized in its protest that "the area in which the . . . permit is located is very much under dispute and is the subject of negotiations"[116], and it requested that "any petroleum prospection in this area [be] stopped without delay pending the definition of their maritime border by the ad hoc commission on borders of the two countries"[117]. Did Gabon invoke a 1974 treaty? It did not.

11. The Parties met again in January 1993. The report of their meeting stated that it was still "not possible to proceed to determine the maritime boundary", because "each Party" still "claim[ed]

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[112] *Minutes of the Guinean-Gabonese Ad Hoc Commission on the Delimitation of the Maritime Boundary in Corisco Bay,* Bata (10–16 Nov. 1985), p. 165. MEG, Vol. VII, Annex 207.

[113] *Ibid*., p. 166.

[114] *Ibid*.

[115] *Ibid*., p. 167.

[116] *Letter No. 293 from* the Minister of Foreign Affairs and Cooperation *to* the Embassy of the Republic of Equatorial Guinea in Gabon *concerning* Note. No 253.89/AMGE of 16 October 1989 in reference to the Clarion Petroleum Permit Issued to the Company of the Same Name (4 May 1990), p. 296. REG, Vol. IV, Annex 46.

[117] *Ibid*.

sovereignty over Conga, Cocoteros, and Mbañe"[118]. Equatorial Guinea "proposed . . . international mediation or arbitration"[119]. Did Gabon say that the matter had been resolved by a 1974 treaty? It did not. Instead, Gabon said it was "willing to negotiate towards delimitation of the maritime boundary between the two countries"[120].

12. In the absence of any such treaty, Equatorial Guinea continued to assert its sovereignty over Mbañe consistent with its legal title inherited from Spain upon independence. For example, in March 1999, Equatorial Guinea enacted a decree designating the median line as the maritime boundary with Gabon and placing base points on Mbañe, Cocoteros and Conga[121]. On 13 September 1999, Gabon protested. Did it invoke any "Bata Convention"? It did not. Instead, it "propose[d] . . . to resume negotiations" to finally resolve the sovereignty and boundary disputes[122].

13. In June 1999, Equatorial Guinea concluded a maritime delimitation agreement with São Tomé and Príncipe, which established the maritime boundary, as shown on this slide. Gabon admits that this boundary is located "well to the south" of a putative delimitation line alleged by Gabon in the document that it first presented in 2003[123]. Accordingly, this area would have fallen to Gabon if this document were a treaty concluded in 1974. Significantly, Gabon did not protest the delimitation agreement between Equatorial Guinea and São Tomé and Príncipe.

14. Tellingly, Gabon's own maritime delimitation agreement with São Tomé and Principe is inconsistent with any supposed treaty concluded in 1974. As you can see on this slide, their maritime boundary ends well to the south; it does not go further north to connect with the putative delimitation line that Gabon presented for the first time in the 2003 document.

15. Because the Parties never delimited their maritime boundary, Equatorial Guinea continued to object to Gabon's attempts to exercise its sovereignty and sovereign rights in the disputed maritime areas. In 2000, for example, Gabon granted permits for petroleum blocks identified as "Mbañe" and

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[118] MEG, Vol. VII, Annex 210, p. 206.

[119] *Ibid*.

[120] *Ibid*.

[121] Republic of Equatorial Guinea, *Decree No. 1/1999 Designating the Median Line as the Maritime Boundary of the Republic of Equatorial Guinea* (6 March 1999), pp. 359-363. MEG, Vol. VI, Annex 193.

[122] *Note Verbale from* the Embassy of the Gabonese Republic to the Republic of Equatorial Guinea *to* the Ministry of External Affairs, International Cooperation, and Francophony of the Republic of Equatorial Guinea (13 September 1999), p. 207. MEG, Vol. VI, Annex 178.

[123] CMG, para. 4.18.

"Mbañe West"[124]. This caused Equatorial Guinea to protest on 21 December 2000. It stated that the "permits encroach upon the maritime area under the state sovereignty . . . of Equatorial Guinea"[125]. The protest further made clear that the Parties had not "defined the boundary" or "resolved matters of sovereignty . . . through negotiation, mediation and arbitration, or through the courts"[126].

16. The Parties continued negotiations in January 2001 "[a]t the invitation" of Gabon"[127]. The jointly signed negotiation minutes confirm that the Parties agreed that "the time had come for [them] to seek definitive resolution" of their sovereignty and boundary disputes[128]. When opening the negotiations,

> "the Head of the Gabonese delegation . . . asked the Parties to work in compliance with the following [treaties] governing the legal framework of this work:
>
> — The French-Spanish Convention of June 27, 1900;
>
> — The United Nations Charter;
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> — The Charter of the Organization of African Unity;
>
> — The International Convention on the Law of the Sea."[129]

17. The Head of the Gabonese delegation also "urged" the Parties "to base their work on the principles underlying the definition and delimitation of [their] border", which include:

— "respecting borders inherited from colonization;

— respecting the sovereignty and territorial integrity of each State"[130].

18. Those were the only treaties and principles that Gabon said should be applied to reach a definitive solution for the Parties' disputes. Did Gabon invoke a 1974 treaty? It did not. By now 27 years had passed since September 1974.

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[124] *Note Verbale from* the Ministry of External Affairs, International Cooperation, and Francophonie of the Republic of Equatorial Guinea *to* the Second Vice-Prime Minister of the Gabonese Republic (21 December 2000), p. 225. MEG, Vol. VI, Annex 179.

[125] *Ibid*.

[126] *Ibid*.

[127] The Gabonese Republic, *Minutes of the Ad Hoc Border Committee*, Libreville (31 January 2001), p. 230. MEG, Vol. VII, Annex 212.

[128] *Ibid*., p. 231.

[129] *Ibid*., p. 230.

[130] *Ibid*.

19. Moreover, during the 2001 negotiations the Parties addressed possible solutions that completely differed from those supposedly agreed in 1974. As the negotiation minutes record, Equatorial Guinea presented "two work hypotheses" for maritime delimitation: first, to divide the disputed maritime area into three sectors; second, to delimit the maritime border by "disregarding the islands of Mbañe, Conga, and Cocotier in order to display the general panorama and trace a median line between the two territories and then examine the situation of the islands after the line is traced"[131]. As you can see on this slide, the proposed delimitation line is completely different from the one Gabon now alleges was "definitively established" in 1974[132], and it leaves those islands on the Equatoguinean side. If the sovereignty and boundary disputes had been definitively resolved in 1974, Gabon would have invoked a corresponding treaty. It did not do so.

20. It was only two years later, in May 2003, that Gabon pulled out of nowhere a photocopy of a never previously mentioned document that it claimed to have been signed and concluded in 1974.

21. Mr President, Members of the Court, the minutes of that meeting recorded Equatorial Guinea's genuine surprise[133].

III. The legal consequences of the Parties' conduct

22. These are the facts. What are the legal consequences of silence for nearly three decades?

23. First and foremost, the Parties' conduct reaffirms what Professor Sands has shown: no treaty was concluded in Bata in September 1974. If the Parties understood themselves to have concluded such a treaty, they would have relied on it as having resolved their sovereignty and boundary disputes. Instead, for the next 30 years, the Parties negotiated the very same disputes, never invoking the alleged 1974 document and always referring to other treaties and legal principles.

24. The legal consequences resulting from the conduct of both Parties are further reinforced by Gabon's own conduct as reflected in its consistent failure to invoke the alleged "Bata Convention" since 1974 in the circumstances calling for its invocation.

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[131] *Ibid*., p. 232.

[132] RG, para. 5.7.

[133] Republic of Equatorial Guinea, *Minutes of the Ad-hoc Border Commission Equatorial Guinea-Gabon,* Malabo (23 May 2003), p. 249. MEG, Vol. VII, Annex 213.

25. If a State confronted with a situation calling for a response fails to respond, this constitutes acquiescence, indicating agreement or a waiver of rights and precluding the State from denying the situation thus accepted. The Court addressed similar circumstances in the *Temple* case. To show that Thailand had illegally occupied the Cambodian territory, Cambodia invoked a map prepared by a delimitation commission under the Franco-Siamese Treaty showing the disputed area on the Cambodian side. Thailand argued that the map was not binding because it had never accepted it. The Court disagreed. It ruled that by failing to object to the map, Thailand acquiesced in its application. The Court stated: "it is clear that the circumstances were such as called for some reaction, within a reasonable period, on the part of the Siamese authorities, if they wished to disagree with the map . . . They did not do so . . . for many years"[134]. Thailand was thus "precluded by [its] conduct from asserting that [it] did not accept [the map]"[135].

26. Gabon seeks to distinguish this case by contending that "the Court did not rule on Thailand's acquiescence to the existence or validity of [the Franco-Siamese Treaty], which was not in dispute"[136]. Gabon misses the point. And the point is that Gabon never invoked the alleged "Bata Convention" to "protect" what it now calls "the assets gained from Bata"[137]. For nearly thirty years, Gabon never invoked the document to support its unlawful claims. For nearly thirty years, Gabon never invoked the document to protest Equatorial Guinea's lawful claims. Gabon is now precluded by its own conduct from making a substantive assertion that, under Article 1 of the Special Agreement, the piece of paper it first presented in 2003 is a treaty having the force of law between the Parties. Gabon acquiesced in the absence of a treaty.

27. This brings me to a second principle: a party cannot be permitted to benefit from its own inconsistencies. "This principle", as the ILC stressed, "has a particular importance in the law of treaties"[138]. It relied on the separate opinion of Judge Alfaro, the Vice-President of the Court, in the

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[134] Case concerning the *Temple of Preah Vihear (Cambodia* v. *Thailand), Merits, Judgment, I.C.J. Reports 1962*, p. 23.

[135] *Ibid*., p. 32.

[136] RG, para. 2.41.

[137] *Ibid*., para. 2.43.

[138] Report of the International Law Commission on the work of its eighteenth session, *Yearbook of the International Law Commission* (1966), Vol. II, p. 239.

Temple case[139], who wrote that: "[t]he legal effect of the principle is" that "the party which by its recognition, . . . conduct or its silence has maintained an attitude manifestly contrary to the right it is claiming before an international tribunal is precluded from claiming that right"[140]. The Court has applied this principle before[141].

28. Under this principle, Gabon cannot be permitted to benefit from its own inconsistencies. As the evidence on the record shows, for nearly thirty years, Gabon never mentioned the alleged "Bata Convention" as an applicable treaty having the force of law in regard to the Parties' titles and boundaries. Instead, it referred to other treaties and legal principles applicable to these matters.

IV. Conclusion

29. Mr President, Members of the Court, the conduct of the Parties over an extended period does matter. By never mentioning for nearly 30 years the document that Gabon first invoked in 2003, the Parties' conduct confirms that no treaty was concluded in 1974. Put simply, Gabon's contention that this document has the force of law is not only mistaken; it is also fatally undermined by its own conduct.

30. I thank you for your kind attention and ask you to invite to the podium Mr Reichler.

The PRESIDENT: I thank Mr Parkhomenko for his statement. I now invite Mr Paul Reichler to take the floor. You have the floor, sir.

Mr REICHLER:

THE LEGAL TITLES TO DISPUTED ISLANDS

1. Mr President, Members of the Court, it is, as always, an honour for me to appear before you.

2. Today, I will address the validity of the legal titles that the Parties claim in respect of certain islands in Corisco Bay, or, in the more precise language of the *Compromis*, whether the titles to these islands invoked by the Parties have the force of law.

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[139] *Ibid*.

[140] Separate opinion of Vice-President Alfaro in case concerning the *Temple of Preah Vihear (Cambodia* v. *Thailand), Merits, Judgment, I.C.J. Reports 1962*, p. 40.

[141] Case concerning the *Arbitral Award made by the King of Spain on 23 December 1906 (Honduras* v. *Nicaragua), Judgment, I.C.J. Reports 1960*, pp. 213-214; *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2007 (II)*, p. 832, para. 79.

3. Corisco Bay and its islands are depicted on your screens now. As my colleague, Mr Smith, mentioned, the titles to the largest of these islands are not disputed. Both Parties recognize that legal title to those islands is held by Equatorial Guinea, and not by Gabon. These are Corisco Island, the largest island with a land area of 14 sq km[142], which has historically been a seat of government of the other islands in the bay[143]. The other uncontested features are Elobey Grande, Elobey Chico, and two small islets, Leva and Hoco. Gabon accepts the validity of Equatorial Guinea's legal title to these islands and islets, and that they were acquired by succession from Spain, upon Equatorial Guinea's independence in 1968.

4. But Gabon does *not* accept the validity of Equatorial Guinea's legal title to three other small islets: Mbañe, comprising 0.07 of a sq km at high tide; Cocoteros, at 0.003 of a sq km; or Conga, also at 0.003 of a sq km.

5. For Equatorial Guinea, the source of its legal title is the same for them as it is for the other, larger islands and islets of Corisco Bay: succession from Spain, upon the attainment of independence in 1968.

6. Gabon disagrees. It argues that during the colonial period both Spain and France claimed title to them, that the competing claims were never resolved, and that the two successor States — Equatorial Guinea and Gabon — inherited this unresolved dispute[144]. Gabon further argues that, in the circumstances, Equatorial Guinea cannot establish the validity of its title without producing a treaty or convention in which France ceded the islets to Spain, or otherwise recognized Spain's title to them[145].

7. Both of Gabon's arguments are demonstrably wrong. First, as I will show you, the three islets at issue in this case were *not* disputed during the colonial period. Spain claimed title to them. France did not. In fact, France expressly, and repeatedly, recognized Spain's title to Corisco Island and all of its dependencies. Second, in the absence of a dispute there was no need for a formal agreement between Spain and France, and no treaty or convention was required to vest valid legal

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[142] MEG, Vol. I, para. 2.6.

[143] MEG, Vol. I, para. 3.5.

[144] CMG, Vol. I, paras. 12, 8.2.

[145] RG, Vol. I, para. 4.9.

title in Spain. The undisputed evidence shows that Spain acquired these insular features by means long recognized by the Court as valid sources of title — occupation by a colonial Power, agreements with local rulers, public and notorious assertion of sovereignty without protest, and effective administration over a prolonged period — and that Equatorial Guinea acquired Spain's valid legal title by succession.

8. In the remainder of this speech, I will address: first, the rules established by the Court in its jurisprudence for determining the validity of legal title to territory, including insular territory; second, the evidence of Spain's acquisition and exercise of legal title to the islands of Corisco Bay, including the three disputed islets, and France's recognition and acceptance of Spain's title; and third, the legal titles to which Equatorial Guinea succeeded upon its independence.

I. The rules for determining the validity of legal title

9. I begin with the applicable rules established in your Judgments in *Burkina Faso/Mali* and *El Salvador/Honduras*, and in the Advisory Opinion in *Western Sahara.* As Professor d'Argent pointed out, the Judgment in *Burkina Faso/Mali* explains that "the concept of title . . . comprehend[s] both any evidence which may establish the existence of a right, and the actual source of that right"[146]. This was reaffirmed in *El Salvador/Honduras* in the same words[147]. Both cases are especially relevant here because they considered the validity of titles obtained by colonial Powers to which their former colonies succeeded upon independence.

10. In *Western Sahara*, the Court recognized that in the eighteenth and nineteenth centuries colonial occupation was "an original means of peaceably acquiring sovereignty over territory otherwise than by cession or succession"[148], and that "agreements with local rulers, whether or not considered as an actual 'cession' of the territory, were regarded as derivative roots of title"[149], as was the "continued display of authority" demonstrated by effective administration and external recognition[150].

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[146] *Frontier Dispute (Burkina Faso/Republic of Mali), Judgment, I.C.J. Reports 1986*, p. 564, para. 18.

[147] *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening), Judgment, I.C.J. Reports 1992*, pp. 388-389, para. 45.

[148] *Western Sahara, Advisory Opinion, I.C.J. Reports 1975,* p. 39, para. 79.

[149] *Ibid.*, p. 39, para. 80.

[150] *Ibid.*, pp. 42-43, paras. 91-93, 98, 108, 128.

11. Spain's acquisition of legal title and exercise of sovereignty over the islands of Corisco Bay, including the three disputed islets, satisfies all of these rules.

II. Spain's legal title to the islands of Corisco Bay

12. The historical evidence begins in 1778, with the Treaty of El Pardo between Spain and Portugal, whose relevant part is included in your judges' folders at grey tab 5. Under this treaty, Spain acquired all of Portugal's colonial claims in or abutting the Gulf of Guinea, including Corisco Bay, except for the islands of Saõ Tomé and Príncipe. This map shows the vast continental territory and two prominent islands, Bioko and Annobón, that were claimed by Portugal and ceded to Spain. France did not assert claims over any of this land territory until 1838, some 50 years later, and there is *no record* that it ever asserted claims to these islands.

13. Gabon argues that the Corisco Bay islands were not formally acquired by Spain under the Treaty of El Pardo[151]. We disagree. But this is academic, because the evidence is indisputable that if Spain did not acquire legal title then, in 1788, it most certainly acquired it subsequently. The evidence is abundant, and it is uncontroverted.

14. In 1843, after an English warship destroyed a Spanish installation on Corisco Island, Spain sent a naval expedition to reassert its sovereign control. The commander of the expedition issued this Declaration asserting Spanish sovereignty, which is at grey tab 6 of your folders:

> "Spaniards have been established on the island of Corisco for many years without any nation disputing their possession and rights . . . [the] entire population has shown its loyalty to Spain, proclaiming Queen Isabella as their ruler . . .
>
> I DECLARE to Commanders of any nation's warships that may come to this island of Corisco: that; for the circumstances described and in the name of the Regent of the Kingdom . . . I declare it a SPANISH ISLAND and an integral part of the Monarchy. The display of any other nation's flag on her is prohibited. All her inhabitants and any foreigners who trade on her are subject and bound by the current laws governing the Spanish colonies and those that the Kingdom's Parliament may enact in the future."[152]

15. France made no protest. Subsequently, the Spanish authorities appointed King Baldomero Boncoro as Pilot of Corisco Bay and Chief of the Southern Point of Corisco Island[153]. Three years

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[151] CMG, Vol. I, paras. 1.5, 8.10.

[152] MEG, Vol. I, para. 3.3; Kingdom of Spain, Royal Commissioner for the Islands Fernando Póo, Annobón and Corisco on the Coast of Africa, *Declaration of Corisco* (16 March 1843). MEG, Vol. V, Annex 110.

[153] MEG, Vol. I, para. 3.4.

later, in 1846, his successor, King Boncoro II, signed a Record of Annexation with the Inspector General of the Spanish Possessions in the Gulf of Guinea, as the continental and insular territory that Spain acquired from Portugal were then known. This Record of Annexation is at grey tab 7 of your folders, in the original handwritten Spanish, in the English translation annexed to the Memorial, and in a certified corrected translation. It provides:

> "... the Island of Corisco, Elobey and their current dependencies are Spanish, I solemnly promise to respect and obey, without delay and faithfully, all the laws that Her Majesty the Queen, and the authorities she sends to the possessions of the Gulf of Guinea, may issue."[154]

16. Following this, the Spanish Inspector General issued a "Charter of Spanish Citizenship given to the inhabitants of Corisco, Elobey and Their Dependencies", which is at tab 8 of your folders. This Charter, which was addressed to "all the inhabitants of Corisco" affirmed that "the Island itself and its dependencies, among which is the island of Elobey, is Spanish". It goes on to say, "the inhabitants of Corisco and dependencies enjoy the same protection as Spanish residents of the motherland; and on the basis of today's act, those inhabitants should be respected as Spaniards now that the same territory is part of the Nation . . . "[155] Again, there is no record — no record — of any protest from France.

17. The evidence establishes that Spain's public declaration of title to Corisco Island and its dependencies, and its open exercise of sovereign authority over these islands and islets, were both continuous and unchallenged. In 1858, for example, Spain's sovereignty over the islands and islets of Corisco Bay was proclaimed again, by the Spanish Governor General[156]. By this time, France's colonial enterprise on the mainland, which ran along the Corisco Bay coast, was well established. Yet, despite their awareness of Spain's declaration and exercise of sovereign title over Corisco Island and its dependencies, the French made no protest, no challenge to Spanish authority over the islands and islets of Corisco Bay.

18. The situation was different on the mainland. There, Spanish and French territorial claims were in conflict with each other. In 1885, France and Spain appointed a mixed commission to resolve

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[154] *Ibid.*, para. 3.5; Kingdom of Spain, Ministry of State, *Record of Annexation* (18 February 1846). MEG, Vol. V, Annex 112.

[155] MEG, Vol. I, para. 3.5; Kingdom of Spain, Ministry of State, *Charter of Spanish Citizenship Given to the Inhabitants of Corisco, Elobey and their Dependencies* (18 February 1846), pp. 2-3. MEG, Vol. IV, Annex 47.

[156] MEG, Vol. I, para. 3.6.

their territorial disputes. The Commission met from 1886 to 1891[157]. It did not address disputes about Corisco Island, Mbañe, Cocoteros or Conga because there were no disputes about these islands.

19. In fact, France expressly recognized, at least twice during these meetings, that Spain had annexed Corisco Island and its dependencies by virtue of the Declaration of 1843 at tab 6, which was on your screens a few moments ago. In December 1886, a French Foreign Ministry report, which is at tab 9 of your folders, acknowledged that "The geographical dependencies of Corisco are: Laval [Leva] and the one called Baynia [Mbañe]"[158]. At tab 10, you will find a similar statement on this subject by the Head of the French delegation to the French-Spanish Commission in September 1887:

> "In effect, the act of 1843 is the one to which Spain owes the annexation of Corisco and of its natural dependencies, the islets of Laval [Leva] and Baynia [Mbañe], included in the zone of the territorial waters of that island."[159]

20. The Conference adjourned in 1891 without fully resolving the parties' competing claims on the mainland. Negotiations resumed in 1900. In the meantime, France provided further evidence of its recognition of Spain's legal title to Corisco Island and its dependencies. In 1895, the Spanish Governor General protested to the Commissaire Général of French Congo certain French actions in the Bay of Corisco. This protest is at tab 11:

> "Furthermore, the fishermen from Corisco have brought to my attention that, upon traveling to the Embagna [Mbañe] islet, located 6 miles southeast of Corisco Island, to conduct their fishing activity, they were ordered to leave by a French agent because France intends to establish a new post at that location. Since Corisco belongs to Spain, Embagna [Mbañe] is a dependency attached thereto . . . And this is a right that Spain cannot relinquish, let alone acquiesce to its being supplanted by a French agent's occupation, which would constitute a violation of the status quo."[160]

21. The French Commissaire Général did not challenge or question Spain's title to Mbañe. His response to the Spanish protest merely denied French intentions to establish a post at Mbañe: "The information that it mentions regarding establishing a post on an islet located 6 miles to the SE of

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[157] *Ibid*., para. 3.9.

[158] French-Spanish Commission, Conference on the Delimitation in West Africa, Archives of the French Ministry of Foreign Affairs, *Annex to Protocol No. 17* (24 December 1886), p. 2. MEG, Vol. III, Annex 11.

[159] French-Spanish Commission, Conference on the Delimitation in West Africa, Archives of the French Ministry of Foreign Affairs, *Protocol No. 30* (16 September 1887), p. 13. MEG, Vol. III, Annex 3.

[160] MEG, Vol. I, para. 3.14; *Letter No. 368 from* the Spanish Governor-General of Fernando Póo *to* the General Commissioner of the French Congo (22 November 1895), pp. 1-2. MEG, Vol. IV, Annex 50.

Corisco is unfounded."[161] The "status quo" referred to by the Spanish Governor General is reflected in contemporaneous French maps. This one is from the Atlas of French Colonies, published in 1899[162]. The Bay of Corisco, Corisco Island, Leva (or Laval) and Mbañe (Baynia) have been highlighted in yellow. The capital letter "E" after each of these islands stands for Espagne, indicating that they were recognized as Spanish possessions.

22. When France and Spain resumed negotiations in 1900, they reached agreement on the land boundaries between their respective colonies, which was embodied in the 1900 Convention[163]. Although the Convention is a source of legal title for land territory, it is not for any of the islands. But it does reflect further French recognition of Spain's title to them. Article 7 provides:

> "In the event that the Spanish government wishes to cede in any way, in whole or in part, its possessions recognized in articles I and IV of this Convention, as well as the Elobey Islands and the Island of Corisco, near the border with the French Congo; the French government shall have the right of first refusal under the same conditions as those proposed to the Spanish government."[164]

23. Gabon argues that the 1900 Convention *created* Spain's legal title to Corisco Island and the Elobeys[165]. But this argument is defeated by the text of the Convention itself. It says nothing about granting or ceding title to Spain. It is worded in such a way as to recognize Spain's title as pre-existing, by granting France in Article VII a right of first refusal if Spain were ever to wish to "cede in any way" those islands. Obviously, Spain could only cede territory to which it already held title.

24. Following the Convention, Spain continued to openly assert its legal title and exercise its administrative authority over Corisco Island and its dependencies, without challenge or protest from France. In 1908, the Spanish Governor ordered the Deputy Governor to station guards on Mbañe and Leva. This is at tab 12 of your folders:

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[161] MEG, Vol. I, para. 3.15; *Letter No. 203 from* the Commissioner-General of the Colonial Administration of the French Republic *to* the Governor-General of Fernando Póo and Dependencies of the Kingdom of Spain (4 February 1896), p. 1. MEG, Vol. IV, Annex 51.

[162] MEG, Vol. I, para. 3.16, Figure 3.3.

[163] *Ibid*., para. 3.19.

[164] Special Convention on the Delimitation of Spanish and French Possessions in Western Africa on Coasts of the Sahara and the Gulf of Guinea, between the Kingdom of Spain and The French Republic, art. 7 (signed 27 June 1900, ratified 27 March 1901). MEG, Vol. III, Annex 4.

[165] RG, Vol. I, para. 4.36.

> "with regard to the islets of Mbañe and Leva, over which our sovereignty is indisputable . . . proceed immediately to ensure that they be occupied and our glorious flag be raised upon them, for which purpose I sent you with this steamer eight guards that will be based at the post on Corisco, to give service in the occupation of the islets, with a pair or sentinel of the eight individuals continuously stationed on each one and the pairs will be relieved weekly."[166]

25. Again, there is no record that France challenged Spain's sovereignty or its continued exercise of authority over any of the islands and islets of Corisco Bay. This evidence, extending over more than a century, supports only one conclusion: France recognized and accepted Spain's legal title to these islands and islets.

26. The same conclusion can be drawn from the conduct of France and Spain in the 1950s concerning Cocoteros. In 1953, France requested from Spain permission for a French ship to conduct a hydrographic survey of Corisco Bay. France's letter to the Spanish Ministry of Foreign Affairs, at tab 13 of your folders, stated:

> "The French Embassy in Madrid is writing to this Department in order to inform that the Secretariat of State of the French Navy announces that the Central Hydrographic Service of the neighbor country would like to obtain the necessary authorization so that the hydrographic boat called 'BEAUTEMPS-BEAUPRE' can visit, without prior notice, between the months of November and December of 1953 and during the months of September and December of 1954 and 1955, the different anchorages of Corisco Bay, located in Territorial Waters of Spanish Guinea."[167]

27. Spain permitted the placement of buoys and beacons, provided they were temporary and France gave notice to the Spanish authorities[168]. Spain's response is at tab 14 of your folders.

28. This proceeded smoothly until February 1955, when the Spanish Governor reported to Madrid that a beacon was being built on Cocoteros under the direction of French colonial authorities[169]. In March 1955, after receiving instructions from Madrid, the Spanish Governor directed the French Territorial Administrator to suspend the work[170]. The French promptly agreed,

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[166] MEG, Vol. I, para. 3.21; *Letter of* the Minister of the Minister of State of the Kingdom of Spain (18 May 1908), p. 2. MEG, Vol. IV, Annex 59.

[167] *Letter No. 223 from* the Embassy of the Republic of France to the Spanish State *to* the Spanish Ministry of Foreign Affairs (7 May 1953). MEG, Vol. IV, Annex 79.

[168] MEG, Vol. I, para. 3.26; The Spanish State, Letter No. 87 from the Ministry of Foreign Affairs to the Department of Morocco and Colonies (24 Feb. 1954). MEG, Vol. IV, Annex 81.

[169] MEG, Vol. I, para. 3.28; The Spanish State, *Letter No. 20-R from* the Governor General of Santa Isabel *to* the General Directorate of Morocco and Colonies (17 Feb. 1955). MEG, Vol. IV, Annex 83.

[170] MEG, Vol. I, para. 3.30; The Spanish State, Telegram No. [ ]11 from the General Directorate of Morocco and Colonies to the Governor of Spanish Territories of the Gulf of Guinea (8 Mar. 1955). MEG, Vol. IV, Annex 88.

stopped the work and evacuated the workers and materials from Cocoteros[171]. An internal French government document, from the Minister for Foreign Affairs to the Minister of Overseas France, dated 6 May 1955, explains why. This is at tab 15 of your folders:

> "'Cocotier' [Cocoteros] must be considered as following the fate of Baynia [Mbañe] Island, of which it is a geographical dependency . . .
>
> Over the past fifty years, Baynia Island was occupied by the Spanish on several occasions, without protest or alternate occupation by us.
>
> Baynia Island is located within the six nautical mile-limit forming the boundary of Spanish territorial waters … the situation of the islet within Corisco's territorial waters places us in a disadvantageous basic legal position."[172]

29. The following month, in June 1955, France issued this formal Notice to Mariners "[a]s Spanish sovereignty over Cocoteros Island has been recognized by the French High Officials, the Cocotiers beacon located in Spanish territory is Spanish"[173].

30. Gabon offers no explanation in its written pleadings for these repeated French actions confirming France's longstanding position that Spain held legal title to Corisco Island and all its dependencies, including Mbañe, Cocoteros and Conga.

31. Even after Gabon became independent in 1960, France continued to recognize Spain's sovereignty over these islands.

32. In September 1968, the official *Institut Géographique National*, then an agency of the French Government, published this map. We have enlarged the portion covering Corisco Bay, so that you can clearly see that Corisco Island and Mbañe, referred to here as *Banie*, are expressly described by the geographic institute of the French Government as pertaining to Equatorial Guinea. This is at tab 16 of your folders[174].

33. The evidence thus leads to two firm conclusions. First, Spain obtained and held legal title to the islands of Corisco Bay, including the islets of Mbañe, Cocoteros and Conga. Throughout this

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[171] MEG, Vol. I, paras. 3.30-3.31; The Spanish State, Telegram No. 7 from the Governor of Spanish Territories of the Gulf of Guinea to the Director-General of Morocco and Colonies (12 Mar. 1955). MEG, Vol. IV, Annex 91; The Spanish State, Letter from the Governor-General of the Spanish Territories of the Gulf of Guinea to the General Directorate of Morocco and Colonies (17 Mar. 1955). MEG, Vol. IV, Annex 89.

[172] MEG, Vol. I, para. 3.32; The French Republic, *Letter from the Minister of Foreign Affairs to the Minister of Overseas France* (6 May 1955), pp. 3-4. MEG, Vol. IV, Annex 94.

[173] REG, Vol. I, para. 4.31; Bulletin to Advise Sailors, *Bulletin of Information No. 626* (1955), p. 1. REG, Vol. III, Annex 17.

[174] MEG, Vol. I, para. 3.100, fig. 3.25. =

period, Spain continuously, openly and indisputably displayed — to quote from *Western Sahara* — "the intention and will to act as sovereign, and . . . actual exercise or display of such authority"[175].

34. Second, France neither had nor claimed to have title to Corisco Island or any of its dependencies. To the contrary, France recognized and accepted Spain's title over these islands, including Mbañe, Cocoteros and Conga.

III. The legal titles to which Equatorial Guinea and Gabon succeeded

35. I come now to the final part of my presentation: the succession of Equatorial Guinea to the titles held by Spain. Mr President, it is a little bit after 1 p.m. I understand that we have been granted additional time because of the starting time of our presentation. I will finish my speech as promptly as I can.

36. Because Spain held legal titles to all the Corisco Bay Islands, including Mbañe, Cocoteros and Conga, these titles inevitably passed to Equatorial Guinea by succession upon its independence in 1968[176].

37. This is reflected in Equatorial Guinea's first Constitution, which defined its territory as including "Corisco . . . and the adjacent islets"[177]. In September 1970, Equatorial Guinea issued a decree establishing "the limits of the territorial waters . . . surrounding the Elobey Islands, Corisco and the Mbañe, Conga and Cocoteros Islets, which are an integral part of the national territory of Guinea"[178]. This decree was sent to the United Nations and all Member States, including Gabon. Gabon did not protest nor did France[179]. Thereafter, Equatorial Guinea continuously exercised sovereignty over these islets without any protest until 1972, when, as you have heard, Gabon seized Mbañe by military force.

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[175] *Western Sahara*, *Advisory Opinion, I.C.J. Reports 1975*, p. 43, para. 92 (quoting *Legal Status of Eastern Greenland*, P.C.I.J., Series A/B, No. 53, pp. 45 *et seq*.).

[176] *Frontier Dispute (Burkina Faso/Republic of Mali), Judgment, I.C.J. Reports 1986,* p. 566, para. 24.

[177] MEG, Vol. I, para. 6.20; Republic of Equatorial Guinea, *Constitution of 1968* (11 August 1968), art. 1. MEG, Vol. VI, Annex 182.

[178] *Cable from* the UN *to* Permanent Missions (13 October 1970), *enclosing Letter from* Equatorial Guinea *to* UN Secretary-General (8 October 1970). MEG, Vol. III, Annex 23. *See also* MEG, Vol. I, para. 6.22; Republic of Equatorial Guinea, *Presidential Decree No. 17/1970* (24 September 1970). MEG, Vol. VI, Annex 186.

[179] MEG, Vol. I, para. 6.22.

38. The evidence shows that Gabon, from its independence in 1960 until 1972 recognized and accepted the validity of Spain's, and then Equatorial Guinea's, legal title to the three islets, along with the rest of the Corisco Bay islands.

39. For example, in 1962 Gabon concluded with Spain a Maritime Protocol confirming Spain's sovereign authority for maintaining the maritime signals in all of Corisco Bay, including the beacon on Cocoteros[180]. Under this Protocol, Gabon, like France before it, was not allowed to conduct work on Cocoteros or in the surrounding waters without Spain's authorization[181]. This was agreed by Gabon in its Protocol with Spain. In 1967, Gabon issued an oil concession covering offshore areas. Pursuant to this concession, Gabon's licensee requested and received Spanish permission to conduct seismic surveys on the "islands of Corisco and the rocks of Conga", which were identified as "Spanish Guinea islands"[182].

40. In 1972, as Mr Smith explained, Gabon suddenly reversed its position and, for the first time, asserted a claim to Mbañe and the other two islets. To justify this reversal, Gabon claimed that no other State, including Spain and Equatorial Guinea, had ever held a valid legal title to them. This is from paragraph 4.61 of Gabon's Rejoinder:

> "When Gabon gained independence in 1960, it inherited a situation where no legal title to the disputed islands was established."

41. To justify this remarkable assertion, Gabon has not only ignored the evidence, but invented new legal rules. In particular, Gabon opposes Spain's title to the disputed islands on the ground that "agreements with local indigenous leaders", can only be a source of title to "inhabited" islands, not uninhabited islets like Mbañe, Cocoteros, and Conga[183]. If there is any support for this in the Court's jurisprudence, Gabon has failed to identify it. In fact, Gabon's argument runs contrary to the Court's Judgments in *El Salvador/Honduras* and, farther back, in *Minquiers and Ecrehos*. In both cases, legal

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[180] REG, Vol. I, para. 4.37; Implementation Protocol in Compliance with the Maritime Signal Organization for the Buoyage and Signaling of Corisco Bay and the Muni River (23 May 1962). REG, Vol. III, Annex 1.

[181] REG, Vol. I, para. 4.37; Implementation Protocol in Compliance with the Maritime Signal Organization for the Buoyage and Signaling of Corisco Bay and the Muni River (23 May 1962), art. 2. REG, Vol. III, Annex 1.

[182] MEG, Vol. I, para. 3.99; Gulf Oil Company of Gabon, *Letter from Mr Rigo de Righi to the Ambassador of Spain* (22 December 1967). MEG, Vol. VI, Annex 147; Gulf Oil Company of Gabon, *Letter from Mr Rigo de Righi to the Ambassador of Spain* (28 Dec. 1967). MEG, Vol. VI, Annex 148.

[183] RG, Vol. I, para. 4.16.

title to small islands was based on "effective possession and control"[184], or the exercise of "State functions in respect of the group"[185]. Both cases also demonstrate that tiny, uninhabited islets may be regarded as "dependencies" of larger islands in close proximity, such that title to the larger island carries with it title to the dependency. As the Chamber in *El Salvador/Honduras* explained: "The small size of Meanguerita, its contiguity to the larger island, and the fact that it is uninhabited, allow its characterization as a 'dependency' of Meanguera"[186]. On this basis, having found that El Salvador held title to Meanguera, the Court ruled that this title extended to Meanguerita.

42. This is precisely the situation of Mbañe, Cocoteros and Conga in relation to Corisco Island. The evidence in this case shows that the three islets have always been treated as dependencies of Corisco Island, that legal title to them has always followed from title to Corisco Island, and that only Spain and then Equatorial Guinea have ever held title to them. It shows that France recognized and accepted Spain's and then Equatorial Guinea's title, as did Gabon from 1960 to 1972. As Professor Sands and Mr Parkhomenko have fully demonstrated, there is no valid basis for Gabon's belated claim of title under the document that first appeared in 2003, nearly 30 years after its supposed creation.

43. There is, in fact, only one source of title Gabon can invoke that is consistent with the evidence adduced in this case: military conquest. We came, we saw, we conquered. Fortunately, international law has evolved considerably since the age of Caesar. There was no United Nations Charter in Roman times. There was no Article 2 (4). Nor was there a Declaration on Friendly Relations providing that "[n]o territorial acquisition resulting from the threat or use of force shall be recognized as legal."[187] In its Advisory Opinion of 19 July 2024, the Court made clear that "the prohibition of territorial acquisition resulting from the threat or use of force, as a corollary of the

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[184] *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)*, *Judgment*, *I.C.J Reports 1992*, p. 579, para. 367.

[185] *Minquiers and Ecrehos (France/United Kingdom), Judgment, I.C.J. Reports 1953*, p. 70.

[186] *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening*), *Judgment, I.C.J Reports 1992*, p. 570, para. 356 (citing to *Minquiers and Ecrehos (France/United Kingdom, Judgment, I.C.J. Reports 1953*, p. 71).

[187] UN General Assembly, Resolution 2625 (XXV), Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (24 October 1970), pp. 77-78. REG, Vol. III, Annex 6.

prohibition of the threat or use of force, is a principle of customary international law"[188]. This means, quoting again from that Advisory Opinion: "The annexation of occupied territory by an occupying Power is unlawful"[189].

44. As a definitive statement of the law by the world's highest judicial authority, this principle must be applied universally. Military invasion, occupation and annexation of another State's territory is as unlawful in Corisco Bay as it is elsewhere in the world. It is a scourge that threatens the very foundations of the precious, but fragile, structure of international law — of which this Court is the world's principal guardian. No State should be allowed to benefit from transgression of this fundamental rule.

45. But that is exactly what would result if Gabon's unlawful use of force against Equatorial Guinea and conquest of Equatorial Guinea's territory were permitted to stand, through recognition of the legal title Gabon now claims. If valid legal title cannot be obtained through the acquisition of territory by military force, then it certainly cannot be lawfully acquired in the aftermath of an unprovoked military invasion and occupation, while the aggressor is occupying the territory with the intention of retaining it permanently, and in position to dictate terms to the aggrieved State.

46. Mr President, Members of the Court, the evidence, and the law, fully demonstrate that Equatorial Guinea acquired the islands of Corisco Bay, including Mbañe, Cocoteros and Conga, by succession from Spain, that these legal titles are valid, and that Gabon has no valid titles to these islands. This concludes my presentation and that of Equatorial Guinea this morning, and I thank you for your kind courtesy and patient attention, and especially for allowing me to proceed to this hour, and I wish you all a most enjoyable lunch. Thank you.

The PRESIDENT: I thank Mr Reichler. The Court will meet again this afternoon, at 3 p.m., for the continuation of Equatorial Guinea's first round of oral argument. The sitting is adjourned.

The Court rose at 1.20 p.m.

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[188] *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, *Advisory Opinion of 19 July 2024,* para. 175.

[189] *Ibid.*