19 MAY 2025

JUDGMENT

LAND AND MARITIME DELIMITATION AND SOVEREIGNTY OVER ISLANDS

(GABON/EQUATORIAL GUINEA)

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DÉLIMITATION TERRESTRE ET MARITIME ET SOUVERAINETÉ SUR DES ÎLES

(GABON/GUINÉE ÉQUATORIALE)

19 MAI 2025

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LAND AND MARITIME DELIMITATION AND SOVEREIGNTY OVER ISLANDS

(GABON/EQUATORIAL GUINEA)

Geographical and historical background.

Geography — Gabon and Equatorial Guinea located on western coast of Central Africa — Maritime features in Corisco Bay — Presence, in Corisco Bay, of three maritime features over which sovereignty is disputed between the Parties, namely Mbanié/Mbañe, Cocotiers/Cocoteros and Conga.

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* *

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Circumstances in which "Bata Convention" was drawn up — Limited and contradictory information.

Subsequent conduct of the Parties — Parties have never given effect to provisions of "Bata Convention" — Parties' subsequent conduct over many decades of negotiations provides strong indication that they had not understood themselves as entering into a treaty having the force of law — Diplomatic exchanges confirm that the Parties at no point considered "Bata Convention" binding upon them — Subsequent conduct of the Parties furnishes compelling indications that they did not consider "Bata Convention" to be a treaty.

"Bata Convention" does not constitute a legal title within meaning of Article 1, paragraph 1, of Special Agreement.

* *

The legal titles, treaties and international conventions invoked by the Parties concerning the delimitation of their common land boundary.

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Utamboni River area — Whether Spain and France approved proposal made by 1901 Commission — No approval through formal decisions — No approval through conduct of Spain and France — Boundary in the area as described in 1900 Convention was not modified pursuant to procedures set out therein.

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*

General conclusion — The legal titles which concern the delimitation of the Parties' common land boundary are the titles held on 17 August 1960 by France and on 12 October 1968 by Spain, on the basis of 1900 Convention, to which titles Gabon and Equatorial Guinea respectively succeeded — Parties not prevented from agreeing to adjust their land boundary.

* *

The legal titles, treaties and international conventions invoked by the Parties concerning sovereignty over Mbanié/Mbañe, Cocotiers/Cocoteros and Conga.

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* *

The legal titles, treaties and international conventions invoked by the Parties concerning the delimitation of their common maritime boundary.

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Customary international law — Customary international law does not constitute a legal title within meaning of Article 1 of Special Agreement.

JUDGMENT

Present: *Vice-President* SEBUTINDE, *Acting President*; *President* IWASAWA; *Judges* TOMKA, ABRAHAM, YUSUF, XUE, NOLTE, CHARLESWORTH, BRANT, GÓMEZ ROBLEDO, CLEVELAND, AURESCU, TLADI; *Judges* ad hoc WOLFRUM, PINTO; *Registrar* GAUTIER.

In the case concerning land and maritime delimitation and sovereignty over islands,

between

the Gabonese Republic,

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;

as Members of the Delegation;

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 Kingdom of Belgium, to the Kingdom of 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,

and

the Republic of Equatorial Guinea,

represented by

HE Mr Domingo Mba Esono, Minister Delegate of Hydrocarbons and Mining Development,

as Agent;

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;

Mr Derek C. Smith, Attorney at Law, Foley Hoag LLP, member of the Bar of the District of Columbia,

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,

Mr Andrew B. Loewenstein, Attorney at Law, Foley Hoag LLP, member of the Bar of the Commonwealth of Massachusetts,

Ms Alison Macdonald, KC, Barrister, Essex Court Chambers, London,

Mr Yuri Parkhomenko, Attorney at Law, Foley Hoag LLP, member of the Bar of the District of Columbia,

Ms Tafadzwa Pasipanodya, Attorney at Law, Foley Hoag LLP, member of the Bars of the District of Columbia and the State of New York,

Mr Paul S. Reichler, Attorney at Law, 11 King's Bench Walk, member of the Bars of the Supreme Court of the United States and the District of Columbia,

Mr Philippe Sands, KC, Professor of International Law, University College London, Barrister, 11 King's Bench Walk,

as Counsel and Advocates;

Mr Diego Cadena, Attorney at Law, Foley Hoag LLP, member of the Bar of Ecuador,

Ms Alejandra Torres Camprubí, Adjunct Professor on International Environmental Law, IE Law School, member of the Madrid and Paris Bars,

Mr Baldomero Casado, Attorney at Law, Foley Hoag LLP, member of the Texas and Madrid Bars,

Mr Coalter G. Lathrop, Sovereign Geographic, member of the Bar of North Carolina,

Mr Remi Reichhold, Barrister, 11 King's Bench Walk,

Mr Peter Tzeng, Attorney at Law, Foley Hoag LLP, member of the Bars of the District of Columbia and the State of New York,

Ms Elena Sotnikova, Foley Hoag LLP,

Mr M. Arsalan Suleman, Attorney at Law, Foley Hoag LLP, member of the Bars of the District of Columbia and the State of New York,

as Counsel;

Ms Gretchen Sanchez, Foley Hoag LLP,

Ms Nancy Lopez, Foley Hoag LLP,

as Assistants,

THE COURT,

composed as above,

after deliberation,

delivers the following Judgment:

1. On 5 March 2021, the Republic of Equatorial Guinea officially notified to the Court the "Special Agreement between the Gabonese Republic and the Republic of Equatorial Guinea" signed in Marrakesh on 15 November 2016, by which the Gabonese Republic (hereinafter "Gabon") and the Republic of Equatorial Guinea (hereinafter "Equatorial Guinea") agreed to submit to the Court a

dispute between them concerning the "delimitation of their common maritime and land boundaries" and "sovereignty over the islands of Mbanié/Mbañe, Cocotiers/Cocoteros and Conga".

2. The text of the Special Agreement reads as follows:

"The Gabonese Republic and the Republic of Equatorial Guinea (hereinafter 'the Parties'),

Whereas there is a dispute between them, the subject of which is set forth in Article 1 of this Special Agreement,

Recognizing that several years of efforts devoted to seeking a solution through negotiation have failed to achieve the desired result,

Recalling their acceptance of the mediation offered by the United Nations Secretary-General with a view to the peaceful settlement of the dispute,

Conscious of the longstanding fraternal ties between the peoples of Gabon and Equatorial Guinea, and wishing to maintain and strengthen the respectful, friendly and co-operative relations between the two States,

Being resolved to settle their dispute peacefully and, to that end, to bring it before the International Court of Justice (hereinafter 'the Court'),

Have agreed as follows:

Article 1
Submission to the Court and Subject of the Dispute

1. The Court is requested to determine whether the legal titles, treaties and international conventions invoked by the Parties have the force of law in the relations between the Gabonese Republic and the Republic of Equatorial Guinea in so far as they concern the delimitation of their common maritime and land boundaries and sovereignty over the islands of Mbanié/Mbañe, Cocotiers/Cocoteros and Conga.

To this end:

2. The Gabonese Republic recognizes as applicable to the dispute the Special Convention on the delimitation of French and Spanish possessions in West Africa, on the coasts of the Sahara and the Gulf of Guinea, signed in Paris on 27 June 1900, and the Convention delimiting the land and maritime frontiers of Equatorial Guinea and Gabon, signed in Bata on 12 September 1974.

3. The Republic of Equatorial Guinea recognizes as applicable to the dispute the Special Convention on the delimitation of French and Spanish possessions in West Africa, on the coasts of the Sahara and the Gulf of Guinea, signed in Paris on 27 June 1900.

4. Each Party reserves the right to invoke other legal titles.

Article 2
Applicable Law

The Court is requested to settle the dispute in accordance with Article 38, paragraph 1, of its Statute.

Article 3
Procedure

1. The Parties, mindful of Practice Direction I adopted by the Court, agree, without prejudice to the burden of proof, that the number and order of pleadings will be governed by the following provisions:

(a) One Party will file the first pleading no later than seven months after the date on which this Special Agreement is notified to the Registrar of the Court.

(b) The other Party will file the second pleading no later than seven months after receiving from the Registrar a certified copy of the first pleading.

(c) The Party that filed the first pleading will file the third pleading no later than five months after receiving from the Registrar a certified copy of the second pleading.

(d) The Party that filed the second pleading will file the fourth pleading no later than five months after receiving from the Registrar a certified copy of the third pleading.

2. If one Party requests an extension of a time-limit, the Court will make a decision in accordance with Article 44 of its Rules.

3. The order in which the Parties are heard during the oral proceedings will be the same as that followed during the written proceedings.

Article 4
Entry into Force

1. This Special Agreement shall enter into force the day after the date on which both Parties have notified each other in writing that the necessary formalities have been completed.

2. Each of the two Parties agrees to make every effort, in good faith, to ensure that this Special Agreement enters into force promptly, in so far as possible within six months of its signature. To this end, each Party agrees to implement the applicable constitutional provisions and complete the necessary formalities with all due dispatch.

Article 5
Registration with the United Nations Secretariat

This Special Agreement shall be registered with the United Nations Secretariat, pursuant to Article 102 of the Charter of the United Nations, at the request of either Party.

Article 6
Notification

This Special Agreement shall be notified to the Registrar of the Court by either Party as soon as possible after it enters into force.

Done in French and Spanish, both versions being equally authoritative, and signed in Marrakesh on fifteen November, two thousand and sixteen." *[Translation by the Registry]*

3. The Registrar immediately transmitted a copy of the notification of the Special Agreement to the Government of Gabon, in accordance with Article 40, paragraph 2, of the Statute of the Court. He also notified the Secretary-General of the United Nations of the notification made by Equatorial Guinea.

4. In addition, by a letter dated 16 April 2021, the Registrar informed all Member States of the United Nations, and any other State entitled to appear before the Court, of the notification of the Special Agreement.

5. Pursuant to Article 40, paragraph 3, of the Statute of the Court, the Registrar subsequently informed the Member States of the United Nations through the Secretary-General, and any other State entitled to appear before the Court, of the filing of the Special Agreement, by transmission of the printed bilingual text.

6. By an Order of 7 April 2021, the Court, having regard to the provisions of the Special Agreement concerning the written pleadings and to the agreement expressed by the Parties at a meeting held with the President, fixed 5 October 2021 and 5 May 2022 as the respective time-limits for the filing of a Memorial by Equatorial Guinea and a Counter-Memorial by Gabon. The Memorial and the Counter-Memorial were duly filed within the time-limits thus fixed.

7. Since the Court included upon the Bench no judge of the nationality of either Party, each Party proceeded to exercise the right conferred upon it by Article 31, paragraph 3, of the Statute of the Court to choose a judge *ad hoc* to sit in the case. Gabon chose Ms Mónica Pinto; Equatorial Guinea chose Mr Rüdiger Wolfrum.

8. By an Order of 6 May 2022, the Court fixed 5 October 2022 and 6 March 2023 as the respective time-limits for the filing of a Reply by Equatorial Guinea and a Rejoinder by Gabon. The Reply and the Rejoinder were duly filed within the time-limits thus fixed.

9. Pursuant to Article 53, paragraph 2, of its Rules, the Court, after ascertaining the views of the Parties, decided 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.

10. Public hearings were held on 30 September and 2, 3 and 4 October 2024. In accordance with Article 3, paragraph 3, of the Special Agreement, the order in which the Parties were heard during the oral proceedings was the same as that followed during the written proceedings. The Court thus heard the oral arguments and replies of:

For Equatorial Guinea: HE Mr Domingo Mba Esono,
Mr Derek Smith,
Mr Pierre d'Argent,
Mr Philippe Sands,
Mr Yuri Parkhomenko,
Mr Paul Reichler,
Mr Dapo Akande,
Ms Tafadzwa Pasipanodya,
Mr Andrew B. Loewenstein,

HE Mr Anatolio Nzang Nguema Mangue,
Ms Alison Macdonald.

For Gabon: HE Ms Marie-Madeleine Mborantsuo,
HE Mr Guy Rossatanga-Rignault,
Mr Alain Pellet,
Mr Ben Juratowitch,
Mr Daniel Müller,
Ms Alina Miron,
Ms Isabelle Rouche,
Ms Camille Strosser.

11. At the hearings, Members of the Court put questions to the Parties, to which replies were given orally, in accordance with Article 61, paragraph 4, of the Rules of Court.

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

On behalf of the Government of Equatorial Guinea,

in the Memorial:

> "Reserving its right to supplement or amend its requests, the Republic of Equatorial Guinea requests the Court to adjudge and declare:
>
> The only legal titles, treaties and international conventions that have the force of law in the relations between the Gabonese Republic and the Republic of Equatorial Guinea in so far as they concern the delimitation of their common maritime and land boundaries and sovereignty over the islands of Mbanié/Mbañe, Cocotiers/Cocoteros and Conga are:
>
> A. With Respect to the Delimitation of the Land Boundary,
>
> 1. by State succession, the Special Convention on the delimitation of French and Spanish possessions in West Africa, on the coasts of the Sahara and the Gulf of Guinea, signed in Paris on 27 June 1900 (the '1900 Convention'), as applied by France and Spain until the independence of Gabon on 17 August 1960 and as continued to be applied by Gabon and Spain until the independence of Equatorial Guinea on 12 October 1968,
>
> 2. the legal title of the Republic of Equatorial Guinea as the successor State to Spain to all titles to territory, including territorial limits, held by Spain based on modifications to the boundary described in Article 4 of the 1900 Convention in accordance with the terms of the 1900 Convention and international law prior to 12 October 1968, the date of the Republic of Equatorial Guinea's independence, and

3. the legal title of the Gabonese Republic as the successor State to France to all the titles to territory, including territorial limits, held by France based on modifications to the boundary described in Article 4 of the 1900 Convention in accordance with the terms of the 1900 Convention and international law prior to . . . 17 August 1960, the date of the Gabonese Republic's independence;

B. With Respect to the Sovereignty over the Islands of Mbanié/Mbañe, Cocotiers/Cocoteros and Conga,

1. by State succession of Equatorial Guinea to Spain's Legal Title held by Spain on 12 October 1968 over Mbanié/Mbañe, Cocotiers/Cocoteros and Conga founded on 1) the general [c]ession of rights from Portugal in the 1778 Treaty of El Pardo, 2) Spain's 1843 Declaration of Spanish Sovereignty for Corisco Island, 3) Spain's 1846 Record of Annexation signed with King I. Oregek of Corisco Island, 4) Spain's 1846 Charter of Spanish Citizenship Given to the Inhabitants of Corisco, Elobey and their Dependencies, and [5]) Spain's uncontested effective and public sovereign occupation of these islands from 1843 until Equatorial Guinea's independence in 1968.

C. With Respect to the Entitlement to Maritime Areas, and their Delimitations, considering the Respective Territories of the Parties as Determined under (A) and (B),

1. the 1900 Convention in so far as it established the terminus of the land boundary in Corisco Bay, and recognized Spain's sovereignty over Corisco Island, Elobey Grande and Elobey Chico; and

2. the United Nations Convention on the Law of the Sea signed on 10 December 1982 at Montego Bay, and

3. customary international law in so far as it establishes that a State's title and entitlement to maritime areas derives from its title to land territory.

The Republic of Equatorial Guinea reserves the right to supplement or amend these submissions in light of further pleadings and as necessary."

in the Reply:

"Reserving its right to supplement or amend its submissions, the Republic of Equatorial Guinea respectfully requests the Court to adjudge and declare:

I. The Special Agreement allows the Court to determine all legal titles, treaties and international conventions that concern the delimitation of the Parties' common maritime and land boundaries and sovereignty over the islands of Mbañe, Cocoteros and Conga.

II. The document Gabon alleges to be the 'Bata Convention' has no force of law or any legal consequences in the relations between the Gabonese Republic and the Republic of Equatorial Guinea.

III. The legal titles, treaties and international conventions that have the force of law in the relations between the Gabonese Republic and the Republic of Equatorial Guinea with respect of the delimitation of their common land boundary are:

1. by State succession, the Special Convention on the delimitation of French and Spanish possessions in West Africa, on the coasts of the Sahara and the Gulf of Guinea, signed in Paris on 27 June 1900 (the '1900 Convention'), as applied by France and Spain until the independence of Gabon on 17 August 1960 and as continued to be applied by Gabon and Spain until the independence of Equatorial Guinea on 12 October 1968,

2. the succession by the Republic of Equatorial Guinea to all titles to territory, including territorial limits, held by Spain based on modifications to the boundary described in Article 4 of the 1900 Convention in accordance with the terms of the 1900 Convention and international law, including the 1919 Agreement between the Governor of French Equatorial Africa and the Governor of Spanish Guinea, prior to 12 October 1968, the date of the Republic of Equatorial Guinea's independence, and

3. the succession by the Gabonese Republic to all titles to territory, including territorial limits, held by France based on modifications to the boundary described in Article 4 of the 1900 Convention in accordance with the terms of the 1900 Convention and international law, including the 1919 Agreement between the Governor of French Equatorial Africa and the Governor of Spanish Guinea, prior to 17 August 1960, the date of the Gabonese Republic's independence;

IV. The legal title that has the force of law in the relations between the Gabonese Republic and the Republic of Equatorial Guinea with respect to the sovereignty over the islands of Mbanié/Mbañe, Cocotiers/Cocoteros and Conga is the succession by the Republic of Equatorial Guinea to the title held by Spain on 12 October 1968 over Mbanié/Mbañe, Cocotiers/Cocoteros and Conga, which itself was founded on 1) the general cession of rights from Portugal in the 1778 Treaty of El Pardo, 2) Spain's 1843 Declaration of Spanish Sovereignty for Corisco Island, 3) Spain's 1846 Record of Annexation signed with King I. Oregek of Corisco Island, 4) Spain's 1846 Charter of Spanish Citizenship Given to the Inhabitants of Corisco, Elobey and their Dependencies, 5) Spain's 1858 Charter Reaffirming Spanish Possession of the Island of Corisco and 6) Spain's uncontested effective and public sovereign occupation of these islands from 1843 until Equatorial Guinea's independence in 1968.

V. Considering paragraphs (III) and (IV) above, the legal titles, treaties and international conventions that have the force of law in the relations between the Gabonese Republic and the Republic of Equatorial Guinea with respect of the delimitation of their common maritime boundary are:

1. the 1900 Convention in so far as it established the terminus of the land boundary in Corisco Bay;

2. the United Nations Convention on the Law of the Sea signed on 10 December 1982 at Montego Bay, and

3. customary international law in so far as it establishes that a State's title and entitlement to adjacent maritime areas derives from its title to land territory.

The Republic of Equatorial Guinea reserves the right to supplement or amend these submissions in light of further pleadings and as necessary."

On behalf of the Government of Gabon,

in the Counter-Memorial:

"In view of the arguments presented in this Counter-Memorial and of any others produced, inferred or substituted, including if necessary *proprio motu*, the Gabonese Republic respectfully requests the Court:

(a) To declare that

(i) the Convention delimiting the land and maritime frontiers of Equatorial Guinea and Gabon of 12 September 1974 (Bata) and the Special Convention on the delimitation of French and Spanish possessions in West Africa, on the coasts of the Sahara and the Gulf of Guinea of 27 June 1900 (Paris) are the legal titles having the force of law in the relations between the Gabonese Republic and the Republic of Equatorial Guinea in so far as they concern the delimitation of their common land boundary;

(ii) the Convention delimiting the land and maritime frontiers of Equatorial Guinea and Gabon of 12 September 1974 (Bata) is the legal title having the force of law in the relations between the Gabonese Republic and the Republic of Equatorial Guinea in so far as it concerns the delimitation of their common maritime boundary and sovereignty over the islands of Mbanié, Cocotiers and Conga.

(b) To reject all claims of the Republic of Equatorial Guinea to the contrary.

Gabon reserves the right to modify or amend these submissions, as appropriate, in accordance with the provisions of the Statute and the Rules of Court."

in the Rejoinder:

"In view of the arguments presented in this Rejoinder and of any others produced, inferred or substituted, including if necessary *proprio motu*, the Gabonese Republic respectfully requests the Court:

(a) To declare that

(i) the Convention delimiting the land and maritime frontiers of Equatorial Guinea and Gabon of 12 September 1974 (Bata) and the Special Convention on the delimitation of French and Spanish possessions in West Africa, on the coasts of the Sahara and the Gulf of Guinea of 27 June 1900 (Paris), subject to the modifications made to the boundary by the Bata Convention, are the legal titles having the force of law in the relations between the Gabonese Republic and the Republic of Equatorial Guinea in so far as they concern the delimitation of their common land boundary;

(ii) the Convention delimiting the land and maritime frontiers of Equatorial Guinea and Gabon of 12 September 1974 (Bata) is the legal title having the force of law in the relations between the Gabonese Republic and the Republic of Equatorial Guinea in so far as it concerns the delimitation of their common maritime boundary and sovereignty over the islands of Mbanié, Cocotiers and Conga.

(b) To reject all claims of the Republic of Equatorial Guinea to the contrary."

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

On behalf of the Government of Equatorial Guinea,

at the hearing of 3 October 2024:

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

I. The Special Agreement allows the Court to determine whether the legal titles, treaties and international conventions invoked by the Parties have the force of law in the relations between them in so far as they concern the delimitation of their common maritime and land boundaries and sovereignty over the islands of Mbañe, Cocoteros and Conga.

II. The document first presented by the Gabonese Republic in 2003 has no force of law or any legal consequences in the relations between the Parties.

III. The legal titles, treaties and international conventions that have the force of law in the relations between the Parties in so far as they concern the delimitation of their common land boundary are the succession by the Gabonese Republic and the succession by the Republic of Equatorial Guinea to all titles to territory, held respectively on 17 August 1960 by France and on 12 October 1968 by Spain, on the basis of the 1900 Convention, including those titles to territory held on the basis of the modifications made, in the application of that Convention, to the boundary described in Article IV of the Convention.

IV. The legal title that has the force of law in the relations between the Parties in so far as it concerns sovereignty over the islands of Mbanié/Mbañe, Cocotiers/Cocoteros and Conga is the succession by the Republic of Equatorial Guinea to the title held by Spain on 12 October 1968 over Mbanié/Mbañe, Cocotiers/Cocoteros and Conga.

V. Considering paragraphs (III) and (IV) above, the legal titles, treaties and international conventions that have the force of law in the relations between the Parties in so far as they concern the delimitation of their common maritime boundary are:

1. the 1900 Convention in so far as it established the terminus of the land boundary in Corisco Bay;

2. the United Nations Convention on the Law of the Sea signed on 10 December 1982 at Montego Bay, and

3. customary international law in so far as it establishes that a State's title and entitlement to adjacent maritime areas derives from its title to land territory."

On behalf of the Government of Gabon,

at the hearing of 4 October 2024:

"The Gabonese Republic requests the Court:

(a) To declare that

(i) the Convention delimiting the land and maritime frontiers of Equatorial Guinea and Gabon of 12 September 1974 (Bata) and the Special Convention on the delimitation of French and Spanish possessions in West Africa, on the coasts of the Sahara and the Gulf of Guinea of 27 June 1900 (Paris), subject to the modifications made to the boundary by the Bata Convention, are the legal titles having the force of law in the relations between the Gabonese Republic and the Republic of Equatorial Guinea in so far as they concern the delimitation of their common land boundary;

(ii) the Convention delimiting the land and maritime frontiers of Equatorial Guinea and Gabon of 12 September 1974 (Bata) is the legal title having the force of law in the relations between the Gabonese Republic and the Republic of Equatorial Guinea in so far as it concerns sovereignty over the islands of Mbanié, Cocotiers and Conga; and

(iii) the Convention delimiting the land and maritime frontiers of Equatorial Guinea and Gabon of 12 September 1974 (Bata) is the legal title having the force of law in the relations between the Gabonese Republic and the Republic of Equatorial Guinea in so far as it concerns the delimitation of their common maritime boundary.

(b) To reject all claims of the Republic of Equatorial Guinea to the contrary."

*

* *

I. GENERAL BACKGROUND

A. Geography

14. Gabon and Equatorial Guinea are both located on the western coast of Central Africa. Gabon is bordered by Equatorial Guinea to the north-west, Cameroon to the north and the Republic of the Congo to the east and south. Equatorial Guinea is bordered by Cameroon to the north and Gabon to the east and south. Equatorial Guinea consists of two regions: a mainland region and an insular region. The mainland region, commonly referred to as Río Muni, covers a surface area of approximately 26,000 sq km. The insular region is composed of two main islands — Bioko (formerly known as Fernando Póo/Fernando Pó) and Annobón — which are 350 nautical miles apart. Equatorial Guinea also has sovereignty over several maritime features in Corisco Bay, namely Corisco Island (located some 16 nautical miles south-west of the mouth of the Muni River),

Elobey Grande and Elobey Chico. In Corisco Bay, there are also three maritime features over which sovereignty is disputed between the Parties, namely Mbanié/Mbañe, Cocotiers/Cocoteros and Conga (see sketch-maps 1 and 2). The Parties to the Special Agreement use the term "islands" to refer to these features. For the purpose of the present Judgment, the Court will therefore use the term "islands". This is without prejudice to the characterization of these features under international law.

15. Mbanié/Mbañe is the largest of the three islands. It has a surface area of approximately 0.07 sq km at high tide; at low tide, it has a surface area of 0.5 sq km according to Equatorial Guinea and 0.2 sq km according to Gabon. Mbanié/Mbañe has never been permanently inhabited.

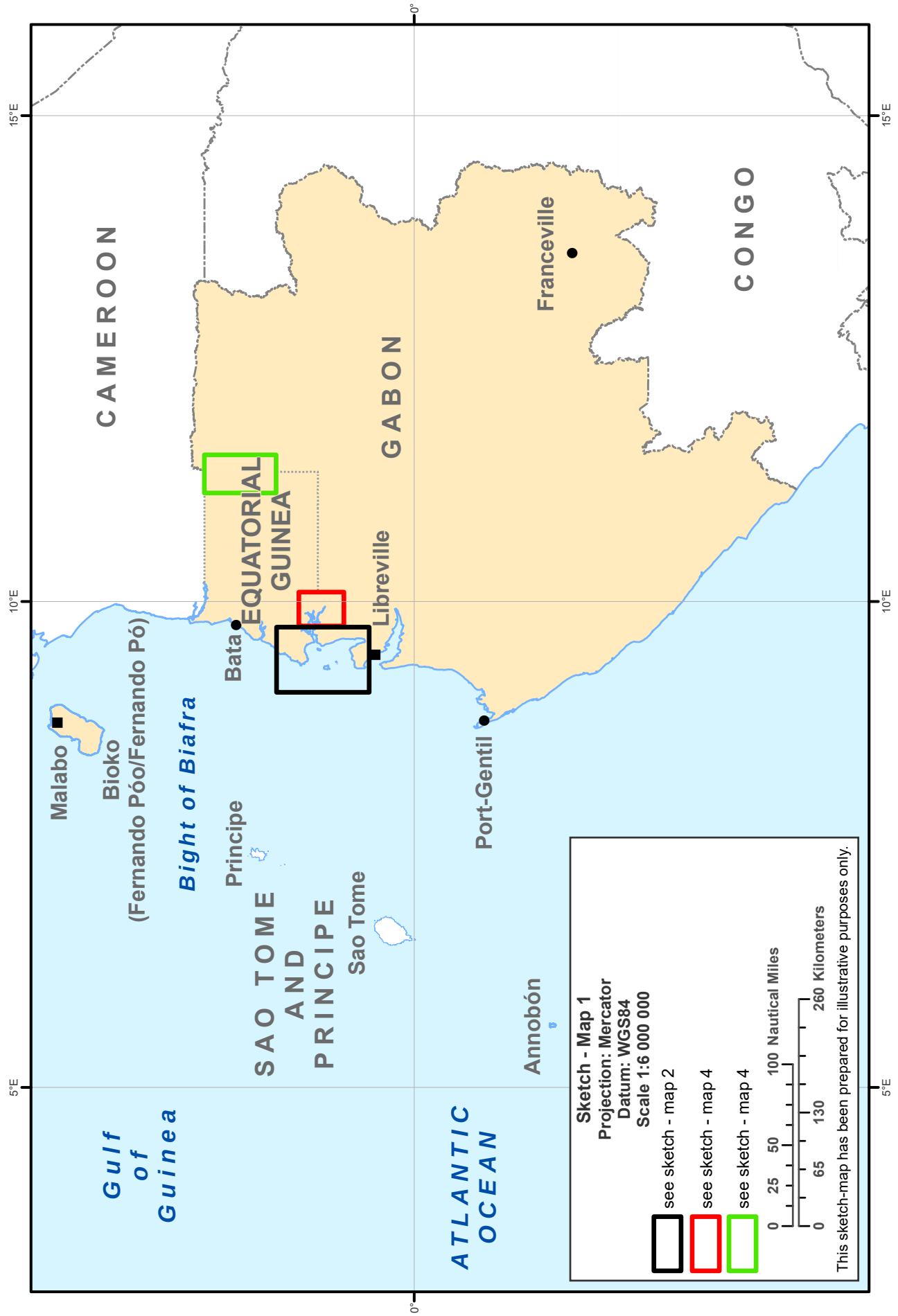
16. Cocotiers/Cocoteros lies 1.5 nautical miles to the east of Mbanié/Mbañe on the eastern edge of a sandbank which Equatorial Guinea calls "Mbañe Bank". This island, which has a surface area of approximately 0.003 sq km at high tide and 0.1 sq km at low tide, is uninhabited.

17. Conga is located approximately 1 nautical mile south-west of Mbanié/Mbañe. It has a surface area of 0.003 sq km at high tide and 1.6 sq km at low tide. Conga is uninhabited.

18. Mbanié/Mbañe, Cocotiers/Cocoteros and Conga lie between 5 and 6 nautical miles south-east of Corisco Island and approximately 10 nautical miles from the coast of Gabon and 18 nautical miles from the coast of Equatorial Guinea.

B. History

19. Originally colonies of Portugal, the islands of Annobón and Fernando Póo/Fernando Pó were ceded by Portugal to Spain by the Treaty of Amity and Commerce of El Pardo (hereinafter the "Treaty of El Pardo") concluded on 11 March 1778. In March 1843, Spain sent a naval expedition to Corisco Island. The commander of the expedition issued a declaration asserting Spanish sovereignty over Corisco Island (hereinafter the "Declaration of Corisco") on 16 March 1843. The next day, the Spanish authorities named a local inhabitant "Baldomero Boncoro" and appointed him as "Pilot of Corisco Bay and Chief of the Southern Point of Corisco Island". Three years later, on 18 February 1846, another local inhabitant called "Orejeck", to whom the Spanish authorities referred as the "King of the Island of Corisco, Elobey, and dependencies", signed a document entitled "Record of Annexation" (hereinafter the "1846 Record of Annexation") in the presence of the "Inspector General of the island possessions in the Gulf of Guinea". According to that document, the islands of Corisco, Elobey and their dependencies were Spanish. Pursuant to that document, the Inspector General issued a "Charter of Spanish Citizenship given to the inhabitants of Corisco, Elobey and dependencies" (hereinafter the "1846 Charter of Spanish Citizenship"), affirming that Corisco "and its dependencies, among which is the island of Elobey, are Spanish". In a document dated 20 July 1858 (hereinafter the "1858 Charter reaffirming Spanish possession of the island of Corisco"), the "Governor-General of the islands of Fernando Pó, Annobón, Corisco and dependencies" reiterated that Corisco and its dependencies were administered by Spain. By Royal Order of 13 December 1858, Spain officially founded the colony of Spanish Guinea.


CAMEROON
EQUATORIAL GUINEA
GABON
CONGO
Franceville
Libreville
Bata
Port-Gentil
Malabo
Bioko
(Fernando Póo/Fernando Pó)
Bight of Biafra
Principe
SAO TOME AND PRINCIPE
Sao Tome
Annobón
Gulf of Guinea
ATLANTIC OCEAN
15°E
10°E
5°E
0°
Sketch - Map 1
Projection: Mercator
Datum: WGS84
Scale 1:6 000 000
see sketch - map 2
see sketch - map 4
see sketch - map 4
0 25 50 100 Nautical Miles
0 65 130 260 Kilometers
This sketch-map has been prepared for illustrative purposes only.


Sketch - Map 2
Projection: Mercator
Datum: WGS84
Scale 1:500 000
0 2.5 5 10 Nautical Miles
0 4.5 9 18 Kilometers
This sketch-map has been prepared for illustrative purposes only.
9°20'E
9°40'E
1°20'N
1°N
0°40'N
EQUATORIAL GUINEA
Cape San Juan
Muni
Elobey Chico
Elobey Grande
Corisco Island
Corisco Bay
GABON
Leva
Hoco
Banco Laval
Mbanié/Mbañe
Conga
Cocotiers/ Cocoteros
Mondah Bay
Cape Esterias
GULF OF GUINEA
Cape Santa Clara
GABON

20. As of 1884, three colonial Powers — Spain, France and Germany — maintained posts along parts of the coast between the German-held areas north of the Campo River and the French-held areas south of Corisco Bay. On 24 December 1885, Germany entered into a border treaty with France (the "French-German Protocol"), ceding to France its colonial territories south of the Campo River. The area from the Campo River in the north to Cape Santa Clara in the south was also claimed by Spain (for illustrative purposes, the Court includes on page 21 the map produced by Equatorial Guinea in its Memorial; see sketch-map 3). The same year, France and Spain appointed a mixed commission to resolve their competing territorial claims in West Africa. The mixed commission met between 1886 and 1891. The negotiations held within the mixed commission were referred to as the "Conference on the Delimitation in West Africa". During the negotiations, France indicated that it was prepared to relinquish its claim to Corisco and the Elobey Islands in exchange for a right of first refusal over those islands should Spain seek to dispose of them.

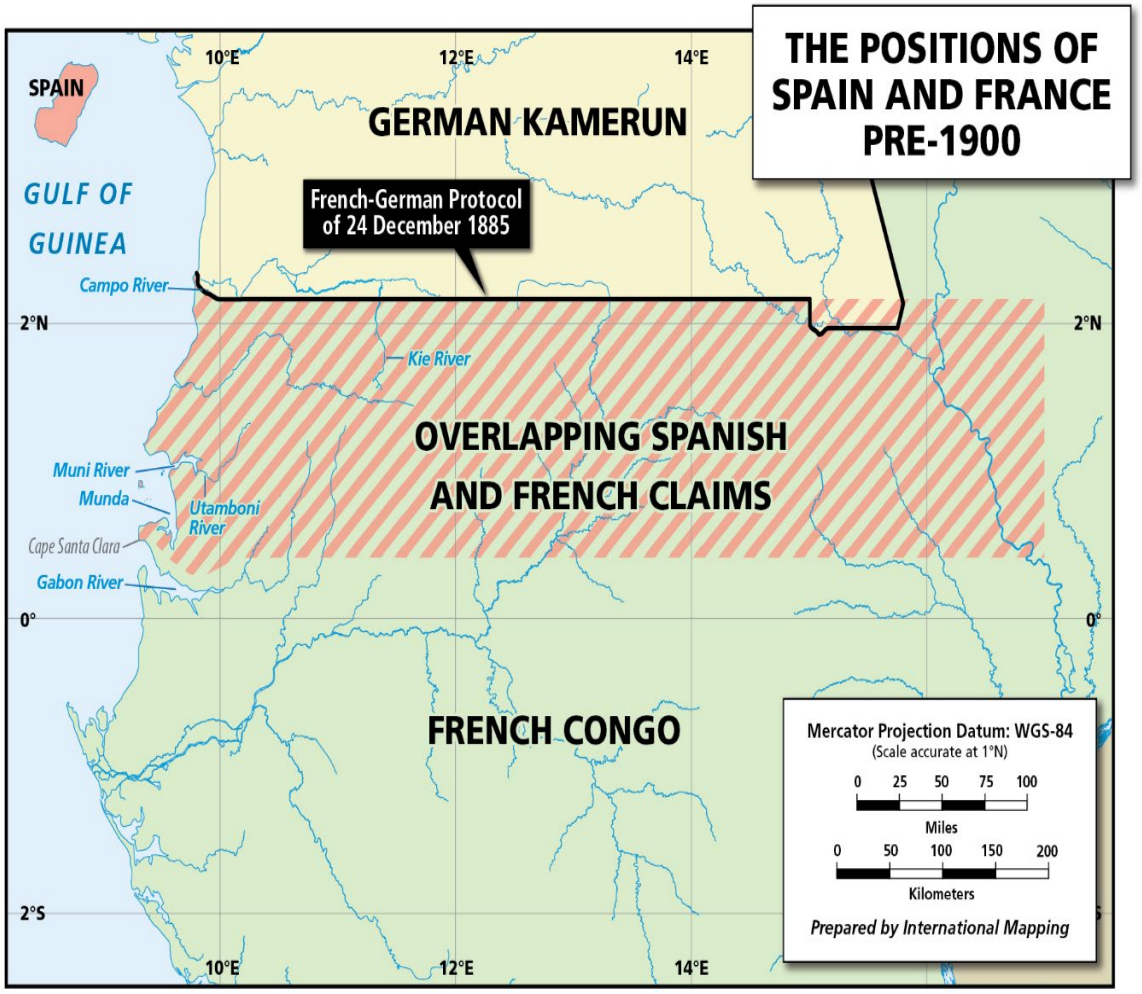
21. In 1900, Spain and France concluded a convention to delimit their respective colonial territories on the west coast of Africa, entitled "Special Convention on the delimitation of French and Spanish possessions in West Africa, on the coasts of the Sahara and the Gulf of Guinea" (hereinafter the "1900 Convention"). Article VII of the 1900 Convention granted France a "right of first refusal" should Spain ever wish to cede the Elobey Islands or Corisco. Article IV of that Convention, for its part, describes the land boundary as follows:

> "The boundary between the Spanish and French possessions on the Gulf of Guinea shall begin at the point where the thalweg of the Muni River intersects a straight line traced from the Coco Beach point to the Diéké point. It shall, then, proceed along the thalweg of the Muni River and of the Utamboni River up to the first point at which the first degree north latitude crosses the latter river, and shall proceed along this parallel until it intersects the 9° longitude east of Paris (11° 20' east of Greenwich). From this point, the line of demarcation shall be formed by said meridian 9° east of Paris until it meets the southern border of the German colony of Kamerun."

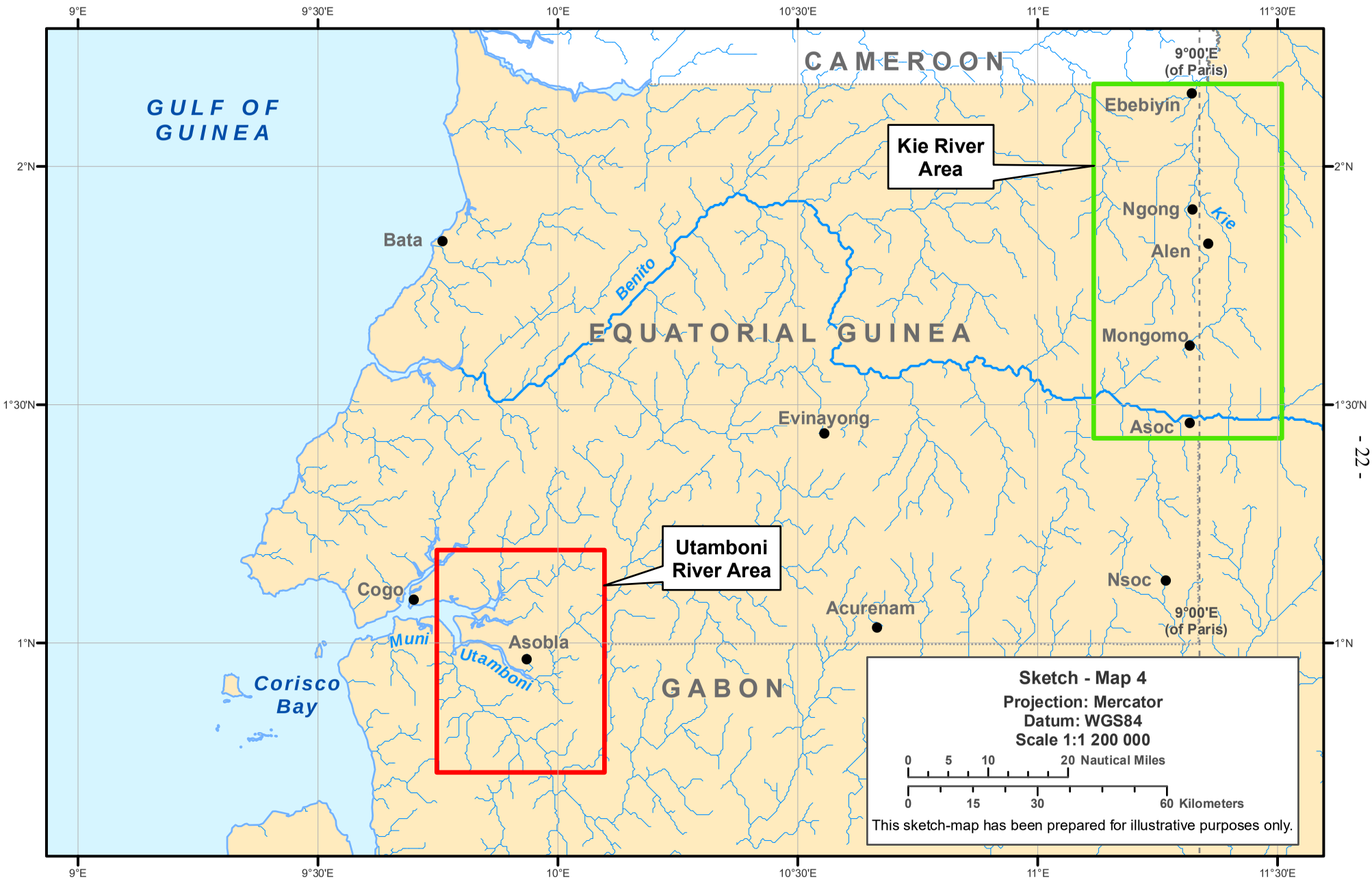
Article VIII of the 1900 Convention provides that the boundaries "shall be recorded . . . with the reservations made in Appendix No. 1 to this Convention". It further provides that both Governments agree to designate commissioners, within four months of exchanging ratifications, who shall be responsible for tracing the demarcation lines on the ground "in accordance with and in the spirit of the provisions of the . . . Convention".

22. Under the terms of Appendix No. 1 to the Convention, the Commissioners or local Delegates responsible for delimiting on the ground all or some of the boundaries "shall use as a basis the description of the boundaries as established in the Convention". There, it is stated that, "[a]t the same time, they may modify the said lines of demarcation in order to determine them more accurately and to rectify the position of the dividing lines of the tracks or rivers, and of the towns or villages marked on the . . . maps [appended to the Convention]" *[translation by the Registry]*. Appendix No. 1 further provides that "[t]he changes or corrections proposed by mutual agreement by the said Commissioners or Delegates shall be submitted to the respective Governments for approval". In keeping with these commitments, shortly after ratification, Spain and France undertook to delimit on the ground the boundary between Spanish and French colonial territories by appointing a binational commission, known as the Franco-Spanish Delimitation Commission (hereinafter the "1901 Commission"). This commission proposed certain changes and corrections to the boundary, in particular in the Utamboni River area in the south-west and in the Kie River area in the north-east (for the location of these two areas, see sketch-map 4).

SKETCH-MAP 3 SHOWING THE TERRITORIAL SITUATION BETWEEN SPAIN, FRANCE AND GERMANY AFTER 1885 ACCORDING TO EQUATORIAL GUINEA



(*Source:* Memorial of Equatorial Guinea, Vol. I, Figure 3.2, following p. 22)


9°E
9°30'E
10°E
10°30'E
11°E
11°30'E
2°N
1°30'N
1°N
GULF OF GUINEA
CAMEROON
EQUATORIAL GUINEA
GABON
Corisco Bay
Kie River Area
Utamboni River Area
9°00'E (of Paris)
Ebebiyin
Ngong
Kie
Alen
Mongomo
Asoc
Nsoc
Bata
Benito
Evinayong
Acurenam
Cogo
Muni
Asobla
Utamboni
Sketch - Map 4
Projection: Mercator
Datum: WGS84
Scale 1:1 200 000
0 5 10 20 Nautical Miles
0 15 30 60 Kilometers
This sketch-map has been prepared for illustrative purposes only.

23. On 4 November 1911, France and Germany concluded a convention by which France ceded to Germany several territories to the south and east of the Spanish colonial territories. These territories were subsequently renamed Neukamerun. The transfer did not call into question the land boundary established between Spain and France under the 1900 Convention.

24. In 1916, France regained full control over the territory of present-day Gabon.

25. In 1919, the respective Governors-General of Spain and France concluded an agreement by an exchange of notes (hereinafter the "1919 Governors' Agreement") designating the Kie River as the "provisional" boundary between their colonial territories in the Kie River area.

26. Gabon achieved independence from France on 17 August 1960; Equatorial Guinea achieved independence from Spain on 12 October 1968.

27. According to Equatorial Guinea, in August 1972, Gabonese military forces seized and occupied Mbanié/Mbañe and, since then, Gabon has maintained its occupation of the island. Gabon, for its part, contends that, in 1972, it established a small police station on Mbanié/Mbañe in order to ensure the safety of its nationals and fishermen operating on the island and in the waters adjacent to it. Gabon adds that the police station has remained on Mbanié/Mbañe since that date.

28. Gabon alleges that, on 12 September 1974, in Bata (Equatorial Guinea), the Presidents of Gabon and Equatorial Guinea signed a document entitled "Convention delimiting the land and maritime frontiers of Equatorial Guinea and Gabon" and refers to this document as the "Bata Convention". According to Gabon, the "Bata Convention" settled the dispute between the two States concerning the delimitation of their land and maritime boundaries and sovereignty over the islands of Mbanié/Mbañe, Cocotiers/Cocoteros and Conga. The Parties disagree on the existence and authenticity of the alleged convention, its binding character and whether it constitutes a legal title within the meaning of Article 1 of the Special Agreement. The Court will use the expression "Bata Convention" in the subsequent analysis, without prejudice to the conclusions it may reach on these disputed issues.

II. THE TASK OF THE COURT UNDER THE SPECIAL AGREEMENT

29. Before addressing the submissions of the Parties and their arguments in support of them, the Court considers that it should specify the task entrusted to it by the Special Agreement. The terms of the Special Agreement by which the Court was seised of the present case have been set out in paragraph 2 above. The task of the Court is formulated in Article 1, paragraph 1, thereof as follows:

> "1. The Court is requested to determine whether the legal titles, treaties and international conventions invoked by the Parties have the force of law in the relations between the Gabonese Republic and the Republic of Equatorial Guinea in so far as they concern the delimitation of their common maritime and land boundaries and sovereignty over the islands of Mbanié/Mbañe, Cocotiers/Cocoteros and Conga."

30. The Court observes that the Parties are in agreement on several points regarding the interpretation of the Special Agreement. The Court has not been asked therein to delimit the land and maritime boundary or determine sovereignty over the three islands, but only to determine whether the legal titles, treaties and international conventions invoked by the Parties have the force of law in their relations in so far as they concern the dispute between them, the subject of which is set forth in Article 1, paragraph 1, of the Special Agreement. It also is not disputed that each Party is at liberty to invoke before the Court legal titles other than those referred to in the Special Agreement, as expressly confirmed in Article 1, paragraph 4, thereof. Furthermore, consistent with Article 1, paragraphs 2 and 3, of the Special Agreement, the Parties recognize the 1900 Convention as applicable to their dispute. Neither of the Parties has contended otherwise in the course of the written and oral proceedings.

31. The Parties nonetheless disagree on the interpretation of the term "legal titles" ("*titres juridiques*" in the French text) in Article 1, paragraph 1, of the Special Agreement.

32. First, Gabon maintains that the term "legal titles" in that Article must be understood to refer solely to "treaties and international conventions". In its view, the words "treaties and international conventions", which immediately follow the term "legal titles" in Article 1, paragraph 1, of the Special Agreement, serve to specify the meaning to be given to that term. According to Gabon, it follows that the Parties may invoke "legal titles" in the context of the present proceedings only in so far as they constitute "treaties and international conventions" in force between them.

33. For Equatorial Guinea, the plain language of Article 1, paragraph 1, of the Special Agreement makes clear that "legal titles" are not limited to treaties and international conventions; rather, the "legal titles" invoked by the Parties form, alongside treaties and international conventions, "an additional, broader category of sources of rights in matters of delimitation and island sovereignty, which the Court is called upon to examine at the request of the Party invoking them". Equatorial Guinea notes that the Special Agreement refers cumulatively to the "legal titles, treaties and international conventions invoked by the Parties" such that "legal titles" are referred to in addition to "treaties and international conventions". It further asserts that interpreting the term "legal titles" to mean only "treaties and international conventions" would deprive that term of any effect.

34. In interpreting the Special Agreement, the Court will rely on the rules on treaty interpretation as codified in Articles 31 to 33 of the Vienna Convention on the Law of Treaties (hereinafter the "Vienna Convention"). Although that Convention is not in force between the Parties, it is well established that these Articles reflect rules of customary international law (*Dispute regarding Navigational and Related Rights (Costa Rica* v. *Nicaragua), Judgment, I.C.J. Reports 2009*, p. 237, para. 47; see also *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia* v. *Myanmar), Preliminary Objections, Judgment, I.C.J. Reports 2022 (II)*, p. 510, para. 87, and *Territorial Dispute (Libyan Arab Jamahiriya/Chad), Judgment, I.C.J. Reports 1994*, pp. 21-22, para. 41).

35. The Court notes that under the terms of Article 1, paragraph 1, of the Special Agreement, it is requested to determine whether the "legal titles, treaties and international conventions" ("*titres juridiques, traités et conventions internationales*" in French) invoked by the Parties have the force of law in the relations between them in so far as they concern the delimitation of their common maritime and land boundaries and sovereignty over the islands of Mbanié/Mbañe,

Cocotiers/Cocoteros and Conga. In light of the general rule of interpretation reflected in Article 31 of the Vienna Convention, according to which a treaty shall be interpreted "in accordance with the ordinary meaning to be given to the terms", it is difficult to see how it is possible to limit "legal titles" to "treaties and international conventions". From a grammatical point of view, the absence of a comma following the words "treaties and international conventions" suggests that the Parties wished to present these terms in a cumulative list. Moreover, the inclusion of "legal titles" within the category of "treaties and international conventions" would largely deprive the reference to "legal titles" of significance. The Court and its predecessor, the Permanent Court of International Justice, have emphasized that the clauses of a special agreement by which a dispute is referred to the Court must, if this does not involve doing violence to their terms, be construed in a manner enabling the clauses themselves to have appropriate effects (see *Corfu Channel (United Kingdom* v. *Albania), Merits, Judgment, I.C.J. Reports 1949*, p. 24; see also *Free Zones of Upper Savoy and the District of Gex, Order of 19 August 1929, P.C.I.J., Series A, No. 22*, p. 13). Accordingly, the term "legal titles" possesses a distinct meaning that is not limited to "treaties and international conventions".

36. Secondly, the Parties disagree on what is comprised within the term "legal titles" and may therefore be the object of the Court's decision. While the Court has determined that "legal titles" may not be limited to "treaties and international conventions", the meaning to be ascribed to that term in the context of Article 1 of the Special Agreement remains to be determined.

37. In Equatorial Guinea's view, the term "legal titles" covers any source of rights to territory under international law and includes, *inter alia*, State succession, the principle that the "land dominates the sea" and the principle of *uti possidetis juris*. Equatorial Guinea adds that legal title is a broad concept in international law that is not limited only to documentary proof. In support of its position, Equatorial Guinea refers to the Judgment of the Chamber of the Court in the *Frontier Dispute (Burkina Faso/Republic of Mali)* case (*I.C.J. Reports 1986*, p. 564, para. 18) as well as the Judgment of the Chamber of the Court in the *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)* case (*I.C.J. Reports 1992*, pp. 388-389, para. 45). It also cites the *Dictionnaire de la terminologie du droit international* (prepared under the direction of J. Basdevant, 1960, p. 604), which gives the word "titre" the meaning of a "[t]erm which, taken in the sense of legal title, means any fact, act or situation which is the cause and basis of a right" *[translation by the Registry]*. According to Equatorial Guinea, it follows that the Special Agreement allows it to invoke and obtain the Court's judgment on the applicability of "all titles, regardless of source, that support its territorial and maritime claims that concern the delimitation of the Parties' land and maritime boundaries, and sovereignty over the islands of Mbañe, Cocoteros and Conga".

38. Gabon, in its written pleadings, contended that the term "legal titles" as used in the Special Agreement covers documentary evidence alone and excludes the "very general" concept of title advanced by Equatorial Guinea. This interpretation, Gabon maintained, is consistent with that espoused by the Chamber of the Court in the *Frontier Dispute (Burkina Faso/Republic of Mali)* case. Subsequently, during the oral proceedings, Gabon appears to have conceded that the term "legal titles" embraces more than documentary evidence alone. But it emphasizes that, no matter which definition of legal title is considered, State succession, the principle that the "land dominates the sea" and the principle of *uti possidetis juris* do not fall within the scope of that term. Gabon further denies that *effectivités* can constitute a legal title. Gabon thus concludes that the Court cannot rule on some of the elements invoked by Equatorial Guinea in its claims, as they do not constitute "legal titles".

39. The Parties also expressed differing views on the 1982 United Nations Convention on the Law of the Sea (hereinafter "UNCLOS") and the question of whether it may properly be considered a legal title in force in the relations between the Parties in so far as it concerns the delimitation of their common maritime boundary (see paragraphs 203 and 207 below).

40. The divergence of views of the Parties as to the meaning of the term "legal titles" is reflected in their final submissions (see paragraph 13 above).

41. In its final submissions, Equatorial Guinea presents five requests to the Court, the last three of which invoke "legal titles, treaties and international conventions" said to be in force between the Parties. The Court notes that some of the "legal titles" invoked are not listed in the Special Agreement and cannot be said to constitute documentary evidence in the narrow sense argued by Gabon. With respect to the land boundary, Equatorial Guinea's third submission asks the Court to declare that the legal titles, treaties and international conventions in force are the "succession by the Gabonese Republic" and "the succession by the Republic of Equatorial Guinea" to all titles to territory, held respectively on 17 August 1960 by France and on 12 October 1968 by Spain, on the basis of the 1900 Convention, including those titles to territory held on the basis of the modifications made, in the application of that Convention, to the boundary described in its Article IV. With respect to the islands, Equatorial Guinea's fourth submission asks the Court to declare that the legal title in force is the "succession by the Republic of Equatorial Guinea to the title held by Spain on 12 October 1968 over Mbanié/Mbañe, Cocotiers/Cocoteros and Conga". With respect to the maritime boundary, Equatorial Guinea's fifth submission asks the Court to declare that the legal titles, treaties and international conventions that have the force of law are: (1) the 1900 Convention in so far as it established the terminus of the land boundary in Corisco Bay; (2) UNCLOS; and (3) "customary international law" in so far as it establishes that a State's title and entitlement to adjacent maritime areas derive from its title to land territory. The mention of "customary international law" in the fifth submission is to be understood as a reference to the principle that "the land dominates the sea".

42. By contrast, in its final submissions, Gabon presents three requests which are limited to treaty-based titles. It asks the Court to declare that the "Bata Convention" is the legal title applicable with respect to sovereignty over the islands and delimitation of the maritime boundary, and to declare that the "Bata Convention" and the 1900 Convention, as modified by the "Bata Convention", are the legal titles applicable to the delimitation of the land boundary. In other words, Gabon does not invoke any legal titles other than those already mentioned in the Special Agreement.

43. The Court does not consider that the term "legal titles" is used in the Special Agreement in a way that requires a narrower interpretation than is usually given to this term. The Court observes that, in any event, the Parties agree that "legal title" is a term of art. Where parties have used a legal term of art in a treaty, they must be presumed, as a general rule, to have intended that term to have the meaning which it generally bears in international law (cf. *Application of the International*

Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. *Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011 (I)*, p. 84, para. 29; *Oil Platforms (Islamic Republic of Iran* v. *United States of America), Preliminary Objection, Judgment, I.C.J. Reports 1996 (II)*, p. 818, para. 45). The Court has had occasion to deal with the concept of legal title. In the case concerning the *Frontier Dispute (Burkina Faso/Republic of Mali)*, the Chamber of the Court observed that the term "title" is generally not limited to documentary evidence alone but may also comprehend "both any evidence which may establish the existence of a right, and the actual source of that right" *(Judgment, I.C.J. Reports 1986*, p. 564, para. 18). In the *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)* case, the Chamber of the Court endorsed this view (*Judgment, I.C.J. Reports 1992*, pp. 388-389, para. 45). In that case, the Chamber also recognized that title to territory, in the sense of the "source" of a State's rights at the international level, can result from a State's succession to a pre-existing legal title held by the previous title holder (*ibid.*). The Court is therefore of the opinion that the term "legal title" used in Article 1 of the Special Agreement refers to title also as the source of a right and that the narrow interpretation advocated by Gabon cannot be accepted.

44. There remains for consideration the issue of which of the elements invoked by Equatorial Guinea in its final submissions are "legal titles" within the meaning of the Special Agreement.

45. On this subject, the Court recalls that, even when it is seised on the basis of a special agreement, it is always required to rule on the final submissions of the parties as formulated at the close of the oral proceedings. There is no difference in this respect between cases where the Court is seised by means of a unilateral application and those where it is seised by a special agreement (*Frontier Dispute (Burkina Faso/Niger), Judgment, I.C.J. Reports 2013*, p. 68, para. 41). When, as is the case here, the special agreement forms the only basis of jurisdiction, any request made by a party in its final submissions may fall within the jurisdiction of the Court "only if it remains within the limits" defined by the provisions of the special agreement, a matter which is for the Court to ascertain (*ibid.*, p. 69, para. 42). A judicial determination that an element invoked by a Party constitutes a "legal title" in the sense of Article 1 of the Special Agreement is accordingly warranted only in respect of such elements invoked by a Party in the final submissions and with regard to matters that are in dispute between them (cf. *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening), Judgment, I.C.J. Reports 1992*, pp. 554-555, para. 326).

46. The Court notes that Equatorial Guinea does not, in its final submissions, ask the Court to declare that *effectivités* as such confer upon it a legal title in relation to the delimitation of the common land boundary (see paragraph 13 above). As further discussed below, Equatorial Guinea relies on *effectivités* to "confirm" the existence of a right derived from a legal title (see paragraphs 106 and 113 below). Similarly, the principle of *uti possidetis juris* is not invoked by Equatorial Guinea in its final submissions. In these circumstances, it is unnecessary for the purposes of this Judgment to consider the issue, addressed by the Parties, of whether *effectivités* and the principle of *uti possidetis juris* constitute "legal titles" within the meaning of the Special Agreement.

III. THE "BATA CONVENTION"

47. In its final submissions, Gabon invokes the "Bata Convention" as a legal title having the force of law between the Parties with regard to all three elements of the dispute: the dispute over the land boundary; the dispute over the islands of Mbanié/Mbañe, Cocotiers/Cocoteros and Conga; and

the dispute over the maritime boundary. For its part, Equatorial Guinea asks the Court to declare that the "Bata Convention" "has no force of law or any legal consequences in the relations between the Parties". The Parties recognize that the issue of whether the "Bata Convention" is a treaty in force between them — and hence a legal title within the meaning of the Special Agreement — lies at the heart of the dispute submitted to the Court. The Court considers it expedient to examine this issue first because of its possible implications for all aspects of the dispute.

48. As noted above (see paragraph 28), according to Gabon, the Presidents of Equatorial Guinea and Gabon signed a "Convention delimiting the land and maritime frontiers of Equatorial Guinea and Gabon" at Bata on 12 September 1974.

49. In February 2004, Gabon submitted the "Bata Convention" to the Secretariat of the United Nations for registration and publication pursuant to Article 102 of the Charter of the United Nations. Following a review of the submission, the Treaty Section of the Office of Legal Affairs noted that "[c]opies of the French and Spanish texts of the Convention . . . submitted by Gabon were not legible" and requested Gabon "to resubmit clearer copies". Thereafter Gabon submitted retyped texts. The Secretariat registered the "Bata Convention" on 2 March 2004 and published it in the United Nations *Treaty Series (UNTS)* (Vol. 2248, p. 93, No. 40037).

50. Equatorial Guinea strongly objected to the registration. In a letter to the Secretary-General of the United Nations dated 10 March 2004, Equatorial Guinea denied the authenticity of the "Bata Convention", "which [Gabon] claim[s] was signed 30 years ago, and of which Equatorial Guinea has no knowledge whatsoever".

51. In a letter to Equatorial Guinea dated 22 March 2004, the Assistant Secretary-General in charge of the Office of Legal Affairs explained the practice of the Secretariat, namely that

> "[w]here an instrument is registered with the Secretariat, this does not imply a judgment by the Secretariat of the nature of the instrument, the status of a party, or any similar question. Thus, *the Secretariat's acceptance for registration of an instrument does not confer on the instrument the status of a treaty or an international agreement if it does not already possess that status*." (Emphasis in the original.)

52. In a letter to the Assistant Secretary-General in charge of the Office of Legal Affairs dated 7 April 2004, Equatorial Guinea submitted that "the registration of the Gabonese document is inadmissible and improper since no Convention exists between Equatorial Guinea and Gabon of 12 September 1974". It further asserted that

> "[t]he document submitted by Gabon, in its own words, is a preliminary document subject to additional negotiations. It is a well-established principle of general law that a document that indicates a lack of agreement on an essential element being addressed is not a binding contract, but expresses the understanding that the parties intend to conclude an agreement in the future."

53. In a letter to the Secretary-General of the United Nations from the President of Equatorial Guinea dated 26 April 2004, Equatorial Guinea also claimed that

> "[i]n May of 2003 Gabon presented for the first time in the long history of this dispute (about 30 years) a poor quality photocopy of a document . . . Gabon alleges to be a treaty signed by the Presidents of the two countries in 1974. This was a total surprise to Equatorial Guinea, since we had been negotiating in good faith with Gabon for nearly 30 years regarding the questions of sovereignty and boundaries and our two countries had even reached agreement on the legal documents relevant to this matter. Gabon never once in all these years mentioned the 1974 document. When questioned about the origins of the documents Gabon indicated that a third State has recently provided it to Gabon and that there is no original."

54. The existence and authenticity of the "Bata Convention" have been the subject of debate between the Parties. A particular difficulty arises from the fact that no original of the "Bata Convention" was presented to the Court.

55. Equatorial Guinea casts doubt both on the existence of an agreement allegedly reached in Bata, as well as on the authenticity of the document relied upon by Gabon in these proceedings, without, however, formally challenging either. It contends that different versions of the "Convention" exist and that these contain important discrepancies. It asserts that 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".

56. Gabon submits that it has met its burden of proving that the "Bata Convention" exists, that it was signed by the Presidents of the two countries and that the copy before the Court is authentic. It acknowledges that it has not been possible to locate an original of the "Bata Convention". Gabon explains that this is due to poor record-keeping, caused by a combination of adverse climate conditions and the lack of qualified staff and technical resources. Gabon relies on what it describes as copies of the signed original of the "Bata Convention" in French and Spanish enclosed with a letter dated 28 October 1974 from the President of Gabon to the Ambassador of France to Gabon. Gabon acknowledges that different versions of the "Bata Convention" exist but considers that the discrepancies are minor, result from transcription errors and have no bearing on the existence of the "Convention".

57. The Court does not deem it necessary to examine the arguments thus advanced. While Gabon has not dispelled all doubts pertaining to the matter, there is some reason to believe that a document referred to by Gabon as the "Convention delimiting the land and maritime frontiers of Equatorial Guinea and Gabon" was signed at Bata. As for the difficulties in locating an original of this document, the absence of a text accepted as authentic by both parties is no proof of a treaty's inexistence (cf. *Right of Passage over Indian Territory (Portugal* v. *India), Merits, Judgment, I.C.J. Reports 1960*, p. 37). A letter dated 28 October 1974, to which copies in French and Spanish of the "Bata Convention" were attached, is held in the archives of the French Ministry of Foreign Affairs. Equatorial Guinea, which recognized that the Presidents of the two countries met in Bata on 12 September 1974, has not claimed that the signatures in the copy of the document were not the signatures of the two Heads of State. For the present purposes, the Court will assume, without deciding, that a text was signed in Bata and that the "copies" put on the record in these proceedings are reproductions of that text.

58. What is decisive for the Court is whether the "Bata Convention" is a treaty having the force of law between the Parties concerning their dispute and whether it thus constitutes a legal title within the meaning of Article 1 of the Special Agreement. On this issue, the Parties have put forward opposing views.

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59. Equatorial Guinea argues that the "Bata Convention" "does not have, and was never understood or treated as having, the force of law in the relations between the Parties" as regards the delimitation of their common maritime and land boundaries or sovereignty over the islands of Mbanié/Mbañe, Cocotiers/Cocoteros and Conga. In its view, the "Bata Convention" would appear to be, "[a]t most, . . . an agreement to continue to seek a final agreement". In support of its contention, Equatorial Guinea refers to the terms of the "Bata Convention", the circumstances of its conclusion and the subsequent conduct of the Parties, as well as other considerations showing that the Parties had no intention to be legally bound by it.

60. With regard to the terms of the "Bata Convention", Equatorial Guinea notes that it contains provisions requiring the Parties to take additional steps to resolve the issues in dispute, including by reaching further agreements on their land and maritime boundaries. It submits that these characteristics would indicate that the "Bata Convention" "was not intended or understood as a final agreement on boundaries, but instead was seen by both Parties as a precursor to an anticipated subsequent agreement".

61. Equatorial Guinea contends that the circumstances in which the "Bata Convention" was allegedly drawn up show that the Parties had no intention to be bound by it. It points to the absence of any preparatory material, minutes of the meeting or official public statements that could be expected in the preparation or the adoption of a delimitation treaty. It further contends that exchanges of correspondence subsequent to the "Bata Convention" evince that the Parties had not reached an agreement.

62. Equatorial Guinea stresses that the subsequent conduct of the Parties also confirms that the "Bata Convention" is not a treaty having the force of law. It notes that, for almost three decades after the "Bata Convention" was signed, the Parties continued their negotiations to settle the same issues allegedly settled by that instrument. It explains that the Parties continued to treat the disputed issues "as though they had never been resolved" and that they carried out extensive negotiations to resolve them without ever invoking the "Bata Convention". It also points out that the Parties have never taken any of the steps required to implement the terms of the "Bata Convention". Finally, Equatorial Guinea refers to a series of diplomatic protests in which neither of the Parties invoked the "Bata Convention" in support of its claims.

63. Equatorial Guinea notes that Gabon waited until February 2004 before it submitted the "Bata Convention" to the United Nations Secretariat for registration under Article 102 of the Charter. Equatorial Guinea recognizes that a failure to register a treaty does not deprive it of the force of law, assuming that it had such a force to begin with. But it suggests that Gabon's delay of 29 years in submitting the "Convention" for registration offers another indication that Gabon "had not previously understood it . . . to be in the nature of a treaty that had the force of law between the Parties".

64. Finally, Equatorial Guinea asserts that Gabon's failure to follow the procedures required by its own constitution for the ratification of the "Bata Convention" is a further indication that "Gabon understood that no treaty has been concluded".

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65. For Gabon, the "Bata Convention" is a treaty having the force of law between the Parties. In support of this view, it refers primarily to the terms of the "Bata Convention" and to the circumstances of its conclusion.

66. Gabon considers that the "Bata Convention" possesses "all the characteristics of a treaty". It notes that the "Convention" comprises a preamble and ten articles in which the "High Contracting Parties" give expression to their agreement. The "Convention" also contains provisions that are typical of treaties, such as a provision addressing its entry into force. So far as the terms of the "Convention" are concerned, Gabon maintains that each of the ten articles "contains one or more indicators that the parties intended to be bound under international law". For Gabon, the presence of provisions requiring further steps by the Parties does not negate the instrument's binding character.

67. The circumstances in which the "Bata Convention" was drawn up, Gabon argues, also indicate that the Parties had the intention to be legally bound. Gabon rejects Equatorial Guinea's description of these circumstances. It asserts that the "Bata Convention" was the outcome of bilateral negotiations that took place between 1970 and 1974 with the aim of delimiting the two States' common boundaries. The signature of the "Bata Convention" was the "culmination" of these negotiations.

68. Gabon also disputes the relevance of the Parties' subsequent conduct to ascertaining their intention to be legally bound. As Gabon sees it, the subsequent conduct of the parties to a treaty, including statements made after its signing by one of the parties, "cannot call into question the terms of a treaty when those terms clearly provide for mutual undertakings". Gabon adds that the mere fact that the Parties did not implement certain provisions of the "Bata Convention" cannot put in question its binding force. Gabon asserts that whether or not it invoked the "Bata Convention" by name in the Parties' relations between 1974 and 2003 is also irrelevant. In the course of the oral proceedings, Gabon nonetheless put forward various explanations as to why it did not invoke the "Convention" during that time (see paragraph 93 below).

69. Gabon further stresses that the fact that "a treaty has gone unmentioned or even been forgotten for any length of time does not mean that it has ceased to exist or has been terminated" within the meaning of the law of treaties.

70. Gabon argues that its delay in submitting the "Bata Convention" to the United Nations Secretariat for registration is equally of no relevance. It relies on the Court's 1994 Judgment in the case concerning *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar* v. *Bahrain)*, where the Court stated that non-registration or late registration of an agreement

"does not have any consequence for the actual validity of the agreement, which remains no less binding upon the parties" (*Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1994*, p. 122, para. 29).

71. Finally, Gabon rejects Equatorial Guinea's contention that the lack of parliamentary approval of the "Bata Convention" confirms that Gabon understood that no treaty was concluded. It argues that disregard by the Parties of their constitutional rules relating to the conclusion of treaties is "irrelevant in discerning the objective intention of the Parties in concluding the Convention".

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72. The Court recalls that under the customary international law of treaties, which is applicable in this case (see paragraph 34), an international agreement concluded between States in written form and governed by international law constitutes a treaty (*Maritime Delimitation in the Indian Ocean (Somalia* v. *Kenya), Preliminary Objections, Judgment, I.C.J. Reports 2017*, p. 21, para. 42; see also *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria: Equatorial Guinea intervening), Judgment, I.C.J. Reports 2002*, p. 429, para. 263, referring to Article 2, paragraph 1, of the Vienna Convention). While there exists a great variety of forms and designations a treaty may adopt, an intention of the parties to be legally bound is necessary for an instrument to constitute a treaty. Absent such an intention to be bound, it is not possible to qualify an instrument as a treaty. The Court notes that the "Bata Convention" is a document which could be characterized as a treaty if the Parties had expressed an intention to be legally bound by that document or if such an intention could be inferred.

73. The Court and international tribunals have had occasion to ascertain whether an instrument constitutes a treaty. To make such a determination, courts and tribunals have, *inter alia*, looked at the terms of the instrument and the particular circumstances in which it was drawn up for indications whether the parties intended to be legally bound by the instrument (see e.g. *Aegean Sea Continental Shelf (Greece* v. *Turkey), Judgment, I.C.J. Reports 1978*, pp. 38-44, paras. 94-107; *Kasikili/Sedudu Island (Botswana/Namibia), Judgment, I.C.J. Reports 1999 (II)*, pp. 1090-91, paras. 67-68; *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria: Equatorial Guinea intervening), Judgment, I.C.J. Reports 2002*, pp. 429-431, paras. 263-268; *Obligation to Negotiate Access to the Pacific Ocean (Bolivia* v. *Chile), Judgment, I.C.J. Reports 2018 (II)*, pp. 549-550, paras. 131-132). The subsequent conduct of the parties may also serve as a relevant indicator of the parties' intention to be legally bound (*South China Sea Arbitration (Philippines* v. *China), Award on Jurisdiction and Admissibility of 29 October 2015*, *Reports of International Arbitral Awards (RIAA)*, Vol. XXXIII, p. 86, para. 213). Moreover, the Court notes that subsequent conduct by both parties, if clear and consistent over a sustained period of time, may be accorded greater weight than the subsequent conduct of one of the parties individually.

74. Thus, the Court observes that indications of parties' intentions to be bound may be identified in the terms of the instrument and the particular circumstances in which it was drawn up, as well as the subsequent conduct of the parties. The weight to be accorded to any particular indication will turn on the circumstances of each case. The presence of concordant indications can be more decisive than any indication taken individually.

75. The Parties have referred to much of this jurisprudence in their pleadings. They agree — for the most part — that the aforementioned elements are relevant to the Court's inquiry. They also agree that the Court does not have to consider whether the "Bata Convention" was terminated. The discussions have borne essentially upon the question whether the "Bata Convention" constitutes a legal title within the meaning of Article 1 of the Special Agreement.

76. Whether the "Bata Convention" is a treaty having the force of law between the Parties, and thus a legal title within the meaning of the Special Agreement, is a question of law for determination by the Court (cf. *Fisheries Jurisdiction (United Kingdom* v. *Iceland), Merits, Judgment, I.C.J. Reports 1974*, p. 9, para. 17). The Court will examine this question in light of the jurisprudence identified above (see paragraph 73).

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77. The Court begins by considering whether the terms of the "Bata Convention", which consists of ten articles and a *nota bene* clause, afford indications of the Parties' intention to be legally bound by it. The Court notes that this instrument presents several features which, at first sight, make it appear to be a treaty. The preamble indicates that the aim of the "Bata Convention" is to settle the Parties' dispute by "definitively establishing their common land and maritime boundaries". In this regard, Article 2 provides that the area of the Medouneu District situated in the territory of Equatorial Guinea is ceded ("*est cédée*") to Gabon; in compensation, Gabon cedes ("*cède*") to Equatorial Guinea two land areas which shall form part of its territory. The verb "to cede" is indicative of a legal obligation. According to Article 3 of the "Bata Convention", the Parties further "recognize" ("*reconnaissent*") that Mbanié/Mbañe forms an integral part of the territory of Gabon and that the "Elobey Islands and Corisco Island" form an integral part of the territory of Equatorial Guinea. The verb "to recognize" suggests that a legal obligation is undertaken. Article 4, for its part, describes the maritime boundary by reference to a line of latitude and by establishing the starting-point of the boundary. Moreover, the inclusion of a provision addressing the entry into force of the "Bata Convention" seems indicative of the instrument's binding character. These are elements which offer indications that the Parties may have intended to be legally bound by the "Bata Convention".

78. At the same time, the Court takes note of certain features — in particular Article 7 of the "Bata Convention" and the *nota bene* clause (handwritten in the Spanish version but typed in the French version put on record in these proceedings) — which cast some doubt on the intention of the Parties to definitively establish their common land and maritime boundaries in so far as they appear to make the undertakings described in Articles 2 and 4 thereof conditional on future agreements between the Parties (see paragraph 85) (cf. *Delimitation of the Maritime Boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012*, p. 35, para. 92).

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79. The Court turns now to the circumstances in which the "Bata Convention" was drawn up. It observes that the information provided to it concerning the process leading to the signing of the "Bata Convention" is limited and contradictory. The Court has no contemporaneous record of the meeting held in Bata in September 1974. Nor has it been presented with preparatory materials that could throw light on the intention of the Parties. The Parties did not issue any formal statements at the time of the signing of the "Bata Convention", as is often done when an instrument of the kind alleged by Gabon is signed. Reference has been made to a "final communiqué" signed by the two Heads of State in Bata, but the full text of this communiqué has not been produced. The Court is therefore unable to assess its content or how it relates to the "Bata Convention".

80. Gabon contends that the Parties' intention to be bound by the "Bata Convention" has to be appraised against their negotiations held over a period of "more than four years", culminating in the signing of the "Bata Convention". It further suggests that "initial outlines" of the "Bata Convention" emerged from these negotiations. However, the Court can see nothing in these negotiations from which it might be inferred that any binding treaty was foreseen by either Party or concluded in September 1974. On the contrary, the evidence available to the Court shows that the Parties continued to maintain differing positions regarding their common maritime boundary and sovereignty over the islands.

81. The Court notes that the Parties have, in support of their respective claims, referred extensively to diplomatic correspondence of French and Spanish authorities subsequent to the signing of the "Bata Convention". Having carefully analysed this correspondence, the Court finds it inconclusive. This correspondence only confirms that much uncertainty existed shortly after the signing of the "Bata Convention" and in the years that followed as to whether it was intended to be a legally binding treaty, or merely a draft treaty.

82. On the whole, the circumstances in which the "Bata Convention" was drawn up do not assist the Court in ascertaining the intention of the Parties. A clear intention to be legally bound cannot be discerned from these circumstances.

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83. The Court will now consider the subsequent conduct of the Parties to determine whether it provides indications that they intended to be legally bound at the time of the signature of the "Bata Convention". The Court does not accept Gabon's assertion that this subsequent conduct is legally irrelevant (see paragraph 73).

84. In the opinion of the Court, the subsequent conduct of the Parties weighs heavily against Gabon's position. It provides compelling indications that the Parties did not conceive the "Bata Convention" as a treaty with the force of law. The Court will examine three main aspects of this conduct.

85. In the first place, the Court observes that the Parties never gave effect to the provisions of the "Bata Convention". It notes that the terms of that instrument make it quite clear that it was intended to be only part of a broader settlement of the Parties' dispute and would have needed to be supplemented through subsequent additional steps and agreements. These additional steps, however, were never taken. For instance, Article 7 of the "Bata Convention" states that "[p]rotocols shall be made" ("*[d]es protocoles d'accord seront pris*") to determine the surface area and the precise boundaries of the land ceded to Gabon and of that ceded to Equatorial Guinea pursuant to Article 2 thereof, as well as to specify the "procedures for the application of the present Convention" ("*les modalités d'application de la présente Convention*"). Similarly, Article 8 of the "Convention" states that the "marking" ("*matérialisation*"), i.e. demarcation, of the frontiers shall be carried out by a team composed of representatives of both States. Moreover, the *nota bene* clause provides that the two Heads of State agree to proceed subsequently with a new text of Article 4 to bring it into conformity with the 1900 Convention. The Court observes that none of the foreseen steps that would have given effect to the "Bata Convention" were taken; nor is there any information before the Court that Equatorial Guinea or Gabon initiated any action required by the "Convention". Gabon has not convincingly explained the reasons for this inaction.

86. The Court considers that this conduct is an indication that the Parties did not conceive the "Bata Convention" to be a treaty.

87. Secondly, the Court notes that, between 1979 and 2003, the Parties entered into several rounds of negotiations. The record before the Court indicates that these negotiations concerned the establishment of a joint development zone as well as questions of land and maritime delimitation and sovereignty over the islands of Mbanié/Mbañe, Cocotiers/Cocoteros and Conga — in other words, the negotiations concerned issues allegedly settled by the "Bata Convention". The Court observes that the Parties at all times acted as though the "Bata Convention" was not binding upon them. Indeed, it is not disputed by the Parties that neither of them invoked the "Bata Convention" at any point during these negotiations.

88. Evidence of this can notably be seen in the meetings held by the Parties in 1985, 1993 and 2001. An *ad hoc* commission for defining the maritime boundary between the Parties in Corisco Bay met in Bata between 10 and 16 November 1985. The meeting was opened by speeches of the Minister of Industry of Equatorial Guinea and the Minister of State of Gabon. As reflected in the minutes of the meeting, both Parties claimed sovereignty over the islands of Mbanié/Mbañe, Cocotiers/Cocoteros and Conga, and proceeded on the basis that the dispute over these islands was unresolved. The minutes also indicate that both Parties affirmed a "series of principles and basic criteria" that would serve to define their common maritime boundary — among these were listed the 1900 Convention and UNCLOS. The "Bata Convention", however, was not included.

89. Further evidence is afforded by the Parties' negotiations held between 17 and 19 January 1993 in Libreville under the auspices of a subcommission of the *ad hoc* commission. The meeting concerned the "delimitation of the boundary between Gabon and Equatorial Guinea", which included the Parties' common land and maritime boundaries. The minutes of the meeting indicate, *inter alia*, that it was not possible for the Parties to reach an agreement with regard to their common maritime boundary, with each Party claiming sovereignty over the islands of Mbanié/Mbañe, Cocotiers/Cocoteros and Conga. In the course of that meeting, Equatorial Guinea proposed that the dispute over the islands be submitted to international mediation or arbitration. Gabon, for its part, indicated that it remained "willing to negotiate towards the delimitation of the maritime boundary between the two countries". The Court notes that neither Party made any mention of the "Bata Convention" in that meeting.

90. A similar picture emerges from the meeting of the *ad hoc* commission held in Libreville between 29 and 31 January 2001. According to the minutes of this meeting, both Parties agreed that the relevant "legal and historic instruments" for maritime delimitation included the 1900 Convention, the Charter of the United Nations, the Charter of the Organization of African Unity and UNCLOS. Equatorial Guinea proposed two "working hypotheses" for the course of the maritime boundary: dividing the zone into three sectors or tracing a median line while excluding the disputed islands of Mbanié/Mbañe, Cocotiers/Cocoteros and Conga to address them later. Gabon, for its part, promised to present its own "working hypothesis". Once again, the Court observes that there is no mention of the "Bata Convention" in the meeting. What is more, the proposed delimitation lines are hardly consistent with the maritime boundary allegedly defined by the "Bata Convention" in 1974.

91. The Court attaches great weight to the clear, and mutually consistent, conduct of the Parties over many years of negotiations disregarding the "Bata Convention" entirely. The natural inference from this conduct is that at no point did they consider themselves bound by it.

92. Gabon has suggested that States often negotiate about matters on which they have already agreed and that to do so can have no consequence for the status of an existing treaty. This suggestion is not convincing to the Court. It is true that the failure to invoke a treaty does not affect its legally binding character, once established. States are also free to engage in negotiations over matters that have already been settled by prior agreements. It can hardly be supposed, however, that they would do so without mentioning these prior agreements, if only in passing.

93. Gabon has also sought to provide explanations for its silence. In its response to a question put to it by a Member of the Court, Gabon stated that it had not invoked the "Bata Convention" in the interests of maintaining good neighbourly relations and following African traditions and practices of dispute resolution. The Court is not convinced by these explanations. No support for them can be found in the evidence placed before the Court. Nor has Gabon been able to explain why it felt able to invoke the "Convention" in 2003 but not in the years before that.

94. Accordingly, the Parties' subsequent conduct over many decades of negotiations as to their land and maritime boundaries provides a strong indication that they had not understood themselves as entering into a treaty having the force of law in Bata.

95. Thirdly, the Court considers that various diplomatic exchanges between the Parties — in particular, notes of protest — subsequent to the signing of the "Bata Convention" further confirm that the Parties at no point considered it binding upon them. A few examples can be given. The Court observes that on 4 May 1990, the Gabonese Ministry of Foreign Affairs sent a Note Verbale to the Embassy of Equatorial Guinea in Libreville regarding an exploration permit granted by Equatorial Guinea in Corisco Bay. Gabon asserted its sovereignty over the island of Mbanié/Mbañe and referred to two possible delimitation lines which, in its view, the permit disregarded. It also emphasized that the area in question was "very much under dispute" and "subject to negotiations", such that Equatorial Guinea could not act unilaterally. Gabon accordingly asked the Equatorial Guinean

Embassy to "intervene with its relevant authorities" so that any petroleum prospecting in this area be stopped "pending the definition of [the Parties'] maritime border by the ad hoc commission on borders of the two countries, which is to take place very soon". Another protest was issued by Gabon on 13 September 1999, after Equatorial Guinea adopted Decree No. 1/1999, designating the median line as the maritime boundary between the two countries and placing base points on the islands of Mbanié/Mbañe, Cocotiers/Cocoteros and Conga. In its Note Verbale, Gabon asserted sovereignty over the islands but did not make any reference to the "Bata Convention". It also proposed resuming the negotiations suspended in 1993 in order to settle the Parties' dispute (see paragraph 89 above).

96. The Court considers that Gabon's conduct is inconsistent with its claim that the "Bata Convention" is a binding agreement that definitively settled the Parties' dispute, notably the question of sovereignty over Mbanié/Mbañe. Had Gabon believed the "Convention" to be in force, it would have been natural for it to invoke the "Convention" in its protests. Gabon has provided no credible explanation as to why it did not frame its protests in terms of the "Convention". The inference must be that Gabon did not believe that this instrument was legally binding.

97. In sum, the subsequent conduct of the Parties, viewed as a whole, furnishes compelling indications that the Parties did not consider the "Bata Convention" to be a treaty.

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98. In light of all the foregoing, in particular the conduct of the Parties in the decades after the signing of the "Bata Convention", the Court concludes that the "Bata Convention" is not a treaty having the force of law between Equatorial Guinea and Gabon concerning the delimitation of their common maritime and land boundaries and sovereignty over the islands of Mbanié/Mbañe, Cocotiers/Cocoteros and Conga. Accordingly, the "Bata Convention" does not constitute a legal title within the meaning of Article 1, paragraph 1, of the Special Agreement.

IV. THE LEGAL TITLES, TREATIES AND INTERNATIONAL CONVENTIONS INVOKED BY THE PARTIES CONCERNING THE DELIMITATION OF THEIR COMMON LAND BOUNDARY

99. The Court will now examine the legal titles, treaties and international conventions invoked by the Parties concerning the delimitation of their common land boundary.

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100. Equatorial Guinea submits that the legal titles, treaties and international conventions that have the force of law in the relations between the Parties in so far as they concern the delimitation of their common land boundary are

> "the succession by the Gabonese Republic and the succession by the Republic of Equatorial Guinea to all titles to territory, held respectively on 17 August 1960 by France and on 12 October 1968 by Spain, on the basis of the 1900 Convention, including those titles to territory held on the basis of the modifications made, in the application of that Convention, to the boundary described in Article IV of the Convention" (final submissions of Equatorial Guinea, paragraph III; see paragraph 13 above).

101. Equatorial Guinea explains that the spatial extent of the territory to which Equatorial Guinea succeeded is delimited by the boundaries that divided the territory administered by Spain from that of Gabon at the moment of Equatorial Guinea's independence.

102. According to Equatorial Guinea, the land boundary between the territories held by Spain and France was established by Article IV of the 1900 Convention, as subsequently modified in accordance with the terms of that Convention. It maintains that the parties agreed in the Convention on a process for modifying the boundaries to account for newly acquired geographical information. Equatorial Guinea explains that, under Article VIII and Appendix No. 1 of the 1900 Convention, Commissioners or local Delegates were empowered to propose modifications to the lines of demarcation in order to determine them more accurately, having regard to the geographical features of the area.

103. While Equatorial Guinea accepts that modifications to the boundaries proposed by the Commissioners or local Delegates require approval by their respective Governments, it contends that the Convention does not provide for any specific or formal procedure by which such approval is to be obtained or given. In its view, the 1900 Convention requires only that the proposed changes be submitted by the Commissioners or local Delegates to their respective Governments and that approval be given by those Governments. Equatorial Guinea contends that approval could be effectuated by any means, including by conduct.

104. According to Equatorial Guinea, the boundaries established by Article IV of the 1900 Convention were subsequently modified in both the Utamboni River and the Kie River areas.

105. With regard to the Utamboni River area, Equatorial Guinea explains that, in accordance with Article VIII of the 1900 Convention, Spain and France established a commission in 1901 (the 1901 Commission), which completed its work and proposed modifications of the boundary. Equatorial Guinea argues that Spain and France approved the 1901 Commission's proposal in the Utamboni River area where they considered its work sufficiently accurate.

106. In the view of Equatorial Guinea, Spain and France's approval of the proposed modification is clear from their conduct. According to Equatorial Guinea, acts of administration were

carried out exclusively by Spain on its side of the modified boundary, without challenge by France. Spain's extensive *infra legem effectivités* include censuses conducted in 1932, 1942 and 1950, the administration of schools and courts, the enforcement of criminal laws and the regulation of economic activity.

107. In this regard, Equatorial Guinea refers, in particular, to the town of Asobla, contending that Spain developed it into a significant regional centre, serving as the seat of Spain's administrative subdistrict and a key military post. Equatorial Guinea asserts that France carried out no acts of administration in Asobla.

108. According to Equatorial Guinea, this was the situation that prevailed in the Utamboni River area after the independence of Gabon on 17 August 1960. Equatorial Guinea contends that Gabon's acceptance of the boundary modifications is evident in a proposal Gabon made to Spain in 1963 to enter into a convention aiming to define "border relations" between Gabon and Spanish-administered Río Muni. In Equatorial Guinea's view, Gabon proceeded on the premise that there was an agreed border.

109. Equatorial Guinea also argues that it has exercised sovereignty throughout the Utamboni River area since achieving independence in 1968, while Gabon has never undertaken sovereign acts in any of the towns and villages in this area.

110. On these grounds, with respect to the Utamboni River area, Equatorial Guinea submits that when it succeeded to Spain's title upon its independence in 1968, it did so in respect of the territory encompassed by the boundary that had been proposed by the 1901 Commission and approved by the parties to the 1900 Convention.

111. As regards the Kie River area, Equatorial Guinea accepts that Spain and France ultimately rejected the 1901 Commission's proposal as geographically inaccurate owing to the malfunctioning of the Commission's chronometers. Nonetheless, in its view, the relevant colonial authorities continued to agree that the eastern boundary should follow rivers and other geographical features.

112. According to Equatorial Guinea, in 1917, Spain and France re-engaged in modifying the eastern part of the boundary described in Article IV of the 1900 Convention to take account of newly acquired information about the area's geography. Equatorial Guinea contends that, by an exchange of notes between the colonies' respective highest officials (the 1919 Governors' Agreement), Spain and France agreed to modify the boundary so that, in the relevant part, it followed the Kie River. In its view, the two colonial Powers' approval of the modification is undeniable because they entered into this Agreement. Equatorial Guinea thus argues that Spain and France used the procedures established in the 1900 Convention to modify the boundary in the Kie River area.

113. Equatorial Guinea argues that Spain implemented the 1919 Governors' Agreement, without objection from France. It cites the following as examples of Spanish *infra legem effectivités*: the construction of a road, the maintenance of engineering structures, acts of civil administration, conduct of the census, the building of schools and health facilities, grants of land concessions, and

the operation of transport and communications infrastructure. Equatorial Guinea points out that France made no attempt to carry out any administrative acts of its own in the area, and that France recognized the modified boundary in a 1940 intelligence report and a 1953 Note prepared by the Inspector General of the Overseas Geographical Services.

114. According to Equatorial Guinea, after gaining independence in 1960, Gabon, like France, also accepted the modified boundary. Equatorial Guinea asserts that Gabon did not protest when Spain carried out a census in areas west of the Kie River, and that Gabon accepted the Kie River as the boundary in the context of negotiating an agreement with Spain concerning border crossings and related matters in 1965.

115. Equatorial Guinea also contends that, since its independence, it has continued to exercise its sovereignty over all the towns in the Kie River area that lie to the east of the 9° meridian and to the west of the Kie River. According to Equatorial Guinea, the Agreement between Gabon and Equatorial Guinea on the Construction of a Border Bridge and a Section of Asphalted Road with Works between the Two Countries (3 August 2007) (hereinafter the "2007 Agreement") and the two bridges constructed pursuant to that Agreement confirm that the Parties have recognized the Kie River as the boundary in the north-east in accordance with the modifications made to the 1900 Convention through the 1919 Governors' Agreement. Equatorial Guinea stresses that Article II of the 2007 Agreement specifies that Ebebiyin and Mongomo are cities "in Equatorial Guinea". It also points out that the Parties have customs and immigration facilities on their respective sides of the Kie River.

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116. Gabon submits that "the [Bata] Convention . . . and the [1900] Convention . . ., subject to the modifications made to the boundary by the Bata Convention", are the legal titles having the force of law in the relations between the Parties in so far as they concern the delimitation of their common land boundary (final submissions of Gabon, paragraph *(a)* (i); see paragraph 13 above).

117. With regard to Equatorial Guinea's arguments concerning the modifications made to the boundary, Gabon contends that Appendix No. 1 of the 1900 Convention requires that the Governments explicitly approve them. Gabon maintains that since this essential condition was not satisfied, in legal terms, the proposed adjustments to the boundary cannot be considered as having modified the title resulting from the Convention.

118. Concerning the Utamboni River area, Gabon argues that Spain and France never approved the proposed boundary modification put forward by the 1901 Commission, either in whole or in part. Gabon points out that, in a letter sent to the French Ambassador to Spain in 1907, the Spanish Minister of State attached importance to a full and rigorous examination of the proposal, which, however, was never completed.

119. According to Gabon, none of the *effectivités* invoked by Equatorial Guinea support the conclusion that Spain, and even less so France, approved the boundary proposed by the 1901 Commission. It maintains that Equatorial Guinea's position is based solely on *effectivités* that contradict the definition of the boundary described in Article IV of the 1900 Convention. In Gabon's opinion, those *effectivités*, even if genuine, would only be *contra legem*.

120. In Gabon's view, since the 1901 Commission had incorrectly located the towns of Asobla and Anguma to the north of the 1° north parallel of latitude, it cannot be deduced from the administration of these localities that the Spanish authorities approved the proposal of the Commission. It is possible that they simply considered themselves to be respecting the boundary described in Article IV of the 1900 Convention.

121. According to Gabon, France continued to consider that the boundary between the two colonies corresponded to the line described in Article IV of the 1900 Convention. It points to the 1936 Order of the Governor-General of French Equatorial Africa, which defined the northern limit of the Cocobeach subdivision as "the boundary of Spanish Guinea as defined by the [1900 Convention]". Gabon points out that Equatorial Guinea has offered no response to the 1936 Order which confirmed, more than 30 years after the 1901 Commission's proposal, that the boundary in the Utamboni River area still followed the 1° north parallel of latitude.

122. As for the Kie River area, Gabon maintains that the Governors did not act within the framework of the provisions of the 1900 Convention allowing for modifications of the boundary. According to Gabon, the text and context of the initial proposal made by the Governor-General of Spanish Territories in Africa show that the Spanish colonial authorities did not consider that they were acting as local Delegates vested with the power to modify the land boundary. Gabon underscores that the 1900 Convention was never mentioned in the exchange of letters between the Governors, and contends that their intention was simply to find a temporary and convenient solution to avoid border incidents in that area. Gabon points out that the Governor-General of French Equatorial Africa reaffirmed the provisional nature of the solution in his reply to the Governor-General of Spanish Territories in Africa.

123. Gabon further argues that the French authorities did not change their position on the boundary established by Article IV of the 1900 Convention. Gabon points to the 1936 Order of the Governor-General of French Equatorial Africa, which reaffirmed the 9° meridian as the boundary in the east, and to maps from the administrative subdivisions of French Gabon.

124. Gabon also refers to the conduct of the Parties after their independence. Gabon emphasizes that the 2007 Agreement makes no mention of the boundary and, at most, is an arrangement of convenience between two States eager to set up transboundary trading in the area.

125. According to Gabon, Equatorial Guinea's claims in the Kie River area are yet again based solely on *effectivités* that are contrary to the title resulting from the 1900 Convention, and the arrangement arrived at by the Governors cannot serve as a basis for transforming *contra legem effectivités* into *infra legem effectivités*.

* *

126. The Court has already concluded that the "Bata Convention" does not constitute a legal title within the meaning of Article 1 of the Special Agreement (see paragraph 98 above). Consequently, the qualification attached by Gabon when it invoked the 1900 Convention as a legal title in its final submissions — namely "subject to the modifications made to the boundary by the Bata Convention" — also has no effect on the legal titles concerning the delimitation of their common land boundary.

127. Equatorial Guinea invokes as legal title concerning its land boundary with Gabon

> "the succession by [the Parties] to all titles to territory, held . . . by France and . . . Spain, on the basis of the 1900 Convention, including those titles to territory held on the basis of the modifications made, in the application of that Convention, to the boundary described in Article IV of the Convention".

128. A State can succeed to the title to territory held by its predecessor State (see paragraph 43 above). Equatorial Guinea and Gabon agree that, on the dates of their independence, they each succeeded to the title to territory held respectively by Spain and France as colonial Powers. The Court recalls that, as a matter of law, "[b]y becoming independent, a new State acquires sovereignty with the territorial base and boundaries left to it by the colonial power" (*Frontier Dispute (Burkina Faso/Republic of Mali), Judgment, I.C.J. Reports 1986*, p. 568, para. 30).

129. The Parties agree that the titles to which they succeeded upon independence were held by the colonial Powers on the basis of the 1900 Convention. The disagreement between them concerns the second part of Equatorial Guinea's submission, namely whether those titles also include titles to territory held on the basis of modifications made, in the application of that Convention, to the boundary described in Article IV of the 1900 Convention.

130. Article VIII and Appendix No. 1 of the 1900 Convention set forth the procedures for modification of the boundary described in Article IV. Article VIII stipulates in part as follows:

> "Both Governments agree to designate Commissioners, within four months of exchanging ratifications, who shall be responsible for marking out on the ground the demarcation lines between the French and Spanish possessions, in accordance with and in the spirit of the provisions of the present Convention".

Appendix No. 1 provides:

> "Although the course of the demarcation lines on the maps attached to the present Convention (appendices numbers 2 and 3) is generally assumed to be accurate, it cannot be considered an absolutely correct representation until confirmed by new surveys.
>
> Therefore, it is agreed that the Commissioners or local Delegates of both Nations who shall subsequently be responsible for delimiting all or part of the boundaries on the ground, shall use as a basis the description of the boundaries as established in the

> Convention. At the same time, they may modify the said lines of demarcation in order to determine them more accurately and to rectify the position of the dividing lines of the tracks or rivers, and of the towns or villages marked on the above-mentioned maps.
>
> The changes or corrections proposed by mutual agreement by the said Commissioners or Delegates shall be submitted to the respective Governments for approval."

131. The Parties agree that the land boundary could be modified on the basis of proposals made by either Commissioners or local Delegates and that any modifications proposed required the approval of the respective Governments. They further agree that Commissioners were appointed in accordance with the terms of the 1900 Convention and that in 1901, those Commissioners made proposals to modify the boundary described in Article IV of the 1900 Convention.

132. The Parties disagree, however, as to whether the boundary described in Article IV of the 1900 Convention was modified pursuant to the procedures set out in the Convention. Equatorial Guinea argues that the provisions allowing for modification of the boundary were applied and given effect in the Utamboni River and Kie River areas. Gabon, for its part, maintains that the proposals made by the 1901 Commission were not approved in respect of either the Utamboni River or the Kie River areas. As for the 1919 Governors' Agreement, Gabon argues that it does not form part of the procedure laid down in Appendix No. 1 of the 1900 Convention.

133. The Court will examine whether the boundary described in Article IV of the 1900 Convention was modified pursuant to the procedures set out in the Convention, with respect to the Utamboni River area and the Kie River area, respectively.

A. Utamboni River area

134. With regard to the Utamboni River area, the Parties disagree as to whether the proposal made by the 1901 Commission was approved by Spain and France.

135. The Court will first examine whether Spain and France approved the proposal through formal decisions by their respective Governments. In this respect, the Court takes note of several exchanges between them in 1905 and 1907. In particular, in a letter to the French Ambassador to Spain, the Spanish Minister of State drew attention to "discrepancies that consequently prevent[ed] this Ministry from definitively approving the work of the aforementioned Franco-Spanish Commission". The Minister of State further stated the following:

> "Indeed, we could not make light of a question as important as this, to approve or reject the work of the 1901 Franco-Spanish Commission, without a clear understanding of the merit of its work.

> Thence the examination and the thorough and necessarily slow survey to which the Spanish delegates have had to dedicate the last three and a half years in order to be able to determine a precise boundary line and, in addition, to safeguard the interests of both France and Spain." (Letter from the Spanish Minister of State to the Ambassador of France to Spain, 20 April 1907.)

The Court observes that French authorities favourably acknowledged the approach described by the Spanish Minister of State in this letter (Letter from the French Minister for the Colonies to the French Minister for Foreign Affairs, 29 June 1907).

136. In the Court's view, the exchanges between Spain and France in the period from 1905 to 1907 indicate that the proposal made by the 1901 Commission was not approved through formal decisions by their respective Governments. The Court observes an apparent absence of governmental approval over the following five decades. Two notes issued by French colonial authorities affirmed that the "definitive" delimitation provided for by Article VIII of the 1900 Convention had not yet been carried out by the Franco-Spanish Commission (Note by the Co-ordination Division for French Equatorial Africa on the delimitation of the boundary between Gabon and Spanish Guinea, 15 September 1952; Note by the General Government of French Equatorial Africa on the delimitation of the boundary between Gabon and Spanish Guinea, 16 September 1952).

137. The Court turns now to Equatorial Guinea's argument that the proposal made by the 1901 Commission was approved through the conduct of Spain and France. The Court observes that there is nothing in the terms of the 1900 Convention mandating a specific form of approval for modifications of the boundary proposed by Commissioners or local Delegates under Appendix No. 1 of the Convention. Accordingly, the Court considers that such approval could be inferred from the conduct of Spain and France.

138. The Court observes that Spain carried out acts of administration in towns south of the boundary described in Article IV of the 1900 Convention, including in Asobla. It conducted censuses, administered schools and courts, enforced criminal laws and regulated economic activity.

139. Regarding Spain's acts of administration in the town of Asobla, the Court notes that the 1901 Commission located Asobla north of the 1° north parallel of latitude and that its exact location in relation to the boundary described in Article IV of the 1900 Convention was unclear for an extended period. It is thus uncertain whether Spanish and French authorities considered that Spain's acts of administration were carried out south of the 1° north parallel of latitude. Furthermore, it appears that France considered this area to remain in dispute between itself and Spain (Letter No. 18 from the Head of the Cocobeach Subdivision to the Head of the Estuaire Department, 9 March 1940). In view of the above, the Court considers that Spain's acts of administration in Asobla do not indicate that Spain and France approved the proposal made by the 1901 Commission.

140. In order to ascertain whether the proposal made by the 1901 Commission was approved through the conduct of the parties to the Convention, the Court considers it important to take into account the conduct of France in addition to that of Spain. The evidence produced by the Parties points to instances in which France protested against Spanish incursions into areas south of the

boundary described in Article IV of the 1900 Convention and instances in which France relied on that boundary. For example, in 1927, in response to activities carried out by Spain in several villages south of the boundary described in Article IV, the French Lieutenant Governor of Gabon stated that the "imprecision of our borders does not justify the encroachments" into certain villages that were "clearly dependent upon our government" (Letter No. 212 from the French Lieutenant Governor of Gabon to the Governor-General of Spanish Territories in the Gulf of Guinea, 16 August 1927).

141. Internal documents of the French Government confirm that France did not approve the proposal of the 1901 Commission. In 1927, the Governor-General of French Equatorial Africa reported to the French Minister for the Colonies several incidents in which the Spanish colonial authorities had "carried out acts on territories that were unquestionably under French sovereignty" (Letter No. 507 from the Governor-General of French Equatorial Africa to the French Minister for the Colonies, 15 September 1927). In 1937, the French authorities rejected the claim of the Spanish colonial authorities that the 1° north parallel of latitude constituted the boundary only from its second point of intersection with the Utamboni River, stating that "[t]his interpretation is unquestionably wrong" (Letter No. 439 from the French Minister for the Colonies to the Governor-General of French Equatorial Africa, 3 May 1937). In 1943, referring to the area towards the bend in the Muni River, the French Commissioner for Foreign Affairs, who was under the authority of the National Committee of Free France, affirmed that the terms of Article IV of the 1900 Convention left no room for doubt that this area belonged to France (Letter from the National Commissioner for Foreign Affairs to the National Commissioner for the Colonies, 27 February 1943). In 1953, the French National Geographical Institute characterized Spain's presence at the bend in the "Mitemboni [Utamboni]" River as an ostensible occupation and a flagrant violation of the 1900 Convention (Note No. 378 by the National Geographical Institute for the Directorate of Political Affairs, 9 January 1953). In the same year, French authorities considered that a map produced by Spain showed Spain encroaching upon the territory held by France at several points, and called for the preparation of their own map with a view to future negotiations with the Spanish Government (Letter No. 242 from the Minister for Overseas France to the French Minister for Foreign Affairs, 8 March 1953).

142. In view of the above, the Court considers that the proposal made by the 1901 Commission was not approved through the conduct of Spain and France.

143. Equatorial Guinea also refers to Gabon's conduct after 1960 in support of its assertion that the boundary proposed by the 1901 Commission continued to be respected after Gabon's independence. Equatorial Guinea emphasizes that Spain continued to exercise authority in the Utamboni River area without protest from Gabon. In particular, it invokes Gabon's diplomatic exchanges with Spain, proposing negotiations "for the purpose of entering into a Convention aiming to define border relations between [them]" (Note Verbale from the Embassy of Gabon in Spain to the Ministry of Foreign Affairs of Spain, 10 December 1963). The Court does not agree with Equatorial Guinea's characterization of the events following Gabon's independence. While Gabon and Spain negotiated an agreement to regulate border relations, such an agreement never entered into force.

144. For these reasons, with regard to the Utamboni River area, the Court concludes that the boundary described in Article IV of the 1900 Convention was not modified pursuant to the procedures established in Article VIII and Appendix No. 1 of the Convention.

B. Kie River area

145. In the eastern part of the boundary, the Court notes that the work of the 1901 Commission was geographically inaccurate owing to the malfunctioning of its chronometers (Kingdom of Spain, Letter from the Colonial Section of the Ministry of State, 20 April 1907). On this basis, the Parties agree that the proposal made by the 1901 Commission to modify the boundary in the Kie River area was not approved by Spain and France. In fact, Equatorial Guinea expressly acknowledges that "in the east . . . Spain and France ultimately rejected the Commission's proposals".

146. In the Kie River area, the core of the Parties' disagreement is whether the 1919 Governors' Agreement (see paragraph 25 above) had the effect of modifying the boundary described in Article IV of the 1900 Convention.

147. The Court recalls that it is always required to rule on the final submissions of the parties as formulated at the close of the oral proceedings (see paragraph 45 above). Under Article 1 of the Special Agreement, the Court is requested to determine whether the legal titles "invoked by the Parties" have the force of law in the relations between them in so far as they concern the delimitation of their common land boundary. Accordingly, it will determine whether the legal titles invoked by the Parties in their final submissions have the force of law in the relations between them. The Court is not requested to, and therefore cannot, make this determination with respect to any legal title that has not been invoked by the Parties in their final submissions (see paragraph 45).

148. In this regard, the Court notes that the legal title invoked by Equatorial Guinea concerning the delimitation of the common land boundary is

> "the succession by the Gabonese Republic and the succession by the Republic of Equatorial Guinea to all titles to territory, held respectively on 17 August 1960 by France and on 12 October 1968 by Spain, *on the basis of the 1900 Convention*, including those titles to territory held on the basis of the modifications made, *in the application of that Convention*, to the boundary described in Article IV of the Convention" (emphasis added).

The Court's task is thus limited to determining whether the boundary described in Article IV of the 1900 Convention has been modified in accordance with the procedures established under Article VIII and Appendix No. 1 of the Convention. The Court is not called upon to determine whether the 1919 Governors' Agreement constitutes an autonomous legal title concerning the delimitation of the land boundary.

149. The 1919 Governors' Agreement takes the form of an exchange of letters between the Governors-General. In the first letter, which was sent on 22 November 1917, the Governor-General of Spanish Territories of Africa proposed that "in the eastern part of the Spanish territory, between the 2° 10' 20" north parallel of latitude and the place where the Kie River starts, we could consider that River as the temporary border until a precise delimitation of the boundary is established" (Letter from the Governor-General of Spanish Territories of Africa to the Governor of French Gabon, 22 November 1917). In his reply, the Governor-General of French Equatorial Africa accepted the proposal, affirming that "the new boundary provisionally adopted for the eastern part of the Spanish territory adjacent to the occupied territories of Neukamerun will be determined by the course of the

N'kye [Kie] stream" (Letter No. 63 from the Governor-General of French Equatorial Africa to the Governor-General of the Spanish Territories of the Gulf of Guinea, 24 January 1919). In response, the Governor-General of Spanish Guinea communicated that "I fully agree with Your Excellency regarding the provisional adoption of the course of the N'kye [Kie] River as part of the eastern boundary of the Spanish territory" (Letter from the Spanish Governor-General of Spanish Guinea to His Excellency the French Governor-General of French Equatorial Africa, 1 May 1919).

150. In the Court's view, the above exchange of letters between the Governors-General indicates that, in the Kie River area, the local representatives, on behalf of the colonial Powers, adopted a temporary and provisional line to avoid incidents, and not a permanent boundary. The Court recalls that "[e]ven if there had been a provisional line found convenient for a period of time, this is to be distinguished from an international boundary" (*Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras), Judgment, I.C.J. Reports 2007 (II)*, p. 735, para. 253).

151. Equatorial Guinea emphasizes that Spain and France continued to apply the 1919 Governors' Agreement in the Kie River area and argues that the boundary described in Article IV of the 1900 Convention was modified through their conduct in accordance with the procedures set out in the Convention. The Court notes that Spain carried out acts of administration in localities on the west side of the Kie River, which included conducting censuses, constructing roads, building schools and health facilities, granting land concessions, operating transportation and maintaining military garrisons. Equatorial Guinea refers, in particular, to the town of Alen, where Spain maintained a military garrison, a school and transportation infrastructure. The Court notes that on some occasions, France also relied on the line adopted by the Governors-General.

152. Nevertheless, nothing in the text of the letters or the circumstances surrounding their exchange indicates that the Governors-General were acting as "local Delegates" vested with the power to propose modifications to the boundary pursuant to Appendix No. 1 of the 1900 Convention. In fact, no reference is made to the 1900 Convention in the exchange of letters. Accordingly, the Court considers that the 1919 Governors' Agreement was not concluded pursuant to the procedures laid down in the 1900 Convention for modifying the boundary described in Article IV. The subsequent conduct of Spain and France cannot change this conclusion.

153. Equatorial Guinea also refers to the Parties' conduct after their independence to support its assertion that the 1919 Governors' Agreement continued to be applied in the Kie River area. The Court notes that the 1993 Report of the Gabon-Equatorial Guinea Border Commission reads as follows:

> "I.1.3 The area located west of the Kie River, between that River and the 11° 20' east of Greenwich meridian, which is *Gabonese territory*, is administered by Equatorial Guinea.
>
> . . . . . .
>
> I.1.4 The Equatoguinean city of Ebebiyin is *located partly in Gabonese territory*, in the area between the Kie River and the 11° 20' east of Greenwich meridian." (French Report of the Border Sub-Commission of the ad-hoc Border Commission Gabon-Equatorial Guinea, 20 January 1993 (emphasis added).)

This report indicates that the representatives of the two Parties considered that the areas where Equatorial Guinea was exercising administrative functions were within Gabonese territory.

154. Equatorial Guinea places particular emphasis on the 2007 Agreement and the two bridges which were constructed pursuant to that Agreement and inaugurated by the respective Heads of State of Equatorial Guinea and Gabon in 2011. It points out that Article II of the Agreement specifies that the towns of Ebebiyin and Mongomo are "in Equatorial Guinea". However, the 2007 Agreement does not mention the boundary between the Parties and does not suggest that it constitutes a modification of the boundary in accordance with the provisions of the 1900 Convention.

155. For these reasons, with regard to the Kie River area, the Court concludes that the boundary described in Article IV of the 1900 Convention was not modified pursuant to the procedures established in Article VIII and Appendix No. 1 of the Convention.

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156. In light of the foregoing, the Court concludes that the legal titles invoked by the Parties that have the force of law in the relations between them in so far as they concern the delimitation of their common land boundary are the titles held on 17 August 1960 by France and on 12 October 1968 by Spain, on the basis of the 1900 Convention, to which titles Gabon and Equatorial Guinea respectively succeeded. The Court finds that no modifications were made to the boundary described in Article IV of the Convention pursuant to the procedures established under Article VIII and Appendix No. 1 of the Convention.

157. The conclusion drawn by the Court in the previous paragraph is predicated on the specific mandate given by the Parties under the Special Agreement, namely to determine whether the legal titles that they have invoked have the force of law in the relations between them in so far as the titles concern the delimitation of their common land boundary. This conclusion does not prevent the Parties from agreeing to adjust their land boundary in light of the existing situation on the ground and the interests of the local populations.

V. THE LEGAL TITLES, TREATIES AND INTERNATIONAL CONVENTIONS INVOKED BY THE PARTIES CONCERNING SOVEREIGNTY OVER MBANIÉ/MBAÑE, COCOTIERS/COCOTEROS AND CONGA

158. The Court will now examine the legal titles, treaties and international conventions invoked by the Parties concerning sovereignty over the islands of Mbanié/Mbañe, Cocotiers/Cocoteros and Conga.

* *

159. Equatorial Guinea submits that the legal title having the force of law in the relations between the Parties in so far as it concerns sovereignty over the islands of Mbanié/Mbañe, Cocotiers/Cocoteros and Conga is "the succession by the Republic of Equatorial Guinea to the title held by Spain on 12 October 1968" over these islands (final submissions of Equatorial Guinea, paragraph IV; see paragraph 13 above).

160. According to Equatorial Guinea, Mbanié/Mbañe, Cocotiers/Cocoteros and Conga were historically regarded — by both Spain and France — as dependencies of Corisco Island. In its view, tiny uninhabited islets may be considered "dependencies" of larger islands in close proximity, such that title to the larger island carries with it title to the dependency. Equatorial Guinea argues that the three islets in question have always been treated as dependencies of Corisco Island and that title to them has always followed from title to Corisco Island.

161. On this basis, Equatorial Guinea maintains that Spain acquired Mbanié/Mbañe, Cocotiers/Cocoteros and Conga by means of colonial occupation, agreements with local rulers, public and notorious assertion of sovereignty without protest, and effective administration over a prolonged period. In particular, Equatorial Guinea argues that Spain's legal title to the islands in question consisted of the cession of rights from Portugal in the 1778 Treaty of El Pardo and Spain's peaceful occupation of them from 1843 onwards. It further refers to the 1843 Declaration of Corisco, the 1846 Record of Annexation, the 1846 Charter of Spanish Citizenship and the 1858 Charter reaffirming Spanish possession of the island of Corisco.

162. Equatorial Guinea maintains that Spain's control over Mbanié/Mbañe, Cocotiers/Cocoteros and Conga was not disputed during the colonial period, since France made claims only to the Elobey Islands. Equatorial Guinea argues that France expressly recognized Spain's title to Corisco Island and its dependencies, pointing out that France affirmed during the discussions held by the Franco-Spanish Mixed Commission from 1886 to 1891 that "Baynia [Mbanié/Mbañe]" is a dependency of Corisco Island. According to Equatorial Guinea, France recognized Spanish title based on annexation and the agreement of the king of that territory.

163. Equatorial Guinea contends that France provided further evidence of its recognition of Spain's legal title to Corisco Island and its dependencies in 1895. It explains that, when the Spanish Governor-General of Fernando Póo protested French actions in Corisco Bay, the Commissioner-General of French Congo did not challenge Spain's title to Mbanié/Mbañe and merely denied France's intentions to establish a post there. Equatorial Guinea asserts that France's recognition of Spain's title to Mbanié/Mbañe was also reflected in contemporaneous French maps on which "Baynia [Mbanié/Mbañe]" was indicated as belonging to Spain.

164. Equatorial Guinea argues that by the time the 1900 Convention was signed, Spain's legal title to Mbanié/Mbañe, Cocotiers/Cocoteros and Conga was unchallenged. According to Equatorial Guinea, while the 1900 Convention did not create a legal title to those islands, it served as a confirmation of France's recognition of Spain's pre-existing legal title to Corisco, and by extension to Mbanié/Mbañe, Cocotiers/Cocoteros and Conga, which — although not mentioned specifically in the Convention — were recognized by France as dependencies of Corisco prior to 1900.

165. Equatorial Guinea contends that after the conclusion of the 1900 Convention, Spain continued to openly assert its legal title and exercise its administrative authority over Corisco Island and its dependencies. According to Equatorial Guinea, the Spanish Minister of State requested that the local authorities in Spanish Guinea look into the veracity of rumours of a possible French occupation of Mbanié/Mbañe. The Governor-General of Spanish Guinea concluded that the rumours were untrue but ordered the Deputy Governor to station guards on Mbanié/Mbañe and Leva to ensure their occupation and to raise the Spanish flag on them. Equatorial Guinea emphasizes that France did not protest against these actions.

166. Equatorial Guinea refers, in particular, to one incident in 1955 regarding the installation of a beacon on Cocotiers/Cocoteros, which, it argues, confirms France's recognition of Spain's title to the islands. According to Equatorial Guinea, France began construction work in February 1955, believing that it had received authorization from Spain. When Spain ordered a halt to the work, France promptly complied and evacuated the workers and materials from Cocotiers/Cocoteros. In a memorandum of May 1955, the French Minister for Foreign Affairs stated that Cocotiers/Cocoteros was a geographical dependency of Mbanié/Mbañe and that, over the past 50 years, Mbanié/Mbañe had been occupied by the Spanish on several occasions without protest or alternate occupation by France. Equatorial Guinea explains that France subsequently asked Spain for permission to restart the work and that Spain granted it. Equatorial Guinea further maintains that when, as a result of this incident, Spain ordered the further placement of its Colonial Guard on Mbanié/Mbañe, France did not protest.

167. Equatorial Guinea argues that Gabon recognized the validity of Spain's legal title to Mbanié/Mbañe, Cocotiers/Cocoteros and Conga from its independence in 1960. It points out, for example, that in 1962, Gabon concluded with Spain a Maritime Protocol confirming Spain's authority to maintain maritime signals in all of Corisco Bay, including the beacon on Cocotiers/Cocoteros. According to Equatorial Guinea, under that Protocol, Gabon was not allowed to conduct work on Cocotiers/Cocoteros or in the surrounding waters without Spain's authorization.

168. Equatorial Guinea submits that upon its independence in 1968, the legal titles held by Spain to all the islands of Corisco Bay, including Mbanié/Mbañe, Cocotiers/Cocoteros and Conga, passed to Equatorial Guinea by succession.

169. Equatorial Guinea also refers to acts carried out after its independence. In 1970, it issued a decree establishing the limits of the territorial waters surrounding the Elobey Islands, Corisco and the Mbañe, Conga and Cocoteros islets. Equatorial Guinea explains that it sent this decree to the United Nations Secretary-General and that neither Gabon nor France protested.

170. Finally, Equatorial Guinea maintains that in 1972, Gabon suddenly reversed its position and, for the first time, asserted a claim to the three islands in question. According to Equatorial Guinea, on 26 August 1972, Gabon invaded Mbanié/Mbañe by force and has illegally occupied it ever since. Equatorial Guinea expresses regret that Gabon downplays this territorial conquest by calling it a police action.

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171. Gabon invokes the "Bata Convention" as the legal title having the force of law in the relations between the Parties in so far as it concerns sovereignty over Mbanié/Mbañe, Cocotiers/Cocoteros and Conga (final submissions of Gabon, paragraph *(a)* (ii); see paragraph 13 above).

172. Gabon argues that although those three islands are a single geographical and historical unit, there is no evidence that they were considered "dependencies of Corisco" by the colonial Powers. According to Gabon, it is unclear whether the Spanish term "*sus*", in the phrase "*sus dependencias*", as used in certain documents, refers to the Elobey Islands or to both Corisco and the Elobey Islands. It further argues that the term "dependencies" in those documents appears to refer to inhabited islands, whereas Mbanié/Mbañe, Cocotiers/Cocoteros and Conga have never been permanently inhabited. Moreover, Gabon is of the view that the proximity of small uninhabited islands to larger islands is not established in law as a basis of title.

173. Gabon maintains that the 1778 Treaty of El Pardo is irrelevant because it mentions only the islands of Annobón and Fernando Póo/Fernando Pó and not Mbanié/Mbañe, Cocotiers/Cocoteros and Conga. Gabon contends that the other historical documents on which Equatorial Guinea relies represent unilateral acts of Spain and are not capable of constituting a legal title. For Gabon, the 1846 Record of Annexation is also a unilateral act of Spain, and not a treaty with a local ruler. Gabon argues that these unilateral acts of Spain are *res inter alios acta* for France and unenforceable against the latter. Furthermore, Gabon emphasizes that since the historical documents do not refer to Mbanié/Mbañe, Cocotiers/Cocoteros or Conga, they have no bearing on these islands.

174. Gabon further contends that Equatorial Guinea cannot invoke both occupation as an original title and agreements with local rulers as a derivative title, since they are mutually exclusive. Gabon points out that Equatorial Guinea does not assert that the islands in dispute were *terra nullius*, which is a requirement for occupation to be valid. As for the agreements with local rulers, Gabon maintains that Equatorial Guinea has failed to prove the existence of such agreements.

175. As regards the alleged public and notorious assertion of sovereignty without protest by France, Gabon maintains that France and Gabon have long made competing claims to the islands, which amounts to an objection.

176. Concerning the period before the adoption of the 1900 Convention, Gabon argues that the claims of the two colonial Powers overlapped significantly in the Gulf of Guinea. According to Gabon, during the discussions held by the Franco-Spanish Mixed Commission from 1886 to 1891, while France was willing to relinquish all claims to Corisco, it was opposed to any further expansion of Spain's claims beyond that island. Gabon contends that the annexes to the protocols of the Commission served as negotiating positions and were not legally binding on the participants.

177. With respect to the 1900 Convention, Gabon emphasizes that while the Convention resolved the sovereignty dispute over Corisco and the Elobey Islands, it was silent on the matter of Mbanié/Mbañe, Cocotiers/Cocoteros and Conga. It thus argues that the question of sovereignty over those islands remained unresolved.

178. As regards the beacon incident on Cocotiers/Cocoteros, Gabon maintains that France began constructing the beacon in 1955, without seeking any prior authorization from Spain. The only Spanish authorization requested by France concerned the planned visit of a French hydrographic boat to Corisco Bay. In Gabon's view, this episode shows that both colonial Powers believed they had sovereignty over the three islands and that they preferred to avoid controversy by instructing their local authorities to find a practical solution.

179. Gabon argues that the uncertainties as to who held title over Mbanié/Mbañe, Cocotiers/Cocoteros and Conga are further reflected in the conduct of Gabon and Spain after Gabon's independence. Gabon refers, in particular, to the maritime delimitation negotiations between Spain and Gabon. Gabon asserts that Spain refused to place its base points for a delimitation on the islands of Mbanié/Mbañe, Cocotiers/Cocoteros and Conga, because, as shown by a Spanish internal document of 1967, it was aware that the ensuing negotiations would be clouded with difficulties. Gabon points out that it was at that time considering placing its own base points on the Mbanié/Mbañe sandbank.

* *

180. The Court observes that the Parties agree that Mbanié/Mbañe, Cocotiers/Cocoteros and Conga are in close proximity to Corisco Island, that they have never had a permanent population and that they should be treated as a single unit. The same view was expressed by France, which stated in 1955 that Cocotiers/Cocoteros is "a geographical dependency" of Mbanié/Mbañe and "follow[s its] fate" (French Republic, Letter from the Minister for Foreign Affairs to the Minister of Overseas France, 6 May 1955). Consequently, the Court considers that the same legal title applies to Mbanié/Mbañe, Cocotiers/Cocoteros and Conga.

181. Gabon invokes the "Bata Convention" as the legal title that has the force of law in the relations between the Parties in so far as it concerns sovereignty over Mbanié/Mbañe, Cocotiers/Cocoteros and Conga. The Court has already concluded that the "Bata Convention" does not constitute a legal title within the meaning of Article 1 of the Special Agreement (see paragraph 98 above). Consequently, the Court will only examine whether the title invoked by Equatorial Guinea constitutes a legal title concerning sovereignty over Mbanié/Mbañe, Cocotiers/Cocoteros and Conga.

182. Equatorial Guinea invokes as legal title "the succession by the Republic of Equatorial Guinea to the title held by Spain on 12 October 1968 over Mbanié/Mbañe, Cocotiers/Cocoteros and Conga". Through succession, the successor State acquires the title held by the predecessor State. Therefore, the Court must ascertain whether Spain, as the colonial Power, held title to Mbanié/Mbañe, Cocotiers/Cocoteros and Conga when Equatorial Guinea became independent on 12 October 1968.

183. The Court will first examine the treaties invoked by Equatorial Guinea in support of its claim that Spain held title to Mbanié/Mbañe, Cocotiers/Cocoteros and Conga. According to

Equatorial Guinea, Spain's title to these islands had its origin in the 1778 Treaty of El Pardo, by which Portugal ceded its colonial territory in the Gulf of Guinea to Spain. However, Article XIII of the Treaty identifies only the islands of Annobón and Fernando Póo/Fernando Pó as ceded territories. It refers neither to Corisco nor to Mbanié/Mbañe, Cocotiers/Cocoteros and Conga. Accordingly, the Court considers that this Treaty cannot be regarded as the source of Spain's title to the three islands.

184. With respect to the 1900 Convention, Article VII provides that France shall have the right of first refusal if Spain wishes to cede "the Elobey Islands and the Island of Corisco". Equatorial Guinea does not rely on the Convention as the source of Spain's title to Mbanié/Mbañe, Cocotiers/Cocoteros and Conga. Equatorial Guinea accepts that, "[a]lthough the Convention is a source of legal title for land territory, it is not for any of the [three] islands [in question]". Taking note of this statement, Gabon points out that the Parties agree that "the 1900 Convention is not a source of legal title for the islands". Equatorial Guinea argues instead that the 1900 Convention confirmed France's recognition of Spain's pre-existing title to Corisco Island, and by extension to Mbanié/Mbañe, Cocotiers/Cocoteros and Conga, which were recognized by France as dependencies of Corisco Island prior to 1900. The Court will consider this further argument below (see paragraph 193).

185. In the absence of a treaty establishing title to territory, international courts and tribunals have examined whether there has been an intentional display of authority over the territory through the exercise of State functions. Such a display of authority must be continuous and uncontested by other States (e.g. *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore), Judgment, I.C.J. Reports 2008*, p. 37, para. 68; *Territorial Sovereignty and Scope of the Dispute (Eritrea* v. *Yemen), Award of 9 October 1998*, *RIAA*, Vol. XXII, p. 268, para. 239; *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 43, para. 93; *Legal Status of Eastern Greenland, Judgment, 1933, P.C.I.J., Series A/B, No. 53*, pp. 45-46; *Island of Palmas case (Netherlands/United States of America), Award of 4 April 1928*, *RIAA*, Vol. II, pp. 839-840). The nature and degree of the display of authority required depend on the particular circumstances of each case, including the character of the territory and the size of the population (e.g. *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore), Judgment, I.C.J. Reports 2008*, pp. 36-37, paras. 66-67; *Clipperton Island (Mexico* v. *France), Award of 28 January 1931*, *RIAA*, Vol. II, p. 1110). Equatorial Guinea addresses those conditions through its arguments regarding the public and notorious assertion of sovereignty without protest and effective administration over a prolonged period.

186. The Court will therefore examine whether there was an intentional display of authority by Spain over Mbanié/Mbañe, Cocotiers/Cocoteros and Conga that was continuous and uncontested.

187. The Court observes that Spain purported to act *à titre de souverain* in relation to Corisco Island and its dependencies before 1900, as evidenced by the 1843 Declaration of Corisco (Kingdom of Spain, Royal Commissioner for the Islands Fernando Póo, Annobón and Corisco on the Coast of Africa, Declaration of Corisco, 16 March 1843), the 1846 Record of Annexation (Kingdom of Spain, Ministry of State, Record of Annexation, 18 February 1846) and the 1846 Charter of Spanish Citizenship (Kingdom of Spain, Ministry of State, Charter of Spanish Citizenship Given to the Inhabitants of Corisco, Elobey and their Dependencies, 18 February 1846).

188. The Court observes, however, that these documents refer only to Corisco Island and the "dependencies" of Corisco Island, but not explicitly to Mbanié/Mbañe, Cocotiers/Cocoteros and Conga. For instance, the 1846 Charter of Spanish Citizenship provides that the inhabitants of Corisco Island and "dependencies" enjoy the same protection as the residents of Spain. Therefore, to determine whether these acts by Spain constitute a display of authority over the maritime features in question, the Court must ascertain whether Mbanié/Mbañe, Cocotiers/Cocoteros and Conga were considered by Spain and France to be "dependencies" of Corisco Island. In addressing this issue, the Court need not establish a definition of the notion of "dependencies" under international law.

189. In this regard, the Court notes that in 1886 and 1887, France recognized "Baynia [Mbanié/Mbañe]" as a "geographical dependenc[y]" and "natural dependenc[y]" of Corisco Island (Franco-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; Protocol No. 30, Session between The Kingdom of Spain and The French Republic, 16 September 1887). Furthermore, it appears that the French Commissioner-General did not object when the Spanish Governor-General of Fernando Póo referred to "Embagna [Mbanié/Mbañe]" as a dependency attached to Corisco Island in 1895 (Letter No. 368 from the Spanish Governor-General of Fernando Póo to the Commissioner-General of the French Congo, 22 November 1895). Based on the foregoing, the Court considers that Spain and France regarded Mbanié/Mbañe as a "dependency" of Corisco Island. The Court recalls in this respect that the Parties agree that Mbanié/Mbañe, Cocotiers/Cocoteros and Conga constitute a single unit and that France shared this view (see paragraph 180 above). Indeed, Gabon underscores that references to Mbanié/Mbañe encompass all three islands in dispute and that those three islands "not only constitute a single geographical unit, but were considered as such by the Parties". For these reasons, the Court considers that Mbanié/Mbañe, Cocotiers/Cocoteros and Conga were considered by Spain and France to be "dependencies" of Corisco Island.

190. Gabon asserts that France made competing claims to Mbanié/Mbañe, Cocotiers/Cocoteros and Conga before 1900, which amounted to an objection to Spain's claims. However, there is no evidence before the Court to indicate that such competing claims were made. While Gabon refers to agreements with the chiefs of the Elobey Islands, these do not concern Mbanié/Mbañe, Cocotiers/Cocoteros and Conga. As such, they do not amount to an objection by France to Spain's claim over the three islands in question.

191. On the contrary, the discussions held by the Franco-Spanish Mixed Commission between 1886 and 1891 show that France accepted Spain's claim over Mbanié/Mbañe. In a memorandum presented in 1886, the French delegation accepted that "[t]he geographical dependencies of Corisco are: Laval [Leva] and the one called Baynia [Mbanié/Mbañe]" (Franco-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). In 1887, in a document signed by both delegations, the head of the French delegation stated that "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 [Mbanié/Mbañe], included in the zone of the territorial waters of that island" (Protocol No. 30, Session between The Kingdom of Spain and The French Republic, 16 September 1887). Furthermore, in 1895, the Spanish Governor-General of Fernando Póo affirmed that Mbanié/Mbañe

belonged to Spain and protested certain French actions taken in Corisco Bay (Letter No. 368 from the Spanish Governor-General of Fernando Póo to the Commissioner-General of the French Congo, 22 November 1895). In response, the Commissioner-General of French Gabon denied that France intended to establish a post on Mbanié/Mbañe and did not claim any rights over the island (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). In the Court's view, the evidence set out above demonstrates France's acceptance of Spain's title over Mbanié/Mbañe before 1900.

192. The Court observes that contemporaneous maps correspond with France's understanding that Mbanié/Mbañe was part of Spanish colonial territory. For example, the Atlas of French Colonies, commissioned by the French Ministry of the Colonies and published in 1899, highlights Corisco Bay, Corisco Island, Leva and "Baynia [Mbanié/Mbañe]" in yellow, and attaches to each island the letter "E", which stands for "*Espagne*" (Spain) (Atlas of French Colonies, Map of the Congo (1899)). While maps primarily serve only as extrinsic evidence of an auxiliary or confirmatory nature, the Court is of the view that the contemporaneous French maps invoked by Equatorial Guinea are consistent with the contention that France understood Mbanié/Mbañe to be part of Spanish colonial territory (see *Kasikili/Sedudu Island (Botswana/Namibia), Judgment, I.C.J. Reports 1999 (II)*, p. 1098, para. 84; *Frontier Dispute (Burkina Faso/Republic of Mali), Judgment, I.C.J. Reports 1986*, p. 582, para. 54).

193. With regard to the 1900 Convention, the Court recalls that under Article VII, France had the right of first refusal if Spain wished to cede "the Island of Corisco". In the Court's view, this provision reflects France's recognition of Spain's title to Corisco Island. However, the Convention does not mention the "dependencies" of Corisco Island or identify Mbanié/Mbañe, Cocotiers/Cocoteros and Conga by name. While Equatorial Guinea accepts that the Convention is not a source of legal title for the three islands in question, it argues that it nevertheless confirmed France's recognition of Spain's pre-existing title to Corisco Island, and by extension to its dependencies (see paragraph 164 above). Absent sufficient evidence, the Court has refrained from concluding that sovereignty over an island extends to other maritime features in the vicinity (see *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore), Judgment, I.C.J. Reports 2008*, p. 99, para. 289; *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Judgment, I.C.J. Reports 2012 (II)*, p. 649, para. 53). In the present case, however, the evidence from the period before 1900 supports the conclusion that the three islands were considered by France and Spain to be "dependencies" of Corisco Island (see paragraph 189 above). In view of the above, the Court considers that the 1900 Convention is in line with Spain's claim over Mbanié/Mbañe, Cocotiers/Cocoteros and Conga.

194. After the conclusion of the 1900 Convention, it appears that Spain continued to exercise authority over Mbanié/Mbañe, Cocotiers/Cocoteros and Conga without protest from France. For example, in 1908, the Governor-General of Spanish Guinea ordered the Deputy Governor to increase Spanish presence on Mbanié/Mbañe by sending military officials, raising the Spanish flag on the island and building houses to support habitation (Letter from the Minister of State of the Kingdom of Spain, 18 May 1908). There is no evidence before the Court that France challenged this exercise of authority by Spain.

195. Equatorial Guinea attaches significance to an incident which took place on Cocotiers/Cocoteros in 1955 involving the installation of a beacon (see paragraphs 166-167 and 178). The Court recalls in this regard that "[t]he construction of navigational aids . . . can be legally relevant in the case of very small islands" (*Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar* v. *Bahrain), Merits, Judgment, I.C.J. Reports 2001*, p. 100, para. 197). While the Parties' accounts of this incident are contradictory, the Court considers that internal statements made by French officials in the aftermath of the incident confirm that France considered Cocotiers/Cocoteros to be under Spanish authority. In a letter sent by the French Minister for Foreign Affairs to the Minister for Overseas France, dated 6 May 1955, the Foreign Minister stated as follows:

> "[T]he 'Cocotiers' islet must be considered as following the fate of Baynia [Mbanié/Mbañe] Island, of which it is a geographical dependency . . .
>
> [O]ver the past fifty years, Baynia Island was occupied by the Spanish on several occasions, without protest or alternate occupation by us[.]
>
> [B]aynia Island is located within the six nautical mile-limit forming the boundary of Spanish territorial waters.
>
> . . . . . .
>
> Furthermore, the situation of the islet within Corisco's territorial waters places us in a disadvantageous basic legal position." (French Republic, Letter from the Minister for Foreign Affairs to the Minister of Overseas France, 6 May 1955.)

The following month, the Head of the Subdivision of Maritime Beaconing for French Equatorial Africa issued a formal Notice to Mariners, stating that "[a]s Spanish sovereignty over Cocotiers Island has been recognized by the French High Officials, the Cocotiers beacon located in Spanish territory is Spanish" (French Subdivision of Maritime Beaconing, Bulletin to Advise Sailors, 4 July 1955).

The next year, the French Head of the Lighthouses and Beacons Service wrote to the Director General of Public Works of French Equatorial Africa, stating that

> "[f]ollowing a minor dispute with the Spanish authorities, Spanish sovereignty over the islet of Baynie [Mbanié/Mbañe] and the islet of Cocotiers had to be recognized.
>
> The Spanish authorized the completion, by the French authorities, of the construction of the beacon at the islet of Cocotiers as well as the placement, by these same authorities, of a light at the top of the beacon, on condition that the expenses incurred for this work would be reimbursed by the Spanish sovereign nation." (Letter from the Head of the Lighthouses and Beacons Service to the Director General of Public Works of French Equatorial Africa, 26 January 1956.)

196. The Court observes that, after Gabon achieved independence in 1960, it continued to recognize Spain's title to Mbanié/Mbañe, Cocotiers/Cocoteros and Conga. In 1962, Gabon concluded with Spain a Maritime Protocol recognizing Spain's authority to maintain maritime signals in Corisco Bay, including the beacon on Cocotiers/Cocoteros. Under this Protocol, Gabon

was not permitted to conduct work on Cocotiers/Cocoteros or in the surrounding waters without Spain's authorization (Implementation Protocol in Compliance with the Maritime Signal Organization for the Buoyage and Signaling of Corisco Bay and the Muni River, 23 May 1962).

197. The Court recalls that it has previously had regard to evidence of post-independence *effectivités* when it has considered that they afforded indications in respect of the boundary established on the basis of the *uti possidetis* principle (*Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening), Judgment, I.C.J. Reports 1992*, pp. 398-399, para. 62; *Frontier Dispute (Benin/Niger), Judgment, I.C.J. Reports 2005*, pp. 109-110, para. 27; *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras), Judgment, I.C.J. Reports 2007 (II)*, pp. 713-722, paras. 176-208, p. 727, para. 229). In the present case, which concerns the identification of legal titles, the Court observes that the conduct of the Parties indicates that Equatorial Guinea maintained control over the three islands after it achieved independence in 1968. For example, in 1970, Equatorial Guinea issued a decree establishing "the limits of the territorial waters . . . surrounding the Elobey Islands, Corisco and the Mbañe, Conga and Cocotero[s] Islets, which are an integral part of the national territory of Guinea". Equatorial Guinea sent this decree to the Secretary-General of the United Nations, and the United Nations circulated the communication to all Member States, including Gabon. There is no evidence before the Court that Gabon presented any objection.

198. In light of the foregoing, the Court concludes that, when Equatorial Guinea achieved independence on 12 October 1968, Spain, as a colonial Power, held title to Mbanié/Mbañe, Cocotiers/Cocoteros and Conga based on an intentional display of authority that was continuous and uncontested. Having reached this conclusion, the Court does not deem it necessary to address the other arguments put forward by Equatorial Guinea.

199. Accordingly, of the legal titles invoked by the Parties, the title that has the force of law in the relations between them in so far as it concerns sovereignty over these islands is the title which was held by Spain on 12 October 1968, to which Equatorial Guinea succeeded when it achieved independence.

VI. THE LEGAL TITLES, TREATIES AND INTERNATIONAL CONVENTIONS INVOKED BY THE PARTIES CONCERNING THE DELIMITATION OF THEIR COMMON MARITIME BOUNDARY

200. The Court will now examine the legal titles, treaties and international conventions invoked by the Parties concerning the delimitation of their common maritime boundary.

* *

201. Equatorial Guinea submits that the legal titles, treaties and international conventions that have the force of law in the relations between the Parties in so far as they concern the delimitation of their common maritime boundary are:

"1. the 1900 Convention in so far as it established the terminus of the land boundary in Corisco Bay;

2. the United Nations Convention on the Law of the Sea signed on 10 December 1982 at Montego Bay, and

3. customary international law in so far as it establishes that a State's title and entitlement to adjacent maritime areas derives from its title to land territory." (Final submissions of Equatorial Guinea, paragraph V; see paragraph 13 above.)

202. With respect to the 1900 Convention, Equatorial Guinea argues that, in so far as it establishes the land boundary terminus, it is an essential legal instrument in the delimitation of the Parties' maritime boundary and falls squarely within the category of legal titles covered by Article 1 of the Special Agreement. According to Equatorial Guinea, it is impossible to determine the Parties' maritime boundary without referring to the land boundary terminus.

203. Regarding UNCLOS, Equatorial Guinea submits that it falls within the scope of Article 1 of the Special Agreement because it is one of the legal titles, treaties and international conventions that have the force of law between the Parties in so far as they concern the delimitation of the common maritime boundary. In particular, Equatorial Guinea emphasizes that the Court's task is not limited to determining legal titles but also treaties and international conventions concerning maritime delimitation. In its view, UNCLOS is an international convention with the force of law that "concern[s]" the Parties' maritime boundary delimitation, even though it does not itself effect the delimitation.

204. Finally, Equatorial Guinea relies on the principle established under customary international law that the land dominates the sea through the projection of the coasts or the coastal fronts. Equatorial Guinea submits that one of the legal titles, treaties and international conventions that have the force of law between the Parties in so far as they concern the delimitation of their common maritime boundary is "customary international law in so far as it establishes that a coastal State's entitlement to adjacent maritime areas derives from its title to land territory". In the course of the oral proceedings, Equatorial Guinea clarified that it does not invoke customary international law as the legal title to adjacent maritime areas but rather argues that a State's title to adjacent maritime areas "is based on" the principle that the land dominates the sea. Equatorial Guinea stresses that customary international law "concern[s]" the delimitation of the Parties' maritime boundary and that it thus falls within Article 1 of the Special Agreement.

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205. Gabon, for its part, invokes the "Bata Convention" as the only legal title having the force of law in the relations between the Parties in so far as it concerns the delimitation of their common maritime boundary (final submissions of Gabon, paragraph *(a)* (iii); see paragraph 13 above).

206. Gabon contends, in the alternative, that none of the alleged legal titles invoked by Equatorial Guinea constitute legal titles in so far as they concern the Parties' common maritime boundary. As for the 1900 Convention, Gabon maintains that it is completely silent with regard to both the course and the direction of the maritime boundary. While Gabon accepts that the 1900

Convention is relevant for maritime delimitation in that it fixes, in principle, the starting-point of the maritime boundary, it insists that such relevance does not make it a title for the purposes of maritime delimitation beyond that point.

207. With respect to UNCLOS, Gabon accepts that it has the force of law between the Parties and that it should be taken into account in the context of negotiations between them on the delimitation of their maritime boundary. However, in Gabon's view, UNCLOS generates only an entitlement and is not a legal title in the sense envisaged by the Special Agreement. Gabon explains that while UNCLOS lays down general rules on maritime delimitation, only the implementation of these rules in a particular instance constitutes a legal title.

208. As regards customary international law, while Gabon admits that the principle that the land dominates the sea is relevant for maritime delimitation and is regularly used in international jurisprudence to establish a maritime boundary, it maintains that customary international law is by no means a legal title and does not fall within Article 1 of the Special Agreement.

* *

209. The Court has already concluded that the "Bata Convention" invoked by Gabon does not constitute a legal title within the meaning of Article 1 of the Special Agreement (see paragraph 98 above). Therefore, the Court will only examine the legal titles, treaties and international conventions invoked by Equatorial Guinea.

210. Equatorial Guinea first invokes the 1900 Convention. The Court notes that under the Special Agreement, it is asked to identify legal titles "in so far as they concern the delimitation of [the Parties'] common maritime . . . boundaries". In the Court's view, such titles need not be dispositive of the maritime delimitation. Article IV of the 1900 Convention determined the land boundary terminus, which serves as "the starting-point of the maritime boundary" (see *Maritime Delimitation in the Indian Ocean (Somalia* v. *Kenya), Judgment, I.C.J. Reports 2021*, p. 240, para. 98). The 1900 Convention is a source of the Parties' rights to adjacent maritime areas in so far as it established the land boundary terminus from which the maritime boundary starts. Accordingly, the Court concludes that the 1900 Convention constitutes a legal title within the meaning of Article 1 of the Special Agreement to the extent that it established the terminus of the land boundary.

211. Equatorial Guinea then invokes UNCLOS. Both Equatorial Guinea and Gabon are parties to UNCLOS. Equatorial Guinea deposited its instrument of ratification on 21 July 1997 and Gabon on 11 March 1998. The Court observes that UNCLOS is an international convention that provides a legal framework for the delimitation of the Parties' common maritime boundary. It is relevant to the delimitation of the Parties' maritime boundary and can play an important role therein. Maritime boundaries may be established by agreement or through adjudication in accordance with the rules

laid down by UNCLOS. Although UNCLOS may "concern" the delimitation of the Parties' common maritime boundary, it is not itself the source of a right to specific maritime areas. Thus, in the view of the Court, UNCLOS does not constitute a legal title within the meaning of Article 1 of the Special Agreement. However, it is an international convention which has the force of law in the relations between the Parties within the meaning of that Article.

212. Equatorial Guinea, lastly, invokes customary international law in so far as it establishes that a State's entitlement to adjacent maritime areas derives from its title to land territory. It is well established that "[t]he title of a State to the continental shelf and to the exclusive economic zone is based on the principle that the land dominates the sea through the projection of the coasts or the coastal fronts" (*Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Judgment, I.C.J. Reports 2012 (II)*, p. 674, para. 140). However, the principle that the land dominates the sea does not automatically assign coastal States rights to specific maritime areas. While the principle may "concern" the delimitation of the Parties' common maritime boundary, it is not itself the source of a right to specific maritime areas. In the Court's view, through Article 1 of the Special Agreement, the Parties intended to request the Court to determine whether the legal titles invoked by the Parties have the force of law in the relations between them in so far as they concern the delimitation of their common maritime boundaries. In light of the foregoing, the Court concludes that customary international law, in so far as it establishes that a State's entitlement to adjacent maritime areas derives from its title to land territory, does not constitute a legal title within the meaning of Article 1 of the Special Agreement.

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213. For these reasons,

THE COURT,

(1) By fourteen votes to one,

Finds that the document entitled "Convention delimiting the land and maritime frontiers of Equatorial Guinea and Gabon" ("Bata Convention") invoked by the Gabonese Republic is not a treaty having the force of law in the relations between the Gabonese Republic and the Republic of Equatorial Guinea and does not constitute a legal title within the meaning of Article 1, paragraph 1, of the Special Agreement;

IN FAVOUR: *Vice-President* Sebutinde, *Acting President*; *President* Iwasawa; *Judges* Tomka, Abraham, Yusuf, Xue, Nolte, Charlesworth, Brant, Gómez Robledo, Cleveland, Aurescu, Tladi; *Judge* ad hoc Wolfrum;

AGAINST: *Judge* ad hoc Pinto;

(2) Unanimously,

Finds that the legal titles invoked by the Gabonese Republic and the Republic of Equatorial Guinea that have the force of law in the relations between them in so far as they concern the delimitation of their common land boundary are the titles held on 17 August 1960 by the French Republic and on 12 October 1968 by the Kingdom of Spain on the basis of the Special Convention on the delimitation of French and Spanish possessions in West Africa, on the coasts of the Sahara and the Gulf of Guinea, signed in Paris on 27 June 1900, to which titles the Gabonese Republic and the Republic of Equatorial Guinea respectively succeeded;

(3) By thirteen votes to two,

Finds that, of the legal titles invoked by the Gabonese Republic and the Republic of Equatorial Guinea, the title that has the force of law in the relations between them in so far as it concerns sovereignty over the islands of Mbanié/Mbañe, Cocotiers/Cocoteros and Conga is the title held by the Kingdom of Spain on 12 October 1968, to which the Republic of Equatorial Guinea succeeded;

IN FAVOUR: *Vice-President* Sebutinde, *Acting President*; *President* Iwasawa; *Judges* Tomka, Abraham, Yusuf, Nolte, Charlesworth, Brant, Gómez Robledo, Cleveland, Aurescu, Tladi; *Judge* ad hoc Wolfrum;

AGAINST: *Judge* Xue; *Judge* ad hoc Pinto;

(4) Unanimously,

Finds that the Special Convention on the delimitation of French and Spanish possessions in West Africa, on the coasts of the Sahara and the Gulf of Guinea, signed in Paris on 27 June 1900, constitutes a legal title within the meaning of Article 1, paragraph 1, of the Special Agreement to the extent that it has established the terminus of the land boundary between the Gabonese Republic and the Republic of Equatorial Guinea, which shall be the starting-point of the maritime boundary delimiting their respective maritime areas;

(5) Unanimously,

Finds that the 1982 United Nations Convention on the Law of the Sea is an international convention that has the force of law in the relations between the Gabonese Republic and the Republic of Equatorial Guinea, within the meaning of Article 1, paragraph 1, of the Special Agreement, in so far as that Convention concerns the delimitation of their maritime boundary.

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

(Signed) Julia SEBUTINDE,
Vice-President.

(Signed) Philippe GAUTIER,
Registrar.

Judge YUSUF appends a separate opinion to the Judgment of the Court; Judges XUE and AURESCU append declarations to the Judgment of the Court; Judge TLADI appends a separate opinion to the Judgment of the Court; Judge *ad hoc* WOLFRUM appends a declaration to the Judgment of the Court; Judge *ad hoc* PINTO appends a dissenting opinion to the Judgment of the Court.

(Initialled) J.S.

(Initialled) Ph.G.

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