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Summary
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Land and Maritime Delimitation and Sovereignty over Islands (Gabon/Equatorial Guinea)

Summary of the Judgment of 19 May 2025

The Court recalls that on 5 March 2021, Equatorial Guinea notified to the Court a Special Agreement signed in Marrakesh on 15 November 2016, by which Gabon and 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".

Article 1 of the Special Agreement reads 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."

As regards the geographical situation of Gabon and Equatorial Guinea, the Court notes that both States are 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.

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. 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. 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. 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.

The Court next describes the historical context of the dispute between the two Parties before and after they each gained independence, on 17 August 1960 for Gabon and on 12 October 1968 for Equatorial Guinea.

I. THE TASK OF THE COURT UNDER THE SPECIAL AGREEMENT (PARAS. 29-46)

In clarifying the task entrusted to it by the Special Agreement, the Court observes that the Parties are in agreement on several points regarding the interpretation of that instrument. The Court has not been asked therein to delimit the land and maritime boundary or determine sovereignty over the islands of Mbanié/Mbañe, Cocotiers/Cocoteros and Conga, 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 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") as applicable to their dispute. 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.

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 three islands. 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. Accordingly, the term "legal titles" possesses a distinct meaning that is not limited to "treaties and international conventions".

The Court then notes that the Parties disagree on what is comprised within the term "legal titles". While the Court has determined that "legal titles" may not be limited to "treaties and international conventions", the meaning to be ascribed to the expression "treaties and international conventions" in the context of Article 1 of the Special Agreement remains to be determined.

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 has had occasion to deal with the concept of legal title in its jurisprudence. 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". In the *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)* case, the Chamber of the Court 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. 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.

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.

When 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 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.

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. As further discussed below, Equatorial Guinea relies on *effectivités* to "confirm" the existence of a right derived from a legal title. 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 of whether *effectivités* and the principle of *uti possidetis juris* constitute "legal titles" within the meaning of the Special Agreement.

II. THE "BATA CONVENTION" (PARAS. 47-98)

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.

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.

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*.

The existence and authenticity of the "Bata Convention" have been the subject of debate between the Parties. 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. What is decisive, according to 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.

The Court recalls that under the customary international law of treaties, an international agreement concluded between States in written form and governed by international law constitutes a treaty. 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. 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.

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 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. This is true of the preamble, which indicates that the aim of the "Bata Convention" is to settle the Parties' dispute by "definitively establishing their common land and maritime boundaries", and of Articles 2 (cession of territory), 3 (recognition of sovereignty over territory) and 4 (course of the maritime boundary) of the "convention". These are elements which offer indications that the Parties may have intended to be legally bound by the "convention". At the same time, the Court takes note of certain features — in particular Article 7 of the "Bata Convention" and the *nota bene* clause — 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.

The Court then turns 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 "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". 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".

The Court notes that the Parties have referred extensively to diplomatic correspondence of French and Spanish authorities subsequent to the signing of the "Bata Convention". In its view, 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.

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.

The Court then considers 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". In the opinion of the Court, that conduct provides compelling indications that the Parties did not conceive the "Bata Convention" as a treaty with the force of law. The Court examines three main aspects of this conduct.

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.

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 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.

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. This is true, for example, of the protest 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.

The Court considers that 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.

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.

III. THE LEGAL TITLES, TREATIES AND INTERNATIONAL CONVENTIONS INVOKED BY THE PARTIES CONCERNING THE DELIMITATION OF THEIR COMMON LAND BOUNDARY (PARAS. 99-157)

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

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.

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".

The Court recalls that a State can succeed to the title to territory held by its predecessor State. The Parties 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 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 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.

Article VIII[1] and Appendix No. 1[2] of the 1900 Convention set forth the procedures for modification of the boundary described in Article IV.

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. 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.

The Court therefore examines 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.

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[1] Article VIII of the 1900 Convention 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".

[2] Appendix No. 1 of the 1900 Convention 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."

A. Utamboni River area

With regard to the Utamboni River area, the Parties disagree as to whether the proposal made by the 1901 Commission was formally approved by Spain and France. In the Court's view, the exchanges between Spain and France in the period from 1905 to 1907 indicate that this was not the case. The Court observes an apparent absence of governmental approval over the following five decades. Two Notes issued by French colonial authorities on 15 and 16 September 1952 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.

The Court turns 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 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. Yet the documents put on the record in these proceedings point 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. Furthermore, internal documents of the French Government confirm that France did not approve the proposal of the 1901 Commission. Hence 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". Similarly, in 1953, the French National Geographical Institute characterized Spain's presence at the bend in the Utamboni River as an ostensible occupation and a flagrant violation of the 1900 Convention. 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.

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]". The Court considers, however, that while Gabon and Spain negotiated an agreement to regulate border relations, such an agreement never entered into force.

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

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. 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 this area, the core of the Parties' disagreement is whether the exchange of notes concluded between the respective Governors-General of Spain and France (the "1919 Governors' Agreement") had the effect of modifying the boundary described in Article IV of the 1900 Convention. That Agreement designated the Kie River as the "provisional" boundary between the two Powers' colonial territories.

The Court recalls that its task is 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.

The Court notes that the 1919 Governors' Agreement 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".

The Court observes that, according to Equatorial Guinea, Spain and France continued to apply the 1919 Governors' Agreement in the Kie River area and 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, while Spain carried out acts of administration in localities on the west side of the Kie River, 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. 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.

The Court notes that 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. It observes in this regard that 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.

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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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.

IV. THE LEGAL TITLES, TREATIES AND INTERNATIONAL CONVENTIONS INVOKED BY THE PARTIES CONCERNING SOVEREIGNTY OVER MBANIÉ/MBAÑE, COCOTIERS/COCOTEROS AND CONGA (PARAS. 158-199)

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

The Court observes that the Parties agree that the three islands 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. Consequently, the Court considers that the same legal title applies to them.

Having already concluded that the title invoked by Gabon — the "Bata Convention" — does not constitute a legal title within the meaning of Article 1 of the Special Agreement, the Court only examines whether the title invoked by Equatorial Guinea, namely "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", constitutes a legal title concerning sovereignty over the three islands.

The Court first examines the treaties invoked by Equatorial Guinea in support of its claim that Spain, as a colonial Power, held title to the three islands when Equatorial Guinea achieved independence on 12 October 1968. It notes in this regard that the 1778 Treaty of El Pardo, by which Portugal ceded its colonial territory in the Gulf of Guinea to Spain, refers neither to Corisco nor to Mbanié/Mbañe, Cocotiers/Cocoteros and Conga and that it cannot therefore be regarded as the source of Spain's title to the three islands. The Court further notes that the Parties agree that the 1900 Convention is not a source of legal title for the three islands.

The Court observes that, 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. The Court therefore examines whether there was an intentional display of authority by Spain over the three islands that was continuous and uncontested.

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, the 1846 Record of Annexation and the 1846 Charter of Spanish Citizenship. 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. Therefore, to determine whether these acts by Spain constitute a display of authority over the maritime features in question, the Court must ascertain whether the three islands were considered by Spain and France to be "dependencies" of Corisco Island.

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. 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. The Court therefore 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 the three islands constitute a single unit and that France shared this view. For these reasons, the Court considers that these features were considered by Spain and France to be "dependencies" of Corisco Island. The discussions held by the Franco-Spanish Mixed Commission between 1886 and 1891 and contemporaneous French maps further confirm that France understood Mbanié/Mbañe to be part of Spanish colonial territory.

The Court recalls that under Article VII of the 1900 Convention, 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. Absent sufficient evidence, the Court has refrained in its jurisprudence from concluding that sovereignty over an island extends to other maritime features in the vicinity. 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. 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.

The Court notes that, after the conclusion of the 1900 Convention, Spain continued to exercise authority over the three islands without protest from France.

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.

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. 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.

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. 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.

V. THE LEGAL TITLES, TREATIES AND INTERNATIONAL CONVENTIONS INVOKED BY THE PARTIES CONCERNING THE DELIMITATION OF THEIR COMMON MARITIME BOUNDARY (PARAS. 200-212)

The Court next examines the legal titles, treaties and international conventions invoked by the Parties concerning the delimitation of their common maritime boundary. Having 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, the Court therefore examines only the legal titles, treaties and international conventions invoked by Equatorial Guinea.

The Court is of the view that the 1900 Convention constitutes a legal title within the meaning of Article 1 of the Special Agreement to the extent that Article IV of that Convention established the land boundary terminus, which serves as "the starting-point of the maritime boundary".

The Court considers, on the contrary, that 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 and thus does not constitute a legal title within the meaning of Article 1 of the Special Agreement.

Finally, although the customary law principle that the land dominates the sea through the projection of the coasts or the coastal fronts may "concern" the delimitation of the Parties' common maritime boundary, it is not itself the source of a right to specific maritime areas. Yet through

Article 1 of the Special Agreement, the Parties have requested 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. 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.

VI. OPERATIVE CLAUSE (PARA. 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.

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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[3].

[3] The summaries of opinions and declarations are annexed in the language available.

Separate opinion of Judge Yusuf

1. Judge Yusuf agrees with the findings of the Court and has voted for the operative paragraphs of the Judgment. However, he disagrees with the outdated terminology and colonial concepts that the Court continues to use with respect to intra-African territorial and maritime delimitations. In his view, it is high time that the Court set aside the use of colonial law, colonial terminologies and the legal concepts and rules attaining to it which were elaborated in the nineteenth century under the Public Law of Europe (*Jus Publicum Europaeum*).

2. Judge Yusuf first examines the use in the case law of the Court, and sometimes by the African States themselves and their counsel, of colonial-inspired or devised terminologies as well as notions and principles of colonial law, or the nineteenth-century Public Law of Europe which mainstreamed such notions and principles. He reviews the persistent recourse to colonial language and colonial concepts in the jurisprudence of the Court, particularly in cases concerning intra-African maritime and territorial delimitations. For Judge Yusuf, such persistent recourse implies a legitimation and rehabilitation of colonial law and doctrines and legal concepts devised by European Powers for the colonization of African countries in the nineteenth century and should be avoided by the Court. According to Judge Yusuf, the Court is not alone in perpetuating the application of the outdated notions of colonial law and the obsolete principles of the *Jus Publicum Europaeum* in the adjudication of African delimitation disputes. These doctrines and principles are also sometimes invoked by African States themselves while appearing before the Court, including the Parties in the present case.

3. In the instant case, Judge Yusuf disagrees with the reasoning of the Court whereby recourse is made to acquisitive prescription and the continued display of authority by a colonial Power "*à titre de souverain*" in an occupied African territory. For Judge Yusuf, the Judgment's insistence on the doctrine of continuous display of authority in a colonial territory "*à titre de souverain*" does not fit the framework of Article 1 of the Special Agreement, nor does it respond to the request of the Parties, which concerns titles but not modes of acquisition of territory. The Judgment could have relied solely on the 1900 Convention and avoided the "*continuum juris*, a legal relay" between colonial law and international law, which he finds inappropriate more than sixty years after the outlawing of colonialism by the United Nations.

Declaration of Judge Xue

1. Judge Xue, in her individual opinion, gives some general observations on the Judgment and explains her vote on the decision concerning the title over the islands of Mbanié/Mbañe, Cocotiers/Cocoteros and Conga.

2. Judge Xue notes that the jurisdiction of the Court in the present case is limited by the terms of Article 1 of the Special Agreement. By virtue of its mandate, the Court is only requested to determine the validity of the "legal titles" invoked by the Parties and not to delimit the land and maritime boundaries. Moreover, she points out that, as the case concerns State succession in relation to decolonization, the issue of whether *effectivités* and the principle of *uti possidetis juris* constitute legal titles within the meaning of the Special Agreement naturally presents itself. However, as Equatorial Guinea does not claim legal titles on those grounds in its final submissions, the Court decided not to take up that issue. Consequently, the scope of the Court's jurisdiction is largely restricted.

3. Judge Xue states that the validity of the "Bata Convention" is an essential issue in the present case; should it constitute a legally binding instrument in the relations between Equatorial Guinea and Gabon, the "Bata Convention" would apply to largely settle the dispute. She agrees with the Court's finding that Gabon's evidence may arguably prove the existence and authenticity of the document but, given its terms and the subsequent conduct of the Parties, it is apparent that the document did not take legal effect and, therefore, it cannot confer any legal title on the Parties. In her view, the "Bata Convention" may be perceived as an unsuccessful attempt on the part of the two nascent States to resolve their boundary dispute through negotiations after their achievement of independence. That failure, regrettably, rendered the Parties falling back on the colonial boundary treaty concluded between Spain and France during the colonial times, namely 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 (hereinafter the "1900 Convention").

4. Judge Xue states that, from the outset, the two colonial Powers were fully conscious that the demarcation lines as drawn on the maps attached to the 1900 Convention were not a "correct representation" of the boundary; they primarily served to divide the colonial "possessions" of the two Powers in that part of Africa. Therefore, the Convention reserved the possibility of amendments proposed by the Franco-Spanish Delimitation Commission. The two colonial Powers nevertheless maintained their ultimate power to approve any corrections or changes to the boundaries.

5. Judge Xue emphasizes that, in the context of the African continent, maintenance of stability and security of the borders has always been a great challenge to the relations of African States since the date they gained independence. This is much due to the fact that colonial boundaries were often drawn up on the basis of quadrillage by the colonial Powers, without proper regard for the local circumstances — including natural, ethnic, economic and social conditions. They are inherently embedded with potential conflicts. Recognizing that "border problems constitute a grave and permanent factor of dissention" for the nascent African States, Member States of the Organization of African Unity accepted the principle of intangibility of frontiers inherited from colonization as a legal basis for the settlement of frontier disputes. This principle, of course, is not to legitimize the arbitrariness of colonial boundaries, but to serve an important purpose: to prevent African States from engaging in fratricidal struggles provoked by challenging the frontiers following the withdrawal of the administering Power. Therefore, the determination of the territorial status quo at the time of independence is crucial for the stability of the frontiers.

6. In the present case, Judge Xue states that, at the time of their independence, many things had happened at the borders of the two colonies since the conclusion of the 1900 Convention. First, the delimitation under the 1900 Convention did not correspond to the situation on the ground; part of the border lines had been altered in practice through local delegates of the colonial Powers and the legal titles as determined by the Court apparently cannot provide a full solution to the border dispute between the Parties. Judge Xue notes that since these changes were not formally approved by the Spanish and French authorities, as found by the Court, for the purpose of maintaining stability and security of the borders, the Parties should take into account the reality on the ground in settling their boundary dispute. The legal implications of the Court's finding on the legal titles must be understood and appreciated in the proper context of this case.

7. Judge Xue next turns to her second point, explaining her dissent on the decision in respect of the three disputed islands. In this regard, she considers that there is no doubt that Spain, during the relevant period, was the dominant power controlling the maritime route in the Gulf of Guinea. She notes that the colonial treaties concluded before 1900 referred to inhabitable islands, while the 1900 Convention did not expressly mention the three disputed islands by name, which leaves a question mark on the issue before the Court.

8. Judge Xue states that the total reliance on colonial documents for determining boundaries is prevailing in the succession process among African States. For the most part, this is perhaps inevitable because of the nature of the boundaries imposed on the former colonies, which were not regarded as a subject but an object of international law. She considers that in the third-party settlement of international disputes, including the cases before this Court, boundary treaties concluded between the former colonial Powers and their *effectivités* over the colonial territories exclusively form the legal and factual bases of the boundaries between African States. Notwithstanding its positive objective for stability and peace, such practice is not without question, in particular in respect of maritime disputes.

9. In the present case, Judge Xue considers that evidence adduced by Equatorial Guinea on Spanish control over the three disputed islands largely demonstrates the rivalry between the former colonial Powers over western Africa during the eighteenth and nineteenth centuries. It does not reveal any physical and material connection between the disputed islands and Corisco Island. In the colonial documents, including treaties concluded between different colonial Powers, at different times, the three disputed islands were not mentioned. Apparently, they were insignificant for Spanish dominance in the region at the relevant time. She notes that the disputed islands became attractive largely because of the subsequent development of the law of the sea and the discovery of maritime non-living resources. These islands, small as they are, may be used as the base points to affect the direction of the maritime boundary, possibly impacting the division of natural resources between the coastal States. She remains unconvinced that the colonial documents as well as the practice of the two colonial Powers sufficiently prove that the disputed islands constitute part of Corisco Island.

10. Judge Xue regrets that the Parties did not succeed in reaching an agreement on the sovereignty of the three disputed islands through negotiations after so many years of independence.

11. In conclusion, Judge Xue underscores that judicial settlement procedure, effective as it is, has its limitations. The Court is constrained both by the terms of the Special Agreement and by the submissions and evidence presented by the Parties. In the present Judgment, the Court has only addressed one specific question put forward by the Parties. The ultimate resolution of the boundary dispute requires further action from the Parties themselves.

Declaration of Judge Aurescu

Judge Aurescu voted in favour of all the subparagraphs of the operative part of the present Judgment. However, he emphasizes two points on which, in his view, the Court did not elaborate enough.

Existence of the "Bata Convention" has not been established

First, Judge Aurescu believes that the Court should have been clearer and consistent in expressing that the existence of the so-called "Bata Convention" is not certain and that, *even if it exists*, it does not constitute a legally binding instrument (a treaty). To achieve this, the Court should have reiterated at the end of its analysis on the matter that it has not been established that the "Bata Convention" exists. Moreover, the word "alleged" should have been used before referring to the *signing* or *signature* of that document. Also, there was no need to include a reference to the fact that no original of the "Bata Convention" was presented to the Court, since there is no requirement in international law to present the original of a treaty in order to prove its existence.

Particularly high threshold applies to treaty modification by conduct

Second, while Judge Aurescu agrees with the finding by the Court that Article IV of the 1900 Convention was not modified expressly or through conduct, he emphasizes that the standard for modification *by conduct* of a treaty, especially of a boundary treaty, is particularly high, since, as also confirmed by the International Law Commission in its commentary to the Draft conclusions on subsequent agreements and subsequent practice in relation to the interpretation of treaties, "the actual occurrence" of a modification of a treaty by an "agreed subsequent practice of the parties" "is not to be presumed". Even if it may be argued that in a certain case, including in the present one, the issue is not the modification of the treaty as such but the modification of the border, it can be equally argued that any modification of the border, as defined by the treaty, also represents a modification of the treaty itself. But even if one only considers the modification of the border, State borders must enjoy stability in the relations between the neighbouring States, and border modifications *by subsequent conduct* cannot be as well presumed or inferred lightly: a high standard should be required for their occurrence.

Separate opinion of Judge Tladi

While Judge Tladi has voted in favour of all paragraphs of the *dispositif*, he takes this occasion to append a separate opinion to the Judgment of the Court in order to express his concern over certain conclusions and observations made by the Court in the Judgment. In his view, these observations and conclusions exceed the Court's jurisdiction in this case, which is limited by the Special Agreement between the Parties to determining

> "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" (Special Agreement between the Gabonese Republic and the Republic of Equatorial Guinea, signed in Marrakesh on 15 November 2016, Article 1 (1)).

Judge Tladi notes that the Judgment, in paragraphs 134-157, disregards this narrowly defined jurisdiction by engaging in an assessment of various acts of *effectivités* in order to determine whether the boundary between the Parties in the Utamboni and Kie River areas has been modified. In his view, the Court ought to have limited itself to identifying the applicable legal title in respect of the land boundary area, which in this case is 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 ("1900 Convention"). By not limiting itself in this manner, the Court has effectively delimited the border between the Parties without their consent and has undermined the sovereign right of the Parties to decide the limits of their acceptance of the Court's jurisdiction.

Declaration of Judge *ad hoc* Wolfrum

Agreeing with the Judgment's ruling, reasoning and structure, Judge *ad hoc* Wolfrum submits his declaration to provide additional clarifications on three specific issues: (1) the legal status (binding nature or lack thereof) of the so-called Bata Convention; (2) the status of the United Nations Convention on the Law of the Sea (UNCLOS) under the Special Agreement; and (3) the mandate of the Court as defined by the Special Agreement.

Regarding the Bata Convention, Judge *ad hoc* Wolfrum concurs with the Judgment's approach of assessing whether the Parties' original intention was to be legally bound. He highlights that, while some features suggest it may be a treaty, the *nota bene* clause added by both Presidents — which required Article 4 (concerning maritime boundaries) to be redrafted in conformity with the

1900 Convention — casts doubt on this intention. In his view, this clause rendered the crucial Article 4 moot, meaning the Bata Convention could not fill the legal gap left by the 1900 Convention regarding maritime boundaries. Consequently, Judge *ad hoc* Wolfrum believes the modified Bata Convention lacked sufficient original legal substance concerning delimitation and sovereignty to be considered a legal title (and thus to fulfil its objective and purpose). He emphasizes that the Presidents' addition of the *nota bene* clause indicated or signalled their intention not to conclude a legally binding instrument. As a result, the Bata Convention remained in draft form due to the consent of the negotiators at Bata, rather than being terminated due to non-implementation — an interpretation the Judgment did not intend to convey. The subsequent practice of the Parties confirms these doubts.

Concerning the status of UNCLOS, Judge *ad hoc* Wolfrum clarifies that it is not identified as a legal title under the Special Agreement because UNCLOS itself does not grant title to land or specific maritime areas. Title to land is derived from customary international law, while rights to maritime zones stem from sovereignty over land (the principle "the land dominates the sea"). UNCLOS provides the framework and procedures (like negotiation or adjudication) for delimiting overlapping maritime claims equitably. He therefore agrees with the Judgment's reference to UNCLOS as a relevant international instrument binding on both Parties for delimiting their competing maritime claims.

Finally, regarding the Court's mandate, Judge *ad hoc* Wolfrum reiterates that the agreed mandate was limited to determining whether the legal titles, treaties and conventions invoked by the Parties have the force of law concerning their boundary delimitation and sovereignty over the specified islands. He notes that although the Parties' arguments sometimes exceeded this scope, the Court's reasoning and decision (*dispositif*) correctly reflected the limited mandate.

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