

12 SEPTEMBRE 2025

ORDONNANCE

**DEMANDE CONCERNANT LA RESTITUTION DE BIENS CONFISQUÉS
DANS LE CADRE DE PROCÉDURES PÉNALES**

(GUINÉE ÉQUATORIALE c. FRANCE)

**REQUEST RELATING TO THE RETURN OF PROPERTY CONFISCATED
IN CRIMINAL PROCEEDINGS**

(EQUATORIAL GUINEA v. FRANCE)

12 SEPTEMBER 2025

ORDER

TABLE OF CONTENTS

| | <i>Paragraphs</i> |
|--|-------------------|
| CHRONOLOGY OF THE PROCEDURE | 1-18 |
| I. FACTUAL BACKGROUND | 19-35 |
| II. EXAMINATION OF THE REQUEST | 36-52 |
| 1. Introduction | 36 |
| 2. Plausibility of the rights whose protection is sought | 37-52 |
| III. CONCLUSION | 53 |
| OPERATIVE CLAUSE | 55 |

INTERNATIONAL COURT OF JUSTICE

YEAR 2025

**2025
12 September
General List
No. 184**

12 September 2025

**REQUEST RELATING TO THE RETURN OF PROPERTY CONFISCATED
IN CRIMINAL PROCEEDINGS
(EQUATORIAL GUINEA *v.* FRANCE)**

REQUEST FOR THE INDICATION OF PROVISIONAL MEASURES

ORDER

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

The International Court of Justice,

Composed as above,

After deliberation,

Having regard to Articles 41 and 48 of the Statute of the Court and Articles 73, 74 and 75 of the Rules of Court,

Makes the following Order:

1. On 29 September 2022, the Republic of Equatorial Guinea (hereinafter “Equatorial Guinea”) filed in the Registry of the Court an Application instituting proceedings against the French Republic (hereinafter “France”) concerning alleged violations by the latter of obligations arising

under the United Nations Convention against Corruption adopted by the General Assembly on 31 October 2003 (hereinafter the “Convention against Corruption” or the “Convention”).

2. At the end of its Application, Equatorial Guinea

“respectfully requests the Court to adjudge and declare:

- (a) that France has violated, and continues to violate, the United Nations Convention against Corruption of 31 October 2003, by not returning to Equatorial Guinea property whose return it has requested and which constitutes the proceeds of a crime of misappropriation of public funds committed against it, including immovable property of which it was the effective and legitimate owner before its confiscation by France;
- (b) that France has violated, and continues to violate, the United Nations Convention against Corruption of 31 October 2003, by not extending to Equatorial Guinea the co-operation and assistance required for the purpose of returning to Equatorial Guinea property whose return it has requested and which constitutes the proceeds of a crime of misappropriation of public funds committed against it, including immovable property of which it was the legitimate owner before that property was expropriated as a result of the confiscation;
- (c) that France has engaged, and continues to engage, its responsibility as a result of that violation;
- (d) that France must, by means of its own choosing, return to Equatorial Guinea all property that Equatorial Guinea has requested to be returned to it.”

3. In its Application, Equatorial Guinea seeks to found the Court’s jurisdiction on Article 36, paragraph 1, of the Statute of the Court in conjunction with Article 66 of the Convention against Corruption.

4. Together with the Application, Equatorial Guinea submitted a Request for the indication of provisional measures with reference to Article 41 of the Statute and to Articles 73, 74 and 75 of the Rules of Court. By that Request, Equatorial Guinea asked the Court to indicate the following provisional measures:

- “(a) France must suspend the competitive bidding procedure in respect of the building located at 40-42 avenue Foch in Paris.
- (b) France must take all measures within its power to ensure that the building located at 40-42 avenue Foch in Paris is not offered for sale.
- (c) France must refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve.”

5. The Registrar immediately communicated to the Government of France the Application, pursuant to Article 40, paragraph 2, of the Statute of the Court, and the Request for the indication of provisional measures, pursuant to Article 73, paragraph 2, of the Rules of Court. The Registrar also notified the Secretary-General of the United Nations of the filing by Equatorial Guinea of the Application and the Request for the indication of provisional measures.

6. In addition, by a letter dated 12 October 2022, the Registrar informed all States entitled to appear before the Court of the filing of the Application and the Request for the indication of provisional measures.

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

8. By a letter dated 19 October 2022 communicated to the Registry under cover of a Note Verbale from the Embassy of Equatorial Guinea in Brussels of the same date, the Agent of Equatorial Guinea informed the Court that his Government had “decided to withdraw its Request for the indication of provisional measures in order to focus on the proceedings on the merits”. Accordingly, the President of the Court, by an Order dated 21 October 2022, placed on record the withdrawal by Equatorial Guinea of its Request for the indication of provisional measures.

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

10. By an Order of 15 December 2022, the Court fixed 17 July 2023 and 19 February 2024 as the respective time-limits for the filing of a Memorial by Equatorial Guinea and a Counter-Memorial by France. The Memorial and Counter-Memorial were duly filed by the Parties within the time-limits thus fixed.

11. By an Order of 28 May 2024, the President of the Court fixed 28 March 2025 and 28 January 2026 as the respective time-limits for the filing of the Reply of Equatorial Guinea and the Rejoinder of France. At the request of Equatorial Guinea, those time-limits were extended to 28 July 2025 and 28 May 2026, respectively, by an Order of the Court dated 27 February 2025. The Reply of Equatorial Guinea was duly filed within the time-limit thus extended.

12. On 3 July 2025, Equatorial Guinea, referring to Article 41 of the Statute and Articles 73, 74 and 75 of the Rules of Court, filed a new Request for the indication of provisional measures “in order to preserve its rights under the [Convention against Corruption]”, and particularly its right to the return of the building located at 42 avenue Foch.

13. At the end of its Request, Equatorial Guinea asked the Court to indicate the following provisional measures:

- “(a) France must take all necessary measures to ensure that the building is not offered for sale;
- (b) France must ensure that Equatorial Guinea has immediate, full and unimpeded access to the entire building;

- (c) France must refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve.”

14. The Registrar immediately communicated the Request for the indication of provisional measures to the Government of France, in accordance with Article 73, paragraph 2, of the Rules of Court.

15. By letters dated 4 July 2025, the Registrar informed the Parties that, pursuant to Article 74, paragraph 3, of its Rules, the Court had fixed 15 July 2025 as the date for the oral proceedings on the Request for the indication of provisional measures.

16. At the public hearings, oral observations on the Request for the indication of provisional measures were presented by:

On behalf of Equatorial Guinea: HE Mr Carmelo Nvono-Ncá,
Mr Jean-Charles Tchikaya,
Mr Francisco Moro Nve Obono,
Mr Alfredo Crosato Neumann,
Sir Michael Wood.

On behalf of France: Mr Diégo Colas,
Mr Hervé Ascensio,
Mr Mathias Forteau,
Ms Maryline Grange.

17. At the end of its oral observations, Equatorial Guinea asked the Court to indicate the following provisional measures:

- “(a) France must take all necessary measures to ensure that the building is not offered for sale;
- (b) France must ensure that Equatorial Guinea has immediate, full and unimpeded access to the entire building;
- (c) France must refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve.”

18. At the end of its oral observations, France requested the Court to “reject all the requests for provisional measures made by Equatorial Guinea”.

*

* *

I. FACTUAL BACKGROUND

19. On 2 December 2008, the organization Transparency International France filed a complaint with the Paris Public Prosecutor against certain African Heads of State and members of their families in respect of allegations of misappropriation of public funds and related offences in their country of origin, the proceeds of which had allegedly been invested in France. This complaint was declared admissible by the French courts and a judicial investigation was opened in 2010 in respect of multiple offences. The investigation focused, in particular, on the methods used to finance the acquisition of movable and immovable assets in France by several individuals, including Mr Teodoro Nguema Obiang Mangue, son of the President of Equatorial Guinea, who was at the time Minister of State for Agriculture and Forestry of Equatorial Guinea and who was subsequently appointed Second Vice-President and then Vice-President of Equatorial Guinea in charge of National Defence and State Security.

20. The judicial investigation opened in France in 2010 concerned, more specifically, the acquisition, by Mr Teodoro Nguema Obiang Mangue, of various assets of considerable value, including a building located at 42 avenue Foch in Paris. Following searches conducted by French investigators at that location and the seizure of certain assets, the Embassy of Equatorial Guinea in Paris sent a series of Notes Verbales to the French Ministry of Foreign and European Affairs asserting that the premises at 42 avenue Foch were used for the performance of the functions of its diplomatic mission in France, and served as the official residence of Equatorial Guinea's Permanent Delegate to UNESCO. The French Ministry of Foreign and European Affairs rejected these assertions and averred, in successive Notes Verbales, that the building at 42 avenue Foch could not be regarded as part of the diplomatic mission of Equatorial Guinea.

21. On 19 July 2012, one of the investigating judges of the Paris *Tribunal de grande instance* ordered the "attachment of the building" located at 42 avenue Foch (*saisie pénale immobilière*), a protective measure provided for by the French Code of Criminal Procedure that may be taken by a judge investigating a case in order to ensure the effectiveness of any order confiscating immovable property that might be issued subsequently. The investigating judge found, in that instance, that the building located at 42 avenue Foch had been wholly or partly paid for out of the proceeds of the alleged offences under investigation and that its owner was Mr Teodoro Nguema Obiang Mangue. The decision ordering the "attachment of the building" was upheld on 13 June 2013 by the *Chambre de l'instruction* of the Paris *Cour d'appel*, before which Mr Teodoro Nguema Obiang Mangue had lodged an appeal.

22. On 13 June 2016, the Government of Equatorial Guinea instituted proceedings against France before the Court in the case concerning *Immunities and Criminal Proceedings (Equatorial Guinea v. France)* with regard to a dispute concerning "the immunity from criminal jurisdiction of . . . [Mr Teodoro Nguema Obiang Mangue], and the legal status of the building which houses the Embassy of Equatorial Guinea in France, both as premises of the diplomatic mission and as State property". In its Application, Equatorial Guinea sought to found the Court's jurisdiction, first, on Article 35 of the United Nations Convention against Transnational Organized Crime of 15 November 2000 (hereinafter the "Palermo Convention") and, second, on Article I of the Optional Protocol to the Vienna Convention on Diplomatic Relations concerning the Compulsory Settlement of Disputes of 18 April 1961 (hereinafter the "Optional Protocol to the Vienna Convention").

23. On 5 September 2016, the investigating judges of the Paris *Tribunal de grande instance* ordered the referral of Mr Teodoro Nguema Obiang Mangue for trial before the Paris *Tribunal correctionnel*.

24. Following a Request for the indication of provisional measures filed by Equatorial Guinea on 29 September 2016, this Court, by an Order of 7 December 2016, indicated the following provisional measure in the case concerning *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*:

“France shall, pending a final decision in the case, take all measures at its disposal to ensure that the premises presented as housing the diplomatic mission of Equatorial Guinea at 42 avenue Foch in Paris enjoy treatment equivalent to that required by Article 22 of the Vienna Convention on Diplomatic Relations, in order to ensure their inviolability” (*I.C.J. Reports 2016 (II)*, p. 1171, para. 99 (I)).

25. In a judgment rendered on 27 October 2017, the Paris *Tribunal correctionnel* found Mr Teodoro Nguema Obiang Mangue guilty of money laundering offences committed in France between 1997 and October 2011. The tribunal ordered, *inter alia*, the confiscation of the building at 42 avenue Foch but noted that, in view of the Court’s Order of 7 December 2016 indicating a provisional measure in the case concerning *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, this penalty could not be executed until the conclusion of those proceedings.

26. By a Judgment of 6 June 2018 on the preliminary objections raised by France in the case concerning *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, the Court found that it lacked jurisdiction on the basis of the compromissory clause in the Palermo Convention, but that it had jurisdiction on the basis of the Optional Protocol to the Vienna Convention to entertain the Application filed by Equatorial Guinea on 13 June 2016, in so far as it concerned the status of the building located at 42 avenue Foch in Paris as premises of the mission, and that that part of the Application was admissible.

27. Following an appeal by Mr Teodoro Nguema Obiang Mangue, the Paris *Cour d’appel* upheld, on 10 February 2020, both his conviction and the confiscation of the building at 42 avenue Foch. Mr Teodoro Nguema Obiang Mangue lodged a further appeal (*pourvoi en cassation*) against that judgment.

28. On 11 December 2020, this Court rendered its Judgment on the merits in the case concerning *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*. The Court found, in particular, that the building at 42 avenue Foch in Paris had never acquired the status of “premises of the mission” of Equatorial Guinea in France within the meaning of Article 1 (*i*) of the Vienna Convention on Diplomatic Relations of 18 April 1961.

29. By a judgment of 28 July 2021, the *Chambre criminelle* of the *Cour de cassation* rejected the appeal lodged by Mr Teodoro Nguema Obiang Mangue against the decision of the Paris *Cour d’appel* of 10 February 2020. Accordingly, his conviction for laundering the proceeds of misappropriation of public funds, misuse of corporate assets and breach of trust, as well as the confiscation of the building at 42 avenue Foch in Paris, became final on that date. The French authorities did not, however, take possession of the building, to which Equatorial Guinea retained “full and unimpeded access”.

30. By a judgment of 8 June 2022, the Paris *Cour d'appel* declared inadmissible a request submitted by Equatorial Guinea for the return of the building at 42 avenue Foch, considering, *inter alia*, that the requesting State had not proved its status as the prior owner of the building.

31. On 29 July 2022, the French Agency for the Management and Recovery of Seized and Confiscated Assets (hereinafter referred to by its French acronym "AGRASC") wrote to the occupants of the building at 42 avenue Foch, explaining that it was responsible for executing the decision of the Paris *Cour d'appel* of 10 February 2020 rendered final by the *Cour de cassation* on 28 July 2021 and that it was required to proceed with the sale of the property, which was therefore to be "vacated of all occupants".

32. On 29 September 2022, Equatorial Guinea instituted the present proceedings before the Court (see paragraph 1 above).

33. On 27 May 2025, AGRASC submitted an application to the President of the Paris *Tribunal judiciaire*, requesting the appointment of a court enforcement officer authorized to enter the building at 42 avenue Foch. AGRASC's application was granted by an order of 3 June 2025, whereby the Vice-President of the Paris *Tribunal judiciaire* authorized a designated court enforcement officer to "enter the premises located at 42 avenue Foch . . . with the assistance of law enforcement and a locksmith if necessary" and to

"check the names on the mailbox and make a record of the identity of all the occupants; to determine the means, origin, date and conditions of entry to the premises and, if applicable, the title on the basis of which the premises were entered; [and] to conduct an inventory of the confiscated units".

34. On the morning of 18 June 2025, the designated court enforcement officer went to the building at 42 avenue Foch, accompanied by law enforcement officials, AGRASC officials, private security personnel and locksmiths, and gained access to various areas of the premises. Based on the information provided by the court enforcement officer, AGRASC arranged for the installation later that day of new locks on the parts of the building it considered vacant.

35. On 3 July 2025, Equatorial Guinea filed the Request for the indication of provisional measures now before the Court (see paragraph 12 above).

II. EXAMINATION OF THE REQUEST

1. Introduction

36. The Court recalls that, pursuant to Article 41, paragraph 1, of its Statute, it has "the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party" pending a final decision in the case. The Court further recalls that it has identified, in its jurisprudence, conditions for the indication of provisional measures (see, for example, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, *Provisional Measures, Order of 26 January 2024*, *I.C.J. Reports 2024 (I)*, p. 3). These conditions are cumulative and provisional measures may only be indicated when each of them is met (*Embassy of Mexico in Quito (Mexico v. Ecuador)*, *Provisional Measures, Order of 23 May 2024*, *I.C.J. Reports 2024 (II)*, p. 623, para. 35).

Among these conditions is the plausibility of the rights whose protection is sought. The Court is not bound to follow any particular sequence in examining these conditions and, in the present circumstances, the Court considers it appropriate to begin with the question whether the rights whose protection is sought by Equatorial Guinea are plausible.

2. Plausibility of the rights whose protection is sought

37. The power of the Court to indicate provisional measures under Article 41 of the Statute has as its object the preservation of the rights claimed by the parties in a case, pending the final decision of the Court. It follows that the Court must be concerned to preserve, by such measures, the rights which may subsequently be adjudged by it to belong to either party. Therefore, the Court may exercise its power to indicate provisional measures only if it is satisfied that the rights asserted by the party requesting provisional measures are at least plausible. At this stage of the proceedings, however, the Court is not called upon to determine definitively whether the rights which the Applicant wishes to see protected exist (see *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, *Provisional Measures, Order of 26 January 2024, I.C.J. Reports 2024 (I)*, p. 17, paras. 35-36).

* *

38. Equatorial Guinea asserts that it has a right to the return of the building located at 42 avenue Foch, pursuant to Chapter V, and particularly Article 57, paragraph 3 (c), of the Convention against Corruption (the text of Article 57 is reproduced at paragraph 48 below). Both Equatorial Guinea and France are parties to this Convention. According to the Applicant, the Convention applies in the present case since the French courts found that the offences of misappropriation of public funds belonging to Equatorial Guinea and of laundering such misappropriated funds in France had been committed and that the building at 42 avenue Foch constitutes proceeds of those offences. The Applicant states that the above-mentioned criminal offences are covered by Articles 17 and 23 of the Convention.

39. According to Equatorial Guinea, Article 57, paragraph 1, of the Convention against Corruption obliges France to dispose of the confiscated building in accordance with paragraph 3 of the same Article. Equatorial Guinea draws a distinction between, on the one hand, subparagraphs (a) and (b) of Article 57, paragraph 3, which concern situations where confiscation has been executed “in accordance with article 55 and on the basis of a final judgement in the requesting State Party”, and, on the other hand, subparagraph (c) of that same paragraph, which concerns “all other cases”.

40. In Equatorial Guinea’s view, Article 57, paragraph 3 (c), of the Convention sets forth three possibilities for a State to dispose of confiscated assets, namely “returning confiscated property to the requesting State Party, returning such property to its prior legitimate owners or compensating the victims of the crime”, to the exclusion of any other possibility. The Applicant considers that it is a requesting State party, the prior legitimate owner of the embezzled funds and the victim of the crime, within the meaning of the aforementioned provision. According to Equatorial Guinea, an interpretation of Article 57, paragraph 3 (c), that does not require the return of confiscated property but rather affords requested State parties a “broad discretionary power” would be incompatible with the text of Article 57 and with the object and purpose of the Convention. Equatorial Guinea underscores that it is entitled to the return of the building at 42 avenue Foch, and that it is not seeking the return of the proceeds of its sale.

41. Finally, Equatorial Guinea maintains that it has a plausible right not only to the return of the building at 42 avenue Foch, but also “to France’s co-operation in relation to that return, and to France’s compliance, in that context, with the fundamental principles of sovereign equality and non-intervention in the domestic affairs of other States”. It asserts that its right to France’s co-operation and assistance is grounded in Article 51 of the Convention against Corruption and that Article 4, paragraph 1, of the Convention enshrines an obligation for States parties to respect the principles of sovereign equality and non-intervention in the domestic affairs of other States when interpreting and implementing their obligations relating to the recovery of assets, as set out in Chapter V of the Convention.

*

42. France contends that the right whose protection is sought by Equatorial Guinea is a “right to the return of the building” on the basis of Article 57, paragraph 3 (c), of the Convention, a right which the Respondent considers “plainly implausible”.

43. France does not accept that Article 57 of the Convention against Corruption applies in the circumstances of the present case. France states, in this regard, that the Applicant’s request for the return of the building at 42 avenue Foch falls outside the scope of the Convention as a whole because Equatorial Guinea has consistently denied that any criminal offence falling within the scope of that instrument has been committed by Mr Teodoro Nguema Obiang Mangue. The Respondent further contends that Equatorial Guinea’s request, more specifically, falls outside the scope of Article 57, paragraph 3, of the Convention, which applies exclusively to requests for the return of property made either within the framework of mutual legal assistance or pursuant to a request for confiscation from a requesting State under, respectively, Article 46 and Article 55 of that same instrument. In the view of France, the request presented by Equatorial Guinea fails to satisfy the applicable requirements under either of these provisions.

44. France additionally maintains that Article 57, paragraph 3 (c), of the Convention does not impose any obligation to return property, but “merely asks the requested State to ‘give priority consideration to [doing so]’”. In this regard, the Respondent notes that the return of confiscated property to a requesting State is only one of the options contemplated in Article 57, paragraph 3 (c), of the Convention, alongside returning such property to its prior legitimate owners or compensating the victims of the crime. It further states that, based on the wording of that provision, there are other options available to the requested State, in addition to the three listed therein. A requested State can thus comply with Article 57, paragraph 3 (c), of the Convention by means other than the return of the property in question.

45. France also argues that it is implausible to interpret Article 57, paragraph 3 (c), of the Convention as leaving requested States no option other than the restitution in kind of confiscated property that has been acquired abroad with misappropriated funds, which would thus, in the present instance, impose on France an obligation to return “the building as such”, as opposed to the “return of the funds or assets which enabled that property to be purchased”. France notes that, in the present case, what was misappropriated from the Treasury of Equatorial Guinea is not the building at 42 avenue Foch, but the public funds which were subsequently used to purchase that building.

46. The Respondent contends that the purported “right to co-operation and assistance” asserted by Equatorial Guinea is invoked “with a view to the return of the building” and lacks any autonomous

character, and that the principles of sovereign equality and non-intervention enshrined in Article 4 of the Convention do not establish autonomous obligations.

* *

47. The Court notes that the right for which Equatorial Guinea seeks protection through the present Request is the right it allegedly possesses, under Article 57, paragraph 3 (c), of the Convention against Corruption, to the return of the building located at 42 avenue Foch in Paris. The Court recalls that the building was confiscated in accordance with a decision of the Paris *Tribunal correctionnel* of 27 October 2017, confirmed by the Paris *Cour d'appel* on 10 February 2020, and rendered final by the *Cour de cassation* on 28 July 2021.

48. The Court recalls that Article 57 of the Convention, which governs the return and disposal of confiscated assets, reads as follows:

“1. Property confiscated by a State Party pursuant to article 31 or 55 of this Convention shall be disposed of, including by return to its prior legitimate owners, pursuant to paragraph 3 of this article, by that State Party in accordance with the provisions of this Convention and its domestic law.

2. Each State Party shall adopt such legislative and other measures, in accordance with the fundamental principles of its domestic law, as may be necessary to enable its competent authorities to return confiscated property, when acting on the request made by another State Party, in accordance with this Convention, taking into account the rights of bona fide third parties.

3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:

(a) In the case of embezzlement of public funds or of laundering of embezzled public funds as referred to in articles 17 and 23 of this Convention, when confiscation was executed in accordance with article 55 and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party;

(b) In the case of proceeds of any other offence covered by this Convention, when the confiscation was executed in accordance with article 55 of this Convention and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party, when the requesting State Party reasonably establishes its prior ownership of such confiscated property to the requested State Party or when the requested State Party recognizes damage to the requesting State Party as a basis for returning the confiscated property;

(c) In all other cases, give priority consideration to returning confiscated property to the requesting State Party, returning such property to its prior legitimate owners or compensating the victims of the crime.

4. Where appropriate, unless States Parties decide otherwise, the requested State Party may deduct reasonable expenses incurred in investigations, prosecutions or judicial proceedings leading to the return or disposition of confiscated property pursuant to this article.

5. Where appropriate, States Parties may also give special consideration to concluding agreements or mutually acceptable arrangements, on a case-by-case basis, for the final disposal of confiscated property.”

49. The Court notes that Article 57, paragraph 3 (c), of the Convention provides that a requested State party “shall . . . give priority consideration” to three possibilities: (i) the return of such property to the requesting State party; (ii) the return of such property to its prior legitimate owners; or (iii) the provision of compensation to the victims of the crime. The phrase “shall . . . give priority consideration”, read in conjunction with the listing of three possibilities, suggests that the requested State party has some discretion as to the course of action ultimately adopted. The Court observes that the return of the confiscated property to the requesting State party is, as a general rule, only one of the possibilities to which the requested State party “shall . . . give priority consideration” in performing the obligation incumbent upon it under Article 57, paragraph 3 (c).

50. After closely examining the arguments of the Parties, the Court concludes that Equatorial Guinea has not demonstrated, in the course of these incidental proceedings concerning the indication of provisional measures, that it possesses a plausible right to the return of the building located at 42 avenue Foch in Paris on the basis of the provision it invokes in that respect.

51. In addition, the Court does not consider that the other provisions invoked by Equatorial Guinea, namely Article 4, paragraph 1, and Article 51 of the Convention, contain separate rights that are of such a nature as to require protection, in the circumstances of the present case, pending the final decision of the Court.

52. The Court recalls that the conditions for the indication of provisional measures identified in its jurisprudence are cumulative (see paragraph 36 above). Therefore, having found that one such condition has not been met, the Court is not required to examine whether the other conditions are satisfied (*Embassy of Mexico in Quito (Mexico v. Ecuador), Provisional Measures, Order of 23 May 2024, I.C.J. Reports 2024 (II)*, p. 623, para. 35).

III. CONCLUSION

53. The Court concludes that the circumstances, as they now present themselves to it, are not such as to require the exercise of its power under Article 41 of the Statute to indicate provisional measures.

*

* *

54. The Court reaffirms that the decision given in the present proceedings in no way prejudices the question of its jurisdiction to deal with the merits of the case or any questions relating to the

admissibility of the Application or to the merits themselves. It leaves unaffected the right of the Governments of Equatorial Guinea and France to submit arguments in respect of those questions.

*

* *

55. For these reasons,

THE COURT,

By thirteen votes to two,

Rejects the Request for the indication of provisional measures submitted by the Republic of Equatorial Guinea on 3 July 2025.

IN FAVOUR: *President* Iwasawa; *Vice-President* Sebutinde; *Judges* Tomka, Abraham, Xue, Bhandari, Nolte, Charlesworth, Brant, Gómez Robledo, Cleveland, Aurescu, Tladi;

AGAINST: *Judge* Yusuf; *Judge ad hoc* Elias.

Done in French and in English, the French text being authoritative, at the Peace Palace, The Hague, this twelfth day of September, 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 Republic of Equatorial Guinea and the Government of the French Republic, respectively.

(Signed) IWASAWA Yuji,
President.

(Signed) Philippe GAUTIER,
Registrar.

Judge TOMKA appends a declaration to the Order of the Court; Judge YUSUF appends a separate opinion to the Order of the Court; Judge NOLTE appends a declaration to the Order of the Court; Judge TLADI appends a separate opinion to the Order of the Court; Judge *ad hoc* ELIAS appends a dissenting opinion to the Order of the Court.

(Initialed) I.Y.

(Initialed) Ph.G.
