

DECLARATION OF JUDGE TOMKA

1. Although I have voted in favour of the Order of the Court, my reason for doing that is a different one than that selected by the Court. I believe that the circumstances, as they now present themselves, are not such as to require the exercise of the Court's power under Article 41 of the Statute to indicate provisional measures.

2. I do not believe that there is an immediate risk of irreparable prejudice to the rights claimed by Equatorial Guinea. As France explained, the process of auctioning of the building will require a certain amount of time. As its Agent reassured the Court, "the completion of any sale of 42 avenue Foch is far from imminent. The preparatory inspection carried out on 18 June 2025 by no means presages any such sale in the near future" (CR 2025/14, p. 55, para. 7).

3. The majority of my esteemed colleagues, however, took the view that Equatorial Guinea has not demonstrated that it possesses a plausible right to the return of the building located at 42 avenue Foch on the basis of the provision it invokes, namely Article 57, paragraph 3 (c), of the United Nations Convention against Corruption.

4. Whether Equatorial Guinea is entitled (and under what conditions) to the return of the building depends on the interpretation of the Convention, in particular its Article 57. This issue lies at the heart of the dispute between the Parties before the Court.

5. The Court reaches its decision after having "closely" examined the arguments of the Parties "in the course of these incidental proceedings", for which it allowed just a short, single round of arguments, and without having afforded any opportunity to Equatorial Guinea to respond. What happened to the principle of adversarial proceedings?

6. Although the Court attaches its usual caveat that its decision on the request for provisional measures in no way prejudices any question relating to the merits, who would really believe that there is a reasonable chance to persuade the Court of an interpretation of Article 57, paragraph 3 (c), of the Convention other than the one it has just adopted?

7. In fact, the Parties, in their written submissions on jurisdiction and the merits, have addressed in detail the question of the interpretation of Article 57 of the Convention¹. However, it appears from the text of the Order that these have not yet been addressed by the Court.

¹ Memorial of the Republic of Equatorial Guinea, 17 July 2023, pp. 45-54, paras. 3.3-3.25; Counter-Memorial of the French Republic, 19 February 2024, pp. 53-62, paras. 162-184; Reply of the Republic of Equatorial Guinea, 28 July 2025, pp. 29-57, paras. 4.1-4.85.

8. I believe that it would have been much more prudent and judicious for the Court to refrain, at the provisional measures stage, from opining on the interpretation of the Article which is central to the resolution of the merits.

(Signed) Peter TOMKA.
