

INTERNATIONAL COURT OF JUSTICE

**LAND AND MARITIME DELIMITATION AND SOVEREIGNTY
OVER ISLANDS (GABON/EQUATORIAL GUINEA)**

**REPLY OF
THE REPUBLIC OF EQUATORIAL GUINEA**

VOLUME I

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CHAPTER 1 INTRODUCTION

1.1 The Republic of Equatorial Guinea submits this Reply in accordance with the Court’s Order of 6 May 2022, which fixed the dates of 5 October 2022 for the submission of Equatorial Guinea’s Reply, and 6 March 2023 for the submission of the Gabonese Republic’s Rejoinder. The Court was seised of the present dispute on 5 March 2021, upon receipt of Equatorial Guinea’s formal notification of the “Special Agreement between the Gabonese Republic and the Republic of Equatorial Guinea concluded on 15 November 2016” (the “Special Agreement”).

1.2 The English translation of Article 1 of the Special Agreement, as provided by the Registry, reads:

“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 demarcating 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.”¹

1.3 The Parties have thus seised the Court with jurisdiction to determine the legal titles, treaties and international conventions applicable to sovereignty over three disputed islands (Mbañe, Cocoteros and Conga), as well as those that are applicable to the delimitation of their land and maritime boundaries. In the Memorial, Equatorial Guinea invoked and established the following legal titles, treaties and conventions applicable to the Parties’ sovereignty and boundary disputes:

“With respect to the land boundary,

1. by State succession, the special Convention on the delimitation of French and Spanish possessions in West Africa, on the coasts of the Sahara and the Gulf of Guinea, signed in Paris on 27 June 1900 (the “1900 Convention”), as applied by France and Spain until the independence of Gabon on 17 August 1960 and as continued to be applied by Gabon and Spain until the independence of Equatorial Guinea on 12 October 1968,
2. the legal title of the Republic of Equatorial Guinea as the successor State to Spain to all titles to territory, including territorial limits, held by Spain based on modifications to the boundary described in Article 4 of the 1900 Convention in accordance with the terms of the 1900 Convention and international law, and
3. the legal title of the Gabonese Republic as the successor State to France to all the titles to territory, including territorial limits, held by France based on modifications to the boundary described in Article 4 of the 1900 Convention in accordance with the terms of the 1900 Convention and international law;

With respect to sovereignty over the islands of Mbañe, Cocoteros and Conga, by State succession of Equatorial Guinea to Spain’s Legal Title held by Spain on 12 October 1968 over these islands.

With respect to maritime boundaries,

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

¹ *Special Agreement between the Gabonese Republic and the Republic of Equatorial Guinea* (15 November 2016) (English translation provided by the Registry on record), art. 1.

2. the United Nations Convention on the Law of the Sea signed on 10 December 1982 at Montego Bay, and customary international law, in so far as it establishes that a State's title and entitlement to maritime areas derives from its title to land territory.”²

1.4 In its Counter Memorial (“CMG”), Gabon has failed to marshal the evidence that would be needed to rebut the extensive proof Equatorial Guinea presented to establish the existence and applicability of these legal titles. Instead, Gabon invokes the alleged “Bata Convention”, a document that it presented for the first time in 2003, as the only alleged legal title upon which the Court must rule in relation to the totality of issues it has been asked to address. As Equatorial Guinea established in Chapter 7 of the Memorial, this document, which was made known to Equatorial Guinea for the first time 29 years after its purported creation, has no legal effect, and cannot be treated as a legal title, treaty or international convention that has the force of law between the two Parties, or, specifically, in relation to the delimitation of the Parties’ maritime and land boundaries or sovereignty over the islands of Mbañe, Cocoteros and Conga. To the contrary, as the evidence in the record before the Court makes clear, it represents nothing more than an effort to concoct, after the fact, a legal title to Equatorial Guinea’s islands that Gabon occupied by the illegal use of force in 1974, and over which it continues to maintain illegal possession to this day.

1.5 Following this Introduction, Chapter 2 of the Reply (“REG”) rebuts Gabon’s assertion that Article 1 of the Special Agreement limits the Court’s jurisdiction to the determination of the applicability of the single legal title as invoked by Gabon, that is, the document presented to Equatorial Guinea for the first time in 2003. The Chapter establishes that the Court’s mandate extends to the consideration of all the legal titles invoked by both Parties, including those arising under international law by operation of the principles of state succession.

² See Memorial of Equatorial Guinea (“MEG”), Vol. I, Submissions.

1.6 Chapter 3 proceeds to establish that Gabon has failed to prove that the document it presented in 2003 has any legal force, or that it offers a basis as a legal title, treaty or convention that has the force of law between the Parties concerning their boundary and territorial disputes. The Chapter shows that Gabon has presented an incomplete and distorted account of the facts, and that the evidence—including that provided by Gabon—confirms that the Parties did not conclude a treaty or other binding agreement that resolved any of their disputes on 12 September 1974. The Chapter recalls the clear and consistent evidence Equatorial Guinea presented in the Memorial, to prove that Gabon and Equatorial Guinea have never proceeded on the basis that there was such a treaty in force between them, and offers additional evidence to support the conclusion that neither Party ever referred to, or considered, the 1974 document as a final or binding agreement resolving their boundary and territorial disputes until Gabon suddenly invoked it for the first time in 2003, and Equatorial Guinea rejected it.

1.7 Chapter 4 establishes that Gabon has failed to present any evidence that contradicts the clear and abundant proof presented in the Memorial that establishes Spain's historic legal title to the islands of Mbañe, Cocoteros and Conga and Equatorial Guinea's succession to that title upon its independence in 1968. The Chapter underscores that Gabon, in its Counter Memorial, does not allege that France or Gabon ever held or claimed title to these islands before 1972, when Gabon suddenly occupied Mbañe by force. The Chapter also establishes that since at least 1843, there has never been any uncertainty, as now claimed by Gabon, with regards to Spain's and Equatorial Guinea's title to all of the islands in Corisco Bay, including Mbañe, Cocoteros and Conga.

1.8 Chapter 5 recalls that Equatorial Guinea demonstrated in its Memorial that Spain and France made use of the procedures set forth in the 1900 Convention to modify parts of the land boundary in the Utamboni River Area in the southwest and the Kie River Area in the northeast. The Chapter shows that Gabon has presented no evidence to rebut Equatorial Guinea's evidence of these agreed modifications, or the continuous sovereign occupation by Spain and Equatorial Guinea of the areas corresponding to Spain in the Utamboni River and Kie River Areas by virtue of these modifications from the early

twentieth century to the present day. The Chapter shows that even the evidence presented by Gabon confirms these Areas as falling within the legal title of Spain and then Equatorial Guinea.

1.9 Finally, Chapter 6 recalls that in its Memorial, Equatorial Guinea established that the legal titles, treaties and international conventions that have the force of law between the Parties in respect of the delimitation of their maritime boundary are those that establish their respective titles to islands and coastal land territory, as well as the 1982 United Nations Convention on the Law of the Sea (“UNCLOS”) and customary international law. The Chapter shows that Gabon’s arguments as to the supposed inapplicability of these legal titles, treaties and international conventions to the delimitation of the maritime boundary are entirely without merit.

1.10 Equatorial Guinea’s Submissions follow Chapter 6 and conclude the main text of Volume I of this Reply. The Reply also includes four volumes of Annexes. Volume II reproduces Equatorial Guinea’s Maps, Figures, Photographs and Videos referred to in Volume I, and Volumes III to V contain the exhibits supporting Equatorial Guinea’s claims.

CHAPTER 2 THE DISPUTE BEFORE THE COURT

I. THE PARTIES AGREE THAT THE SPECIAL AGREEMENT ASKS THE COURT TO DECIDE ON THE LEGAL EFFECT OF TITLES, TREATIES AND INTERNATIONAL CONVENTIONS INVOKED BY THEM

2.1 In its Memorial, Equatorial Guinea established that the Special Agreement between the Parties asks the Court to decide on the legal effect of titles, treaties and international conventions invoked by the Parties. It does so in relation to two distinct but related matters: (i) the determination of sovereignty over the islands of Mbañe, Cocoteros and Conga, and (ii) the delimitation of the Parties' land and maritime boundaries.³

2.2 Gabon's Counter-Memorial appears to accept Equatorial Guinea's position.⁴ It devotes several pages to this subject, concluding, as Equatorial Guinea does, that the Court has not been tasked with determining sovereignty over the disputed islands, or delimiting the land and maritime boundary between the Parties, but rather with "determin[ing] the applicable legal titles".⁵ Despite this agreement, Gabon suggests that Equatorial Guinea "implicitly postulates that the Court is invited to rule [on the delimitation and territorial sovereignty]"⁶ by "describing the border and territorial dispute in which the

³ MEG, Vol. I, para. 1.4. *See also ibid.*, para. 1.7 ("The Parties have seized the Court with jurisdiction to determine the Legal Titles applicable to sovereignty over the three disputed islands ... and identify the Legal Titles applicable to the delimitation of their land and maritime boundaries."). *See also*, Special Agreement between the Gabonese Republic and the Republic of Equatorial Guinea (15 November 2016) (French original on record), art. 1, para. 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.").

⁴ MEG, Vol. I, para. 5.2 ("Gabon has nothing to find fault with in this affirmation, which is a simple gloss of Article 1 of the Special Agreement.").

⁵ CMG, Vol. I, paras. 5.5-5.62 ("déterminer les titres juridiques applicables").

⁶ CMG, Vol. I, para. 5.4. ("postule implicitement que la Cour est invitée à se prononcer [sur la délimitation et souveraineté territoriale]").

two states are engaged without paying any further attention to the terms of the Special Agreement”.⁷

2.3 Equatorial Guinea makes no such “implicit postulation”. It has set out the facts in the Memorial exclusively for the purpose of establishing the legal titles, treaties and conventions that Equatorial Guinea invokes under Article 1 of the Special Agreement. Equatorial Guinea sets out these facts from 1789 to 1968, the period of Spanish colonization, because they establish the existence of the legal titles to which Equatorial Guinea succeeded to from Spain upon independence. The facts that arose after 1968 establish the continuity of these titles from Equatorial Guinea’s independence to the present day.

II. THE SPECIAL AGREEMENT DOES NOT LIMIT THE COURT’S JURISDICTION TO DECIDING ONLY WHETHER THE DOCUMENT GABON PRESENTED IN 2003 IS A LEGAL TITLE HAVING THE FORCE OF LAW BETWEEN THE PARTIES

2.4 In its Memorial Equatorial Guinea noted that the phrase “legal titles, treaties and international conventions” in Article 1, paragraph 1 of the Special Agreement, and the reference in paragraph 4 to the invocation of “other legal titles”, indicate that the Parties have agreed that the Court’s task is to determine *all* legal titles having the force of law between them that are applicable to the resolution of their territorial and boundary disputes.

2.5 Gabon appears to adopt a different approach. First, it seems to argue that the Special Agreement reflects the two States’ intent to limit the Court’s jurisdiction to deciding only whether a single instrument—the document it presented in 2003—is a legal title having the force of law between the Parties. To support this argument, Gabon limits its reading of the words “legal titles” to mean only Treaties and Conventions. As explained below, this contradicts the actual terms of the Special Agreement and is inconsistent with its object and purpose. Second, Gabon argues that, in accordance with Article 31(4) of the

⁷ *Ibid.*, para. 5.3. (“à décrire le différend frontalier et territorial qui oppose les deux États sans davantage prêter attention aux termes du Compromis”).

Vienna Convention on the Law of Treaties (“VCLT”), the Parties intended to give a special meaning to the term “legal titles”, whereby “legal titles” means “*preuves documentaires*”,⁸ such that all other titles to territory under international law would not qualify as “legal titles” under the Special Agreement.

2.6 By these arguments, which Equatorial Guinea demonstrates below to be erroneous, Gabon seeks to exclude from the Court’s jurisdiction the consideration of the legal titles, treaties and conventions invoked by Equatorial Guinea. Gabon’s position is that the Court has been tasked with determining the applicability of only *one* alleged legal title: the alleged treaty presented in 2003 and invoked before the Court by Gabon. According to Gabon, the relevant terms of the Special Agreement

“evidence the fact that the heart of the dispute rests on the applicability of the conventions or more precisely on the applicability of the Bata Convention of September 12, 1974, which Gabon considers to be applicable. As far as the Paris Convention of June 27, 1900 is concerned, the postulation of its applicability is accepted by both Parties”.⁹

As set out below, Gabon’s interpretation of the Special Agreement seeking to limit the Court’s task to merely answering one “yes” or “no” question, regarding the nature and effect, if any, of the document presented in 2003 (which it calls the “Bata Convention”), is not supported by the ordinary meaning of the terms of the Special Agreement in their context and in light of its object and purpose.

⁸ CMG, Vol. I, para. 5.69.

⁹ *Ibid.*, para. 5.30 (“mettent en évidence le fait que le cœur du différend repose sur l’applicabilité de conventions ou plus exactement sur l’applicabilité de la Convention de Bata du 12 septembre 1974, que le Gabon considère comme applicable. Pour ce qui est de la Convention de Paris du 27 juin 1900, le postulat de son applicabilité est accepté par les deux Parties”) (emphasis added, footnotes omitted).

A. GABON’S INTERPRETATION OF THE SPECIAL AGREEMENT CONTRADICTS THE TEXT OF THE PREAMBLE AND ARTICLE 1 AND DEPRIVES IT OF *EFFET UTILE*

2.7 The Parties agree that the customary rules on treaty interpretation, as reflected in Articles 31 and 32 of the VCLT, apply to the interpretation of the Special Agreement.

2.8 The preamble of the Special Agreement refers to a dispute between the Parties as defined in Article 1. That provision defines the dispute that has been presented to the Court for resolution, and the limits of the matters the Court may resolve. Specifically, the Court is called upon to determine which of the “legal titles, treaties and international conventions” invoked by each of the Parties have the force of law in the relations between them “in so far as they concern the delimitation of their common maritime and land boundaries and sovereignty over the islands of Mbanié/Mbañe, Cocotiers/Cocoteros and Conga”. The Court is not asked to resolve any sovereignty and boundary dispute. Rather, it is asked to determine the legal nature and validity of any of the titles invoked by the Parties which may be relevant for the delimitation of their common maritime and land boundaries and for determination of sovereignty over the islands.

2.9 Gabon accepts that a treaty must be interpreted in good faith in accordance with the ordinary meaning to be given to its terms, in their context and in the light of its object and purpose.¹⁰ Yet it then proceeds to ignore the ordinary meaning of the terms of the Special Agreement, rendering much of the text superfluous, and undermining the object and purpose of the Agreement.

2.10 Article 1(1) of the Special Agreement does not, as Gabon argues, limit the Court’s determination of the applicable “legal titles, treaties and Conventions” to the consideration of the single alleged title invoked by Gabon. The words “legal titles, treaties and international conventions” are, indisputably, written in the plural. On their face, these

¹⁰ See CMG, Vol. I, para. 5.7.

words thus refer to consideration of more than a single source of legal rights. For Gabon, the plural form is only intended to include the 1900 Convention, as well as the document it first presented in 2003, but, Gabon says, there is no need for the Court to decide on the applicability of the former because the Parties agree that it is applicable, leaving only the applicability of the latter for the Court to decide. In contrast, it is Equatorial Guinea's view that the use of the words "titles", "treaties" and "international conventions" in the plural demonstrates that Gabon's interpretation of the Special Agreement cannot be correct; the Court is asked to address all possible legal titles, treaties and conventions invoked by the Parties, not just the one alleged title invoked by Gabon. If it were otherwise, the Special Agreement would simply have stated that the Court shall determine whether the single alleged title invoked by Gabon is applicable, with no reference to other "legal titles, treaties and conventions". Gabon's interpretation thus renders most of the text of Article 1 superfluous contrary to the principle of *effet utile*.

2.11 Further, Gabon's argument assumes its own conclusion that in the phrase "the legal titles, treaties and international conventions invoked by the Parties", the terms "treaties" and "international conventions" are merely a "specification" of "the expression 'legal titles'".¹¹ This is obviously contrary to the text of the Special Agreement, which lists distinct sources of legal rights that the Court must assess: legal titles, in addition to treaties and international conventions. There is nothing in the text that indicates or implies that "treaties and international conventions" are intended to constitute the only sources of the "legal titles" referred to in Article 1(1). There are many possible formulations the drafters could have used to express this intention, had it been the case, but they chose not to use them. Instead, they listed distinct terms, separated by a comma and a conjunction, with no indication that the latter two terms were intended to be synonymous with, or integrated or subsumed into, the first one. Gabon's interpretation in effect rewrites the text of Article 1

¹¹ *Ibid.*, para. 5.70 ("l'expression « les titres juridiques »").

by eliminating the term “legal titles”, equating them with treaties and conventions, and thus rendering the term redundant and irrelevant.

2.12 The Court has repeatedly ruled that the interpretation of a special agreement must not render any of its provisions “devoid of purport or effect”.¹² If, as Gabon asserts, “legal titles” means only “treaties and international conventions”, the term “legal titles” would be deprived of any “purport or effect”. The drafters of the Special Agreement could have referred to “treaties and international conventions” without mentioning “legal titles”, but that is not what they chose to do. Rather, they included the latter term, which in common usage and international law has a different and broader meaning than “treaties and conventions”. It follows that Gabon cannot deprive the Court of the jurisdiction the Parties conferred on it, namely to determine the applicability of the legal titles invoked by Equatorial Guinea in the Memorial, including those that are not “treaties” or “international conventions”. Similarly, Gabon cannot read out of the Court’s jurisdictional mandate the power to determine the applicability of the treaties and conventions invoked by Equatorial Guinea other than the so-called Bata Convention (invoked by Gabon).

B. GABON’S INTERPRETATION CONTRADICTS THE PURPOSE OF THE SPECIAL AGREEMENT

2.13 Gabon’s limited and exclusionary interpretation of the text of the Special Agreement contradicts its fundamental purpose, as described by Gabon itself. In discussing the scope of the Parties’ consent to jurisdiction, Gabon makes the following statement regarding the purpose of the Special Agreement:

“[T]he judgment that the Court is requested to deliver is clearly intended to ‘affect existing legal rights or obligations of the parties, thus removing uncertainty from their legal

¹² *Corfu Channel (United Kingdom of Great Britain and Northern Ireland v. Albania)*, Merits, Judgment, I.C.J. Reports 1949, p. 24 (“It would indeed be incompatible with the generally accepted rules of interpretation to admit that a provision of this sort occurring in a special agreement should be devoid of purport or effect.”); see also *Territorial Dispute (Libyan Arab Jamahiriya/Chad)*, Judgment, I.C.J. Reports 1994, p. 25, para. 51; *Free Zones of Upper Savoy and the District of Gex*, Order of 19 August 1929, P.C.I.J. (Series A), No. 22 (1929), p. 13.

relations’ and the Parties will ‘in a position to take ... action’ to follow up on it.”¹³

2.14 Gabon further accepts that “[t]he question posed to the Court concerns ‘*legal titles*, treaties and international conventions’ that will subsequently allow the Parties to determine simultaneously the delineation of their maritime and land boundaries and the sovereignty over the three islands cited”.¹⁴ Gabon also accepts that the Court must settle the dispute between the Parties as set out in the Special Agreement (but, of course, without exceeding the mandate the Parties have consigned to it).¹⁵ Gabon further postulates that if the Court fulfils its mission, it will have “real consequences” and will be an “important step towards a solution” to the dispute between the Parties concerning the delimitation of the land and maritime boundaries and sovereignty over the three disputed islands.¹⁶

2.15 It is thus clear that Equatorial Guinea and Gabon are in agreement that the purpose of the Special Agreement is for the Court to resolve completely the Parties’ dispute regarding the applicable legal titles, treaties and international conventions “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”. This will then assist the Parties, in reliance on the Court’s judgment, to peacefully proceed to resolve their disputes regarding those issues.

¹³ CMG, Vol. I, para. 5.57 (“l’arrêt que la Cour est invitée à rendre est évidemment destiné à « affecter les droits ou obligations juridiques existants des parties, dissipant ainsi toute incertitude dans leurs relations juridiques » et les Parties seront « à même de prendre des mesures » pour y donner suite.”) (footnotes omitted).

¹⁴ CMG, Vol. I, para. 5.11 (“[L]a question posée à la Cour porte sur « les titres juridiques, traités et conventions internationales » qui permettront ultérieurement aux Parties de déterminer à la fois le tracé de leurs frontières maritime et terrestre et la souveraineté sur les trois îles citées”).

¹⁵ CMG, Vol. I, para. 5.55.

¹⁶ *Ibid.*, paras. 5.56-5.59 (“conséquences concrètes”) and (“une étape importante en vue de la solution”).

2.16 Yet, Gabon’s position that the Court’s jurisdiction is limited to the single issue of the applicability of the document presented in 2003¹⁷ contravenes this purpose. First, it would prevent the Court from completely resolving the dispute submitted to it because it would exclude any legal title, treaty or convention invoked by Equatorial Guinea except the 1900 Convention. Second, it would prevent the Court from removing “any uncertainty in their legal relationship”¹⁸ such that the Parties could then proceed to negotiate the peaceful resolution of their boundary and sovereignty disputes.

2.17 Gabon argues that settlement of these underlying disputes by the Parties in subsequent negotiations would be facilitated only if the Court limits the scope of its decision to the applicability of the 1900 Convention (which is agreed by both Parties) and the document presented in 2003 (which is invoked only by Gabon).

2.18 This is not correct. Gabon ignores the additional legal titles invoked by Equatorial Guinea, which, if determined by the Court to be applicable together with the 1900 Convention, would enable the Parties to completely resolve the question of sovereignty over the islands as well as the primary areas of dispute over the land boundary. For example, with regard to the islands of Mbañe, Cocoteros and Conga, the title to territory inherited by Equatorial Guinea from Spain by State succession, upon Equatorial Guinea’s independence, establishes that the three islands are under the sovereignty of Equatorial Guinea. If the Court finds that this title has the force of law between the Parties, the Parties will be able to apply this legal title to resolve definitively this part of their dispute. By contrast, the text of the document presented in 2003, apart from the fact that Equatorial Guinea denies that it is a source of legal title, does not even mention Cocoteros or Conga.

2.19 Similarly, the legal title to continental territory acquired by Equatorial Guinea upon its independence from Spain enables the Parties to determine the exact

¹⁷ See *ibid.*, paras. 5.61-5.62.

¹⁸ *Ibid.*, para. 5.57 (“« ... toute incertitude dans leurs relations juridiques ... »”) (footnote omitted).

location of the land boundary in the disputed areas. That title reflects the boundary described in the 1900 Convention and the agreed adjustments made by France and Spain based on Article 8 and Annex 1 of the Convention prior to the independence of Equatorial Guinea and Gabon. Based on the legal titles conferred by the Convention, as mutually adjusted, the Parties can settle their dispute over the land boundary with little need for further negotiations on the course of the boundary. The document presented by Gabon in 2003 is both incomplete and indeterminate in regard to the location of the land boundary and, in addition to its disputed legal status, offers little in the way of guidance to the Parties to facilitate resolution of their boundary dispute.

2.20 Finally, as discussed in Chapter 3 below, in addition to not being a treaty in force between the Parties, the document presented in 2003 by Gabon, by its text, indicates the existence of a continuing dispute between the Parties on the delimitation of the maritime boundary, without offering any indication as to how or where that delimitation is to be effected.

2.21 Gabon's self-serving reading of the Special Agreement to include only the initial text of the 1900 Agreement, without any of the subsequent boundary adjustments made by Spain and France pursuant to the Agreement's terms, would also arbitrarily exclude valid legal titles to land territory invoked by Equatorial Guinea in its Memorial. The Special Agreement records the agreement of the Parties on the applicability of the 1900 Convention to their land and maritime disputes, i.e., that it is a source of their legal titles. But Gabon would freeze in place the titles established by the colonial powers in 1900, and ignore the boundary (and title) adjustments that Spain and France made, and implemented, especially in the areas of the Utamboni and Kie Rivers, in the southwest and northeast, respectively. If, as the Parties agree, the 1900 Convention is a source of legal titles to land territory, then the boundary adjustments made by agreement of the colonial powers pursuant to its terms, and prior to the independence of Equatorial Guinea and Gabon, must likewise be sources of legal titles to land territory. The *effet utile* of the Special Agreement thus requires that the Court decide on the applicability of the agreed adjustments pursuant to the 1900 Convention as potential legal titles. Only by doing so can

the Court properly decide on the applicability of the 1900 Convention “in so far as [it] concerns the delimitation of their common maritime and land boundaries”.

III. THE SECOND MEANING GABON ASSERTS FOR “LEGAL TITLES” IS UNSUPPORTED BY THE JURISPRUDENCE OF THE COURT

2.22 Legal title to territory can be the result of a juridical act (“*un acte juridique*”) — e.g., a border treaty—or of a juridical fact (“*un fait juridique*”)—e.g., a State succession or acquiescence.¹⁹ It is therefore erroneous to suggest, as Gabon does on the basis of an artificial distinction between title and entitlement,²⁰ that certain juridical facts should not count as legal title. In Equatorial Guinea’s view, Gabon is wrong in dismissing, for example, State succession as a source of legal title, when this is plainly a process under international law by which titles belonging to the previous sovereign pass over to the successor State.²¹ State succession is the juridical fact by which a successor State acquires a legal title to its predecessor’s territory.

2.23 Succession is both the source of the rights of the successor State and a legal title. This is because, as noted by the Chamber in the *El Salvador/Honduras* case, the concept of legal title under international law refers to the source of a State’s rights to territory:

“[T]he ‘title’ of El Salvador or of Honduras to the areas in dispute, in the sense of the source of their rights at the international level is, as both Parties recognize, that of succession of the two States to the Spanish Crown in relation to its colonial territories; the extent of territory to which each

¹⁹ See G. Distefano, *L’ORDRE INTERNATIONAL ENTRE LEGALITE ET EFFECTIVITE: LE TITRE JURIDIQUE DANS LE CONTENTIEUX TERRITORIAL* (2001), Sections 1.4.1, 2.2. REG, Vol. V, Annex 62. See also on Title to territory deriving from a juridical act or from a juridical fact: P.M. Dupuy & Y. Kerbrat, *DROIT INTERNATIONAL PUBLIC* (2022), pp. 62-63, para. 59. REG, Vol. V, Annex 68.

²⁰ CMG, Vol. I, paras. 5.81, 9.14.

²¹ CMG, Vol. I, para. 5.79.

State succeeded being determined by the *uti possidetis juris* of 1821.”²²

2.24 The *Dictionnaire de la terminologie du droit international* similarly defines the term “*titre*” as follows: “[t]erme qui, pris dans le sens de *titre juridique*, désigne tout fait, acte ou situation qui est la cause et le fondement d’un droit”.²³ Thus “legal title” and “title” are synonyms in the lexicon of international law: they mean any source of rights to territory under international law, including, *inter alia*, State succession.

2.25 As noted by the Chamber in *El Salvador/Honduras*, title may also refer to documents that demonstrate the existence of a legal title, such as a colonial “Royal Decree attributing certain areas to [a colonial administrative unit]” inherited by the successor State.²⁴ Gabon asserts that “legal titles” in the Special Agreement means only “documents that demonstrate the existence of a legal title”. Its approach seeks to exclude from the meaning of “legal titles” the actual legal titles of the Parties under international law, including treaties and conventions as sources of the Parties’ rights under international law. Gabon has not provided any evidence or other support for the proposition that the Parties intended to give such a restricted meaning to “legal titles”. In the absence of evidence of a special meaning in the Special Agreement, Gabon seeks to sustain its position by reference to paragraph 18 of the Chamber’s Judgment in *Burkina Faso/Mali*.²⁵ However, Gabon has misconstrued that paragraph.

2.26 Paragraph 18 of that Judgment actually undermines Gabon’s narrow approach to “legal title”. In the Chamber’s own words, it felt “obliged to dispel

²² *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)*, Judgment, I.C.J. Reports 1992, 351, p. 389, para. 45.

²³ J. Crawford, *Brownlie’s Principles of Public International Law* (8th edition), p. 212, citing Basdevant, *Dictionnaire de la terminologie du droit international* (1960). REG, Vol. V, Annex 59 (“[t]erm which, taken in the sense of legal title, means any fact, act or situation which is the cause and basis of a right”).

²⁴ *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)*, Judgment, I.C.J. Reports 1992, 351, p. 42, para. 45.

²⁵ *Frontier Dispute (Burkina Faso/Republic of Mali)*, Judgment, I.C.J. Reports 1986, p. 14, para. 18.

misunderstanding” that “the term ‘legal title’ appears to denote documentary evidence alone”.²⁶ To this end, it explained that:

“It is hardly necessary to recall that this is not the only accepted meaning of the word ‘title’. Indeed, the Parties have used this word in different senses. In fact, the concept of title may also, and more generally, comprehend both any evidence which may establish the existence of a right, and the actual source of that right.”²⁷

It is clear, therefore, that the Chamber did not, as Gabon argues, define “legal title” as being limited only to documentary proof. To the contrary, it rejected that definition.

2.27 Contrary to Gabon’s argument, the Chamber in *El Salvador/Honduras* made no distinction between “legal title” and other “title” to territory. In fact, the Chamber used the terms title and legal title interchangeably, stating:

“Both Parties have invoked, in relation to this claim of El Salvador, the analysis in the Judgment of the Chamber of the Court in the *Frontier Dispute* case of the relationship between “titles” and “*effectivités*” As already noted above, the Chamber in that case was dealing with the “colonial *effectivités*”, i.e., the conduct of the administrative authorities during the colonial period, whereas the acts relied on by El Salvador in the present case occurred after the independence of the two States, and in some cases in very recent years. The Chamber in the *Frontier Dispute* case referred also (*inter alia*) to the hypothesis of administration of a disputed territory by a State (not a colonial sub-division) other than the one possessing legal title ...; it may be taken to have had post-colonial *effectivités* also in mind.”²⁸

²⁶ *Ibid.*

²⁷ *Ibid.* (emphasis added).

²⁸ *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)*, Judgment, I.C.J. Reports 1992, p. 51, para. 61 (emphasis added, citations omitted).

2.28 The Chamber also used “legal title” and “title” interchangeably at paragraph 63 of the Judgment, where it discussed “what legal relationship exists between [*effectivités*] and the *titles* on which the implementation of the principle of *uti possidetis* is grounded”. Later in that same paragraph it made reference to the State “possessing the *legal title*”.²⁹

2.29 Nor can Gabon derive any support from paragraph 45 of the Judgment, regarding the definition of “title”, which confirms the proposition that:

“As the Chamber in the *Frontier Dispute* case observed, the word ‘title’ is generally not limited to documentary evidence alone, but comprehends “both any evidence which may establish the existence of a right, and the actual source of that right.”³⁰

The Judgment thus fully supports Equatorial Guinea’s position that legal titles are not limited to “*preuves documentaires*”; rather, the term is broad enough to include the source of the right to territory, like succession, or acquisition by longstanding and effective administration, i.e., *effectivités*, accepted by other States.

2.30 The Chamber in the *Gulf of Maine* case likewise used the terms “title” and “legal title” as synonyms and found legal titles to exist in that case in regard to maritime areas—without any reference what Gabon refers to as “*preuves documentaires*”:

“It should not be forgotten, however, that ‘legal title’ to certain maritime or submarine areas is always and exclusively the effect of a legal operation. The same is true of the boundary of the extent of the title. That boundary results from a rule of law, and not from any intrinsic merit in the purely physical fact. In the Chamber’s opinion it is therefore correct to say that international law confers on the coastal State a legal title to an adjacent continental shelf or to a maritime zone adjacent to its coasts; it would not be

²⁹ *Ibid.* (emphasis added).

³⁰ *Ibid.*, p. 41, para. 45.

correct to say that international law recognizes the title conferred on the State by the adjacency of that shelf or that zone, as if the mere natural fact of adjacency produced legal consequences.”³¹

2.31 In sum, Gabon seeks to exclude from the Court’s jurisdiction some of the titles invoked by Equatorial Guinea, including titles to land and insular territory resulting from State succession and *effectivités*, and titles to maritime areas resulting from UNCLOS and customary international law.

2.32 Yet the Special Agreement plainly allows Equatorial Guinea to invoke and obtain the Court’s Judgment on the applicability of all titles, regardless of source, that support its territorial and maritime claims that concern the delimitation of the Parties’ land and maritime boundaries, and sovereignty over the islands of Mbañe, Cocoteros and Conga. Equatorial Guinea has properly invoked these titles in its Memorial, where it has elaborated on them in considerable detail. It further demonstrates their existence and applicability to the Parties underlying territorial and sovereignty disputes in Chapters 4 through 6 below, after refuting Gabon’s claim, in Chapter 3, that the document first presented in 2003—which Gabon refers to as the “Bata Convention”—is a source of title to any land or insular territory, or to any maritime area.

³¹ *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America)*, Judgment, I.C.J Reports 1984, p. 296, para. 103 (emphasis added).

CHAPTER 3
THE DOCUMENT PRESENTED BY GABON IN 2003 DOES NOT ESTABLISH
LEGAL TITLE OR HAVE THE FORCE OF LAW IN THE RELATIONS
BETWEEN THE PARTIES

3.1 This Chapter addresses the document first presented by Gabon on 23 May 2003 (the “2003 Document”). Gabon claims this document to be a legally binding convention signed by President Francisco Macias Nguema of Equatorial Guinea and President Albert Bernard Bongo of Gabon (who later changed his name to Omar Bongo Ondimba) 29 years earlier, on 12 September 1974 at Bata. Gabon claims that it “settled the disputes and other difficulties between the two States concerning the delimitation of their land and maritime boundaries and sovereignty over the islands of Mbañe, Cocoteros and Conga”.³²

3.2 As described in Chapter 5 of the Memorial and Chapters 4 and 5 of this Reply, following Equatorial Guinea’s independence in 1968, the Parties grappled with two territorial conflicts resulting from: (i) Gabon’s 1972 occupation of Mbañe and consequent maritime boundary claims based on its purported title to Mbañe; and (ii) Gabon’s 1974 occupation of continental land territory west of the Kye River in the vicinity of Ebebiyin, and claim to sovereignty over that territory. In relation to both conflicts, Gabon claimed sovereignty without lawful basis over what had been undisputed Equatoguinean territory, and then invaded and occupied those areas.

3.3 Specifically, on 23 August 1972, Gabonese armed forces attacked the islet of Mbañe, captured and abused four Equatoguinean soldiers who had replaced the Spanish Colonial Guard stationed on the island, and detained and abused 24 Equatoguinean

³² CMG, Vol. I, para. 6.1. (“a résolu les différends et autres difficultés entre les deux États en ce qui concerne la délimitation de leurs frontières terrestre et maritime et la souveraineté sur les îles Mbanié, Cocotiers et Conga”).

fishermen who were also present on the island.³³ Equatorial Guinea protested the invasion to the United Nations Security Council³⁴ but, despite efforts to mediate the dispute under the auspices of the Organization of African Unity, Gabon refused to withdraw from the island and has since maintained an illegitimate claim to title to the islands rooted in possession gained by the illegal use of force.

3.4 Just under two years later, in June 1974, Gabon invaded and occupied more Equatoguinean territory, this time in in the northeastern part of its continental region, title to which was indisputably held by Spain pursuant to the 1900 Convention and the 1919 Governors' Agreement, and then by Equatorial Guinea as the successor State. Prior to Gabon's invasion, the territory had been occupied, controlled and administered by Spain and Equatorial Guinea without interruption, objection or protest from France or Gabon, since at least 1919.

3.5 It is against the backdrop of Gabon's seizure of Equatorial Guinea's insular and continental territory, and Equatorial Guinea's protests, that President Bongo met with President Macias in Bata on 12 September 1974. Gabon argues that this brief meeting resulted in a final and binding international agreement that resolved all sovereignty and boundary disputes in Gabon's favor. This argument is contradicted by the evidence Gabon has put before the Court and definitively rebutted by Equatorial Guinea's evidence.

3.6 In its Memorial, Equatorial Guinea demonstrated that:

- (i) Gabon has not discharged its burden to prove the authenticity of the document presented in 2003;³⁵

³³ MEG, Vol. I, para. 4.9.

³⁴ MEG, Vol. I, para. 4.10.

³⁵ MEG, Vol. I, paras. 7.1-7.7.

- (ii) Equatorial Guinea and Gabon have never treated that document as having force of law in the relations between them, within the meaning of Article 1 of the Special Agreement;³⁶
- (iii) In any event, the document, by its terms, is not a completed agreement or a final treaty;³⁷ and
- (iv) In the years that followed its sudden appearance in 2003, neither Party acted as though the alleged “Bata Convention” had any legal effects.³⁸

3.7 Much of what Equatorial Guinea demonstrated in the Memorial in regard to this document has been accepted, or at least has not been challenged, by Gabon in its Counter-Memorial. In particular, at least twelve propositions appear not to be disputed by Gabon:

1. Gabon bears the evidential burden of proving the authenticity of the document.³⁹

³⁶ MEG, Vol. I, paras. 7.8-7.14.

³⁷ MEG, Vol. I, paras. 7.15-7.20.

³⁸ MEG, Vol. I, paras. 7.21-7.23.

³⁹ MEG, Vol. I, para. 7.7. See *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010, p. 71 para. 162 (the Court held that “in accordance with the well-established principle of *onus probandi incumbit actori*, it is the duty of the party which asserts certain facts to establish the existence of such facts”). See also *Case Concerning Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America)*, Judgment, I.C.J. Reports 1984, p. 437, para. 101; *Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, p. 128, para. 204; *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment, I.C.J. Reports 2009, p. 86, para. 68; *Case Concerning Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Judgment, I.C.J. Reports 2012, p. 332, para. 15.

2. Despite allegedly having been signed on 12 September 1974, Gabon first presented the document to Equatorial Guinea only on 23 May 2003.
3. No original of the document has ever been produced. Gabon has stated that it does not possess an original, only purported photocopies, portions of which are barely legible, and the Spanish version is cut off at the bottom of the signature page such that the names of the signatories and anything written below the signatures is not shown.⁴⁰
4. There are material differences between the alleged photocopies of the document on which Gabon now seeks to rely,⁴¹ including as between the French and Spanish versions of the document, all of which Gabon has passed over in silence, as if they did not exist.
5. Gabon's claim to legal title over the disputed insular, land and maritime areas thus rests entirely on photocopies of French and Spanish versions

⁴⁰ MEG, Vol. I, paras. 7.2, 7.7 and 7.26; CMG, Vol. I, para. 3.12: "Despite all its efforts, Gabon has not been able to locate in its archives an original of the Bata Convention signed on September 12, 1974." ("Malgré tous ses efforts, le Gabon n'a pas pu retrouver dans ses archives un original de la Convention de Bata signée le 12 septembre 1974."). Gabon's own evidence indicates it has never provided an original copy of the Document presented in 2003. President Bongo sent a mere *photocopy* of the Document presented in 2003 to the French ambassador in Gabon, affirming that he had attached "two copies, in French and Spanish, of the Convention on Frontiers" ("*deux ampliations, en langue française et espagnole, de la Convention sur les frontières*") (CMG, Vol. V, Annex 172, p. 404). Moreover, the French ambassador in Gabon confirms that France has the original cover letter from President Bongo but that a *photocopy* of Document presented in 2003 was attached (*see* CMG, Vol. V, Annex 172, p. 403: "Please find enclosed a copy of the original letter of transmission of the 1974 Agreement, signed by President BONGO on 28 October 1974, and the photostat of the Convention which is in our possession" ("Je vous prie de bien vouloir trouver ci-joint copie de l'original de la lettre de transmission de l'Accord de 1974, signée par le Président BONGO le 28 octobre 1974, *et du photostate de la Convention* qui se trouve en notre possession.") (emphasis added). Thus, the document at Annex 155 of Gabon's Counter-Member is, at best, a *photocopy of a photocopy* of the Document presented in 2003.

⁴¹ MEG, Vol. I, paras. 7.2-7.6.

of the document, of dubious origin, which contain unexplained material inconsistencies.⁴²

6. President Bongo (one of the two alleged signatories) remained in office until 8 June 2009, yet the evidence before the Court indicates that on no occasion before 2003 did he mention that an agreement with President Macias had been reached at the 1974 Bata meeting; nor did he or his government publish or produce a copy of any such agreement.
7. The document presented by Gabon, rather than reflecting a final agreement on the Parties' disputed sovereignty and boundary issues, contains material provisions requiring the Parties to take specific steps to resolve these issues, including by reaching further agreements on their land and maritime boundaries⁴³ indicating that essential elements

⁴² The first Spanish version of the Document produced by Gabon in 2003 is cut off on the final page, such that it does not contain the full signatures or the names of the alleged signatories (MEG, Vol. I, para. 7.4). As explained in the Memorial, Gabon subsequently produced a second (purportedly re-typed) Spanish version of the Document, which it submitted to the UN Secretary-General in 2004 for registration with the UN Treaty Section (MEG, Vol. I, paras. 7.27-7.29). In this second re-typed version, Gabon added a signature line, the names of the alleged signatories, and a *nota bene* (MEG, Vol. I, paras. 7.4-7.5). Gabon offers no explanation for these inconsistencies in the Counter-Memorial. To make matters worse, at Annex 155 of its Counter-Memorial, Gabon now advances *yet another* Spanish version of the Document, which is inconsistent with the re-typed version Gabon submitted to the UN Treaty Section in 2004. The third Spanish version of the Document produced by Gabon at Annex 155 of its Counter-Memorial is still cut off at the signature line, such that the signatories' names are only partially visible (only Bongo's signature line is discernible on the right), but most significantly, there is a handwritten *nota bene* which appears in the left margin which differs from the *nota bene* that Gabon inserted in the re-typed version it submitted to the UN Secretary-General in 2004. *See* CMG, Vol. V, Annex 155 ("El artículo 4º será examinado por los dos Jefes de Estado ulteriormente, conforme la Convención de 1900.") ("Article 4 will be examined by the two Heads of State, pursuant the 1900 Convention"); *see also* MEG, Vol. VII, Annex 216 ("Los dos jefes de Estado convienen de proceder (sic) ulteriormente a una nueva redacción del artículo 4, para ponerla en conformidad con la Convención de 1900.") (The two Heads of State agree to subsequently proceed to a new drafting of Article 4, to bring it in conformity with what is disposed in the 1900 Convention"). Moreover, in third version of the Spanish text at Annex 155 of Gabon's Counter-Memorial, President Bongo's signature line appears on the right, whereas it is on the left in the re-typed Spanish version of the Document which Gabon submitted to the UN Secretary-General in 2004 (*c.f.* CMG, Vol. V, Annex 155; and MEG, Vol. VII, Annex 216).

⁴³ MEG, Vol. I, paras. 7.10-7.20. *See infra* Chapter 3, Section II.A. Gabon attempts to create the illusion of a definitive boundary agreement by way of Sketch Map No. 3.1, claiming that it depicts the boundaries per Articles 1 to 4 of the Document submitted in 2003. (CMG, Vol. I, para. 3.13 (d)). However, this sketch map—produced by Gabon for the purpose of these proceedings—is no more than a mere illustration, as acknowledged in the faint, small-sized text at the bottom right corner: "This sketch is for illustrative purposes

of the dispute were still pending resolution at the conclusion of the September 1974 meeting.

8. Equatorial Guinea and Gabon have never taken any of the required steps to resolve any of these issues, or to implement the terms of the Bata document; nor have they reached any of the agreements on the sovereignty or boundary identified in that document.⁴⁴
9. The so-called “Bata Convention” was never subjected to a vote of the Gabonese people or submitted to Gabon’s Parliament for ratification, as required by Gabon’s Constitution in relation to treaties affecting territory.⁴⁵ Gabon admits that President Bongo sought “to avoid parliamentary ratification of the [document], which could have been a pretext for a new contestation or even a calling into question of the agreement”.⁴⁶ Gabon’s admitted failure to follow its own constitutional requirements to ratify the alleged agreement confirms that Gabon understood that no treaty has been concluded.
10. The document was not registered with the United Nations Treaty Section “as soon as possible”, as required by Article 102 of the UN Charter.⁴⁷ It was not until 5 February 2004 that Gabon submitted an

only. Projection: WGS84. Realisation: Gaëlle Sutton, 2022” (“Ce croquis a été établi à seule fin d’illustration. Projection: WGS84. Réalisation: Gaëlle Sutton, 2022.”) (CMG, Vol. I, p. 103).

⁴⁴ MEG, Vol. I, paras. 7.11-7.21. *See infra* Chapter 3, Section II.A.

⁴⁵ MEG, Vol. I, para. 7.12.

⁴⁶ CMG, Vol. I, para. 3.19 (“d’éviter une ratification parlementaire qui aurait p[u] être prétexte à une nouvelle contestation, voire à une remise en cause de l’accord”). *See also Letter No. 85 from* the Director General of the Ministry of Foreign Affairs *to* the Spanish Ambassador in Malabo (25 February 1977) in which the Spanish Ambassador to Gabon acknowledged that the Document presented in 2003 “has not been submitted to [Gabon’s] Parliament or ratified” and that it “has fallen by the wayside for now”. REG, Vol. IV, Annex 44.

⁴⁷ MEG, Vol. I, para. 7.23.

illegible photocopy to the UN Secretary-General, and Equatorial Guinea immediately submitted formal objections to its registration.⁴⁸ At the time, Gabon falsely represented to the UN Secretary-General that the Parties had no reservations or objections to the document despite the fact that Equatorial Guinea had protested its authenticity from the moment that Gabon first presented it on 23 May 2003.⁴⁹

11. For almost three decades after the document was allegedly signed, the Parties conducted themselves on the basis that no such agreement had been concluded: they fully maintained their pre-1974 claims to the disputed land, islands and maritime areas by reference to other legal titles. Throughout this period, the Parties engaged in frequent and intensive bilateral negotiations seeking to resolve their differences regarding sovereignty over the Corisco Dependencies and the delimitation of their land and maritime boundaries (i.e., the very issues that Gabon alleges were “settled” and “resolved” by the document presented in 2003), yet the document was never raised or even mentioned as a source of title or other legal rights in any of these negotiations.⁵⁰ Instead, the Parties consistently invoked, relied on, and affirmed the principle of respect for boundaries inherited from their

⁴⁸ MEG, Vol. I, para. 7.27. *See also*, *Lettre du ministre d’État gabonais au secrétaire général des Nations Unies*, (5 February 2004). CMG, Vol. V, Annex 174. As noted in MEG, Vol. I, paragraph 7.29, UN registration “does not confer on the instrument the status of a treaty or international agreement if it does not already possess that status” (citing to *Letter from the Assistant Secretary-General of the United Nations to the Permanent Representative of the Republic of Equatorial Guinea to the United Nations* (22 March 2004), p. 3 (citing to UN Treaty Handbook Section 5.3.1, p. 27) (emphasis omitted). MEG, Vol. III, Annex 32).

⁴⁹ Equatorial Guinea protested Gabon’s efforts to register the Document presented in 2003 with the Treaty Section of the United Nations, *see Letter from the Ministry of Foreign Affairs of the Republic of Equatorial Guinea to the Secretary-General of the United Nations* (10 March 2004). MEG, Vol. III, Annex 31; *see also Letter No. 179/05 from the Permanent Mission of the Republic of Equatorial Guinea to the United Nations to the Director of the United Nations Division of Ocean Affairs and Law of the Sea* (11 March 2005). MEG, Vol. III, Annex 36.

⁵⁰ MEG, Vol. I, paras. 7.1, 7.9, 7.13, and 7.24. *See also* CMG Vol. I, paras. 3.17, 3.24(c), and 3.25.

colonial predecessors, the applicability of the 1900 Convention and subsequent agreed modifications, and UNCLOS as the legal bases to resolve their disputes and determine their respective titles.

12. Having been entirely absent from the negotiations between the Parties for almost three decades, when the document was suddenly presented to the Equatoguinean delegation on 23 May 2003, they were taken completely by surprise and responded that they had never seen or heard of such a document.⁵¹

3.8 Gabon does not challenge any of these points in its Counter-Memorial. Instead, it advances a partial and highly selective account of the circumstances surrounding the alleged “conclusion” in 1974 of what it now claims to be a treaty resolving in its favor all the disputes between the Parties. Significantly, the only “evidence” upon which it relies are unilateral and self-serving statements by its own authorities. Such statements are wholly inadequate to rebut two conclusions that can be derived from the totality of the evidence presented to the Court:

- First, the circumstances surrounding the alleged creation of the document in 1974, and its absence from any subsequent discussions between the Parties for the next 30 years, establish that neither in September 1974, nor at any time thereafter, did the Parties consider that they had concluded a final and binding agreement on their respective legal titles in relation to any of the disputed islands, continental land territory or adjacent maritime areas that are the subject of Article 1 of the Special Agreement; and
- Second, the alleged agreement of 12 September 1974, even if it could be proven to have come into existence (*quod non*), was not a final or binding agreement which “definitively solved” the Parties’ sovereignty dispute over

⁵¹ MEG, Vol. I, para. 5.19.

the islands of Mbañe, Cocoteros and Conga, or their disputes over continental land territory or adjacent maritime areas. At most, it was understood to be no more than an unfinished attempt to reach an agreement on these issues which was never completed or even followed up, as confirmed by the fact that Gabon itself treated the document as a nullity for the next three decades.

I. THE CIRCUMSTANCES SURROUNDING THE ALLEGED CONCLUSION OF THE DOCUMENT PRESENTED IN 2003 DEMONSTRATE THAT THIS DOCUMENT IS NOT A FINAL AND BINDING TREATY ESTABLISHING LEGAL TITLES WITHIN THE MEANING OF ARTICLE 1 OF THE SPECIAL AGREEMENT

A. GABON HAS NOT PRODUCED ANY CONVINCING EVIDENCE TO SUPPORT ITS ASSERTION THAT THE PARTIES CONCLUDED A BINDING AGREEMENT ON 12 SEPTEMBER 1974

3.9 The Court has underscored that “the establishment of a permanent ... boundary is a matter of grave importance and agreement is not easily to be presumed”,⁵² and it has emphasized the need for convincing evidence to determine boundaries between disputing parties.⁵³ Gabon has presented no convincing evidence to support its allegation that on 12 September 1974 the Parties concluded a final and binding agreement “on the delimitation of ‘land and sea’ borders”, which “definitively solved” their boundary and sovereignty disputes.⁵⁴ Gabon’s allegation is based on nothing more than:

⁵² *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)*, Judgment, I.C.J. Reports 2007, p. 735, para. 253.

⁵³ *Territorial Dispute (Libyan Arab Jamahiriya/Chad)*, Judgment, I.C.J. Reports 1994, p. 37, para. 72 (citing *Temple of Preah Vihear (Cambodia v. Thailand)*, Judgment, I.C.J. Reports 1962, p. 34; *Aegean Sea Continental Shelf (Greece v. Turkey)*, Judgment, I.C.J. Reports 1978, p. 36); see also *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)*, Judgment, I.C.J. Reports 2008, p. 51, para. 122.

⁵⁴ CMG, Vol. I, para. 3.17.

- (i) an undated video, which it describes as an audiovisual report by the Gabonese government’s television service relating to President Bongo’s four-day visit to Equatorial Guinea in September 1974;⁵⁵
- (ii) President Bongo’s self-serving and unilateral statement published in a single article of the Gabonese weekly newspaper *L’Union*;⁵⁶
- (iii) a letter from President Bongo to the French Ambassador in Gabon of 28 October 1974 by which he transmits to the Ambassador a photocopy of a document he calls a “convention”; and
- (iv) selectively quoted passages from a few accounts provided by French and US diplomats.

3.10 This evidence fails to support Gabon’s conclusion that on 12 September 1974 the Parties concluded a final and binding boundary agreement. As regards the video footage, the Court will note that it does not mention any treaty or convention. Rather, it merely refers to talks between President Macias and President Bongo, which reportedly did no more than make it *possible* to “definitively resolve” the sovereignty and boundary disputes.⁵⁷ The video includes a unilateral statement by President Bongo, purportedly made on his return to Libreville, that “everything is settled”. However, the document Gabon presented in 2003 *is never mentioned by President Bongo or showed in the video*. Nor is there mention of any other bilateral convention or treaty. The video only refers to a “final

⁵⁵ Reportage audiovisuel sur la visite d’État du président Bongo en Guinée Équatoriale et sa retranscription. CMG, Vol. II, Annex V2.

⁵⁶ “*Tout est réglé! avec la Guinée Équatoriale*” [“Everything is settled!” with Equatorial Guinea], *L’Union* (20 September 1974), p. 1. CMG, Vol. V, Annex 150.

⁵⁷ Reportage audiovisuel sur la visite d’État du président Bongo en Guinée Équatoriale et sa retranscription. CMG, Vol. II, Annex V2 (“The talks between the two heads of state then made it possible to definitively resolve the problem of the delimitation of the borders between Equatorial Guinea and Gabon.”) (“Les entretiens des deux chefs d’État ont permis ensuite de résoudre de manière définitive le problème de la délimitation des frontières entre la Guinée Équatoriale et le Gabon.”).

communiqué”.⁵⁸ Plainly, such a document would not qualify as a source of legal title under Article 1(1) of the Special Agreement.

3.11 The article in the Gabonese newspaper *L’Union*, dated 20 September 1974, purports to quote the same statement of President Bongo that was included in the broadcast video footage. In the print version, like the video, the President is quoted as saying that “everything is settled”. Unlike the video, the newspaper refers to an alleged “convention” on land and maritime boundaries. But the caption below the photograph states only that a “final communiqué” was signed, not a treaty or convention.⁵⁹

3.12 Taken together, these two contemporaneous reports—unilaterally produced by Gabon—contradict rather than support Gabon’s assertion that on 12 September 1974 the Parties concluded a final and binding agreement which “resolved the territorial and border disputes between Gabon and Equatorial Guinea”.⁶⁰ They demonstrate that what was produced at the conclusion of that meeting, if anything, was nothing more than a “final communiqué”, indicating that the Parties’ intentions to continue working toward the resolution of the sovereignty and boundary issues that divided them.

3.13 It was not until 28 October 1974, in a letter to the French Ambassador, that President Bongo first referred to the “final communiqué” resulting from the meeting in Bata a month earlier as a “convention”. But in doing so, the Gabonese President appears to

⁵⁸ Reportage audiovisuel sur la visite d’État du président Bongo en Guinée Équatoriale et sa retranscription. CMG, Vol. II, Annex V2 (“Before leaving Equatorial Guinea on Thursday 12 September, the President and his Equatoguinean counterpart signed the final communiqué. This document formalizes their full agreement and concretizes the will of both countries to develop their exchanges and increase their cooperation in all areas.”) (“Avant de quitter la Guinée Équatoriale le jeudi 12 septembre, le président et son homologue équato-guinéen ont signé le communiqué final. Ce document officialise leur pleine concordance de vues et concrétise la volonté des deux pays de développer leurs échanges et d’accroître leur coopération dans tous les domaines.”).

⁵⁹ “‘*Tout est réglé!*’ avec la Guinée Équatoriale” [“‘Everything is settled!’ with Equatorial Guinea”], *L’Union*, (20 September 1974), p. 3. CMG, Vol. V, Annex 150 (“communiqué final”).

⁶⁰ CMG, Vol. I, para. 3.25 (“a résolu les différends territoriaux et frontaliers entre le Gabon et la Guinée Équatoriale”).

have deliberately avoided calling the communiqué a “treaty” because, under Article 52 the Gabonese Constitution, “treaties” that entail cession, exchange or addition of territory required a vote of the affected population and parliamentary ratification. The letter is thus not evidence that President Bongo considered that he had signed a treaty that entailed cession, exchange or addition of any territory.

3.14 Nor can Gabon derive support for its assertion that the document first presented in 2003 is a final and binding agreement from its selective references to a few second—or third-hand sources. Gabon relies inappropriately, for example, on accounts by the French Ambassadors to Gabon⁶¹ and the US Embassy in Cameroon,⁶² which do no more than report on the same unilateral statement by President Bongo at his press conference at Libreville Airport on 12 or 13 September 1974, already submitted by Gabon in the form of video footage and local press reporting.⁶³ The two diplomatic accounts of President Bongo’s statement offer no support for Gabon’s position on the so-called Bata Convention. The French and the US accounts make no reference to such an agreement, and offer no description of its content, terms or legal significance. The US report observes, in

⁶¹ The French Ambassador reports that a press conference took place on 13 September 1974, and that President Bongo stated that an agreement on the delimitation of land and maritime boundaries had been signed and that “this problem is definitively resolved”. *Télégramme No. 691/692 de l’ambassade de France au Gabon au ministère des Affaires étrangères français* (13 September 1974). CMG, Vol. V, Annex 148. (“He announced that he had signed an agreement with President Macias Nguema on the delimitation of the ‘land and maritime’ borders between the two countries and that this problem was definitely settled.”) (“Il a annoncé qu’il avait signé avec le Président Macias Nguema un accord sur la délimitation des frontières ‘terrestre et maritimes’ entre les deux pays et que ce problème était définitivement réglé.”).

⁶² A telegram from the US Embassy in Cameroon dated 14 September 1974 states that President Bongo held a press conference at Libreville Airport on 12 September (as opposed to 13 September as reported by the French Ambassador) at which he announced that “the frontier problem between the two countries had been definitively settled”. *Télégramme No. 1139 de l’ambassade des États-Unis au Cameroun au secrétaire d’État américain* (14 September 1974). CMG, Vol. V, Annex 149.

⁶³ *Télégramme No. 691/692 de l’ambassade de France au Gabon au ministère des Affaires étrangères français* (13 September 1974). CMG, Vol. V, Annex 148; *Télégramme No. 1139 de l’ambassade des États-Unis au Cameroun au secrétaire d’État américain* (14 September 1974). CMG, Vol. V, Annex 149.

particular, that the Gabonese Government “has released no details of border settlement ...”.⁶⁴

3.15 More significantly, Gabon completely ignores the report of *its own diplomatic representative*—*its Ambassador to Equatorial Guinea*—who told the French ambassador to Gabon that there was “no definitive decision”⁶⁵ reached in Bata on 12 September 1974. Gabon has no answer to this in its Counter Memorial. Nor does Gabon mention that fact that President Macias gave an account to the French Ambassador similar to that given by Gabon’s Ambassador: that the talks in Bata had only resulted in “general principles of an agreement”⁶⁶ and that:

“...since the Gabonese President’s stay was too brief and his departure a bit hurried, the negotiations leave a certain number of details in the dark that the Gabonese delegation ‘refused to discuss’ and that is why, not wanting to prejudge the final decisions that will undoubtedly be taken on the return of President Bongo from China, Equatorial Guinea has abstained, until now, from any statement”.⁶⁷

⁶⁴ *Télégramme No. 1139 de l’ambassade des États-Unis au Cameroun au secrétaire d’État américain* (14 September 1974). CMG, Vol. V, Annex 149.

⁶⁵ *Dépêche d’actualité No. 40/DA/DAM-2 de l’ambassadeur de France en Guinée Équatoriale à la direction des Affaires africaines et malgaches du ministère des Affaires étrangères français* (2 October 1974). CMG, Vol. V, Annex 152. (“Monsieur Jesus Oyono persistant, selon l’Ambassadeur Ndouna, à ‘finassieren’ et à influencer de ses arguties le Président Macias, aucune décision définitive ne put être prise avant le départ du Président Bongo et mon collègue gabonais ne sait pas encore aujourd’hui si un résultat définitif a pu être obtenu par la délégation d’experts gabonais venue à Bata vers le 20 septembre.”) (“As Mr. Jesus Oyono persisted, according to Ambassador Ndouna, in “finessing” and influencing President Macias with his quibbling, no definitive decision could be taken before the departure of President Bongo, and my Gabonese colleague does not yet know if the delegation of Gabonese experts that came to Bata around September 20 was able to achieve a definitive result.”).

⁶⁶ *Ibid.* (“les principes généraux d’un accord”).

⁶⁷ *Ibid.* (“le séjour du Chef d’Etat gabonais ayant été trop bref et son départ un peu précipité, les négociations laissent dans l’ombre un certain nombre de points de détail sur lesquels la délégation gabonaise ‘n’a rien voulu entendre’ et c’est pourquoi, ne voulant pas préjuger des décisions finales qui seront sans doute prises au retour de Chine du Président Bongo, la Guinée Equatoriale s’est abstenue jusqu’à présent de toute déclaration”).

3.16 Gabon asserts in its Counter Memorial that President Macias described to the French Ambassador “the provisions envisaged” during the talks with President Bongo.⁶⁸ It fails to mention, however, that a more detailed report was given to the French ambassador by Gabon’s Ambassador to Equatorial Guinea—Mr Dépenaud Ndouna—who emphasized that the talks in Bata on 11 and 12 September 1974 “were conducted with difficulty and took place in a painfully unpleasant atmosphere”,⁶⁹ as a result of which:

“At the end of an afternoon of thorny discussions, the Gabonese Head of State, tired of these about-faces, ultimately returned to his capital with nothing having been definitively signed, except a purely formal press release, whose text only received limited publicity”.⁷⁰

3.17 The account given by the Gabonese Ambassador is to the same effect. In describing “the status of the negotiations” at the conclusion of talks on 12 September 1974, he reported that “...no definitive decision could be taken before the departure of President Bongo ...”.⁷¹ Even more directly, three weeks after the meeting, the Gabonese Ambassador

⁶⁸ *Ibid.*, p. 253 (“les dispositions envisagées”).

⁶⁹ *Dépêche d’actualité No. 40/DA/DAM-2 de l’ambassadeur de France en Guinée Équatoriale à la direction des Affaires africaines et malgaches du ministère des Affaires étrangères français* (2 October 1974). CMG, Vol. V, Annex 152: “les conversations qui ont eu lieu... les 11 et 12 septembre, à Bata, se sont déroulées avec difficulté dans une atmosphère pénible... Au terme d’un après-midi de discussions épineuses, le Chef de l’Etat gabonais, fatigué de ces palinodies, a finalement regagné la capitale sans que rien ait pu être signé définitivement, sauf un communiqué de pure forme dont le texte n’a donné lieu qu’à une faible publicité.”.

⁷⁰ *Ibid.*, p. 250 (“Au terme d’un après-midi de discussions épineuses, le chef d’Etat gabonais, fatigue de ces palinodies, a finalement regagné sa capitale sans que rien ait pu être signé définitivement, sauf un communiqué de pure forme dont le texte n’a donné lieu qu’à une faible publicité”; *Letter from the Spanish Ambassador in Malabo to the Spanish Minister of Foreign Affairs* (2 October 1974). REG, Vol. IV, Annex 39. In a separate dispatch from the Spanish Ambassador to Equatorial Guinea—which has not relied on by Gabon—the Gabonese Ambassador is also reported to have made further statements which directly contradict the terms of the Document presented in 2003, including that: “the Guinean intransigence and bad manners over these two recent years had finally led President Bongo and his government to fully enforce their rights and consequently go back to the border established in the 1900 Paris Convention between France and Spain, which is the only legal text that should be used in this matter, since as with Spanish America in the past, the principle of *uti possidetis* has been strictly applied upon Africa’s decolonization”. The Gabonese Ambassador further stated that Gabon was willing to cede the area of Medouneu (in the district of Acurenán) to Equatorial Guinea. Again, this directly contradicts the terms of Article 2 of the Document presented in 2003.

⁷¹ *Dépêche d’actualité No. 40/DA/DAM-2 de l’ambassadeur de France en Guinée Équatoriale à la direction des Affaires africaines et malgaches du ministère des Affaires étrangères français* (2 October 1974). CMG,

to Equatorial Guinea reported that a treaty settling the sovereignty and boundary disputes between the two States had *not* been concluded on 12 September 1974.⁷²

3.18 Gabon attempts in vain to find support in the comments of President Macias, at a meeting with diplomatic representatives on 13 October 1974, for its argument that a final and binding agreement had been reached in Bata. Its chief source is the French Ambassador to Equatorial Guinea, who was present at the meeting. But all that the French Ambassador reported President Macias as saying was “that he had drawn a definitive line under this matter” and that he had “renounced any further discussion of land boundaries”. Plainly, the President’s statement is more consistent with his rejection of a boundary agreement with Gabon, not his agreement to one. The evidence shows that President Macias indeed “dr[e]w a definitive line” by demanding payment of adequate compensation for 3,000 Equatoguinean citizens who would need to be evacuated (as well as schools, dispensaries, military camps, workshops, bridges and road installations) pursuant to a potential exchange of territory, which had been discussed “in principle”.⁷³ Gabon omits entirely to quote President Macias’ comment in full, in which he made clear that, absent such compensation (which was never agreed by Gabon)⁷⁴ there would be no further discussion on the land boundary:

Vol. V, Annex 152. (“l’état des négociations”) and (“aucune décision définitive ne put être prise avant le départ du Président Bongo”).

⁷² *Ibid.*

⁷³ CMG, Vol. I, para. 3.21, (“qu’il ‘avait tiré un trait définitif sur cette affaire’ et qu’il avait ‘renoncé à toute discussion ultérieure au sujet des frontières terrestres’”) quoting *Dépêche d’actualité No. 43/DA/DAM-2 de l’ambassadeur de France en Guinée Équatoriale à la direction des Affaires africaines et malgaches du ministère des Affaires étrangères français* (14 October 1974). CMG, Vol. V, Annex 153, p. 5); The Spanish State, Ministry of Foreign Affairs *Aide-Memoire on "Solicited Cartography for the Spanish Ambassador in Equatorial Guinea"* (27 September 1974), p. 2 (“Our Embassy in Malabo indicates, however, that it’s not true and that the conflict continues on.”). REG, Vol. IV, Annex 36. A mere “agreement in principle” is also recorded in *ibid.* where it is stated that: “[a]ccording to reports from our Embassy in Libreville, Presidents Macias and Bongo -the latter recently visiting Malabo- had reached an agreement in principle.”

⁷⁴ Gabon’s own evidence reveals that President Macias and President were unable to reach agreement on compensation for displaced Equatoguineans. *Dépêche d’actualité No. 43/DA/DAM-2 de l’ambassadeur de France en Guinée Équatoriale à la direction des Affaires africaines et malgaches du ministère des Affaires étrangères français* (14 October 1974). CMG, Vol. V, Annex 153, pp. 4-5 (“Par surcroît, révèle le Président

“President Macias therefore renounced any further discussion on the subject of land boundaries, *but the same cannot be said about maritime boundaries.*”⁷⁵

3.19 Nowhere in this official French report was it stated that a final boundary agreement had been concluded. To the contrary, it was recorded that President Macias stated clearly that no agreement had yet been signed:

Macias, selon le rapport qui lui a été fait par un délégation équato-guinéenne, envoyée récemment à Libreville, le Président Bongo refuse absolument de verser, en échange de cette évacuation, une indemnisation que la Guinée Équatoriale demandait ‘à titre humanitaire’ et qu’elle avait évaluée à 192 000 000 pesetas.”) (“Moreover, reveals President Macias, according to the report made to him by an Equatorial Guinean delegation, recently sent to Libreville, President Bongo absolutely refuses to pay, in exchange for this evacuation, an indemnity that Equatorial Guinea asked on ‘humanitarian basis’ and that it had evaluated at 192 000 000 pesetas.”). *See also Dépêche No. 141/DAM de l’ambassadeur de France au Gabon au ministre des Affaires étrangères français (7 November 1974). CMG, Vol. V, Annex 156, p. 2* (“Le Chef de l’État Gabonais a souligné, d’autre part, qu’il n’avait jamais été question de verser une indemnité aux Equato-Guinéens pour leur permettre de dédommager ceux de leurs ressortissants qui seraient contraints d’évacuer certaines parcelles du territoire gabonais où ils s’étaient installés indûment. Au demeurant, ce point ne figurait pas dans le texte de la convention. ‘Sans doute, a poursuivi le Président BONGO, ai-je fait comprendre au Président MACIAS que je pourrais lui envoyer quelques fonds pour qu’il soit en mesure de remplir ses obligations de Chef d’État. C’est pourquoi dès mon retour à Libreville de lui ai dépêché mon neveu (M. Martin BONGO, Ministre de l’Éducation Nationale) qui lui a remis, de ma part, vingt millions de francs CFA. Loin de me remercier, mon collègue estimant que je ne donnais pas assez, m’a aussitôt envoyé une délégation de rang ministériel qui m’a demandé une somme exorbitante et que j’ai éconduite. C’est probablement pour cette raison qu’il a décidé de donner sa version des faits aux diplomates accrédités à Malabo. Cette version est fautive et le Président MACIAS a menti en affirmant que nous avions discuté du principe d’une indemnité.”) (“The Gabonese Head of State stressed, on the other hand, that there had never been any question of paying compensation to the Equatorial Guineans to enable them to compensate those of their nationals who would be forced to evacuate certain parts of Gabonese territory where they had settled unduly. In fact, this point was not included in the text of the convention. No doubt, President BONGO continued, I made President MACIAS understand that I could send him some funds so that he could fulfil his obligations as Head of State. That is why, as soon as I returned to Libreville, I sent my nephew (Mr. Martin BONGO, Minister of National Education) who gave him, on my behalf, twenty million CFA francs. Far from thanking me, my colleague, considering that I did not give enough, immediately sent me a delegation of ministerial rank who asked me for an exorbitant sum of money and which I rejected. It is probably for this reason that he decided to give his version of the facts to the diplomats accredited in Malabo. This version is false and President MACIAS lied when he said that we had discussed the principle of compensation.”) This disagreement between President Macias and President Bongo over compensation is yet further indication that the two did not reach a final and binding agreement on 12 September 1974.

⁷⁵ *Dépêche d’actualité No. 43/DA/DAM-2 de l’ambassadeur de France en Guinée Équatoriale à la direction des Affaires africaines et malgaches du ministère des Affaires étrangères français (14 October 1974). CMG, Vol. V, Annex 153, p. 267 (emphasis added)* (“Le Président Macias a donc renoncé à toute discussion ultérieure au sujet des frontières terrestres, mais il n’en est cependant pas de même en ce qui concerne les frontières maritimes”).

“as soon as the agreement is signed, he will evacuate, he says, schools, dispensaries, military camps, workshops, bridges and road installations from the entire southern part of the area, as well as the 3,000 inhabitants who occupy it ...”.⁷⁶

3.20 President Macias is also reported to have said, about the subject of maritime boundaries:

“Indeed, the impasse in which we currently find ourselves on this issue is at the level of expert negotiations and the two Heads of State have not yet personally discussed it.”⁷⁷

3.21 It is therefore clear from the evidence on which Gabon relies that as of 13 October 1974, one month after the purported “convention” had come into existence, negotiations between the Parties had not been concluded, and that no final and binding agreement had been reached or signed.⁷⁸

⁷⁶ *Dépêche d'actualité No. 43/DA/DAM-2 de l'ambassadeur de France en Guinée Équatoriale à la direction des Affaires africaines et malgaches du ministère des Affaires étrangères français* (14 October 1974). CMG, Vol. V, Annex 153, p. 266 (emphasis added) (“dès la signature de l'accord, il évacuera, dit-il, les écoles, dispensaires, campements militaires, ateliers, ponts et installations routières de toute la partie sud de la zone, ainsi que les 3 000 habitants qui l'occupent ...”).

⁷⁷ *Ibid.*, p. 267 (“En effet, l'impasse dans laquelle on se trouve actuellement à leur sujet se situe au niveau de la négociation des experts et les deux chefs d'Etat n'en ont pas encore personnellement débattu”). In similar vein, the British account of this meeting, recorded in a Note of the Foreign and Commonwealth Office concludes that there would be further discussions between the Heads of State. Foreign Commonwealth Office, The National Archives, *Summary of Address to the Diplomatic Corps at Malabo given by President Macías on Sunday 13 October, 1974*. REG, Vol. IV, Annex 32.

⁷⁸ Gabon also quotes the French Ambassador to the effect that President Macias had conceded that he had “completely relinquished its sovereign rights over Mbañe, Cocoteros and Conga” (“entièrement abandonné ses droits de souveraineté sur M'Banié, Cocotier et Conga”). CMG, Vol. I, para. 3.21. See also *Dépêche d'actualité No. 43/DA/DAM-2 de l'ambassadeur de France en Guinée Équatoriale à la direction des Affaires africaines et malgaches du ministère des Affaires étrangères français* (14 October 1974). CMG, Vol. V, Annex 153, p. 267. However, in the sentence immediately before, it is stated that this purported concession was flowed from what had been “requested” by Gabon during the talks, not the result of an alleged binding final agreement. (“Afin de disposer d'eaux territoriales continues devant le Rio Muni et autour des îles Corisco, Elobey Grande, et Elobey Chico, la Guinée Equatoriale demandait que la limite entre ses eaux et les eaux territoriales gabonaises fut fixée le long du 1° de lat. N.”).

3.22 Gabon cites to a dispatch from the French Ambassador to Gabon the following month, dated 7 November 1974, reporting on a meeting with President Bongo (on a date unknown), in which President Bongo is said to have claimed that an agreement was signed by the two Presidents on 12 September 1974.⁷⁹ Gabon, however, omits key observations by the French Ambassador in the same document, which establish a different picture: first, that Gabon “had not given any serious indications”⁸⁰ on the subject of the allegedly signed agreement; second, that President Macias’ account to diplomatic representatives in Malabo on 13 October 1974 was materially different from that claimed by President Bongo. The French diplomatic dispatch evidences more of a disagreement between the two Parties, and their failure to conclude a treaty, rather than the existence of a final and binding agreement.

3.23 Gabon refers to another meeting between President Macias and the French Ambassador to Equatorial Guinea on 23 December 1974,⁸¹ more than three months after Gabon alleges an agreement was concluded. However, there is no reference in the French ambassador’s account of this meeting to any treaty, agreement or convention between Equatorial Guinea and Gabon that was purportedly reached on 12 September 1974 (or at any subsequent time). Thus, between September 1974 and the end of that year, Equatorial Guinea consistently and repeatedly denied the existence of an agreement with Gabon on the disputed sovereignty and boundary issues. There is no evidence produced by Gabon, or from any other source, to the contrary.

3.24 To allege such evidence, Gabon mischaracterizes a French diplomatic report dated 11 April 1975, authored by France’s Ambassador to Equatorial Guinea. According to Gabon, the French Ambassador reported that President Macias told him that

⁷⁹ *Dépêche No. 141/DAM de l’ambassadeur de France au Gabon au ministre des Affaires étrangères français* (7 November 1974). CMG, Vol V, Annex 156, p. 290.

⁸⁰ *Ibid.*, p. 289.

⁸¹ CMG, Vol. I, para. 3.23. *See also Télégramme n° 134 de l’ambassade de France en Guinée Équatoriale au ministère des Affaires étrangères français* (23 December 1974). CMG, Vol V, Annex 157.

“a settlement of the issues relating to the delimitation of land and sea borders and the sovereignty over the Mbañe, Cocoteros and Conga islands has been reached” on 12 September 1974.⁸² But that it is not what the French Ambassador reported. Instead, he wrote that President Macias did no more than reiterate the position he had expressed during previous meetings with the Ambassador on 1 October 1974,⁸³ and with diplomatic representatives on 13 October 1974,⁸⁴ specifically that the Parties had agreed in Bata only on the general principles of a *future* (and as yet unsigned) agreement and its “*envisaged* provisions”.⁸⁵

3.25 Gabon invokes a telegram from the US Embassy in Libreville dated 29 April 1975, but this document also contradicts its argument that the Parties concluded a binding agreement in September 1974. The US Embassy telegram reports that the “Gabonese-Equatorial Guinean border problem [is] far from solved and may indeed be heating up.”⁸⁶ This account confirms that whatever might have been discussed in Bata 19 months earlier, it was not understood by the Parties to have resolved their sovereignty or boundary disputes, or to constitute a final and binding treaty sufficient to establish legal title within the meaning of Article 1 of the Special Agreement.

⁸² CMG, Vol. I, para. 3.23 (“un règlement des questions relatives à la délimitation des frontières terrestres et maritimes et de celle concernant la souveraineté sur les îles Mbanié, Cocotiers et Conga est bel et bien intervenu”).

⁸³ *Dépêche d'actualité No. 40/DA/DAM-2* de l'ambassadeur de France en Guinée Équatoriale à la direction des Affaires africaines et malgaches du ministère des Affaires étrangères français (2 October 1974). CMG, Vol. V, Annex 152, pp. 252-253.

⁸⁴ *Dépêche d'actualité No. 43/DA/DAM-2* de l'ambassadeur de France en Guinée Équatoriale à la direction des Affaires africaines et malgaches du ministère des Affaires étrangères français (14 October 1974). CMG, Vol. V, Annex 153, p. 1.

⁸⁵ *Dépêche d'actualité No. 40/DA/DAM-2* de l'ambassadeur de France en Guinée Équatoriale à la direction des Affaires africaines et malgaches du ministère des Affaires étrangères français (2 October 1974). CMG, Vol. V, Annex 152, p. 253 (“les dispositions envisagées”).

⁸⁶ *Télégramme No. 621* de l'ambassade des États-Unis au Gabon (29 April 1975). CMG, Vol V, Annex 159, p. 307. *See also* CMG, Vol. I, para. 3.24(b).

3.26 Finally, Gabon relies on a dispatch from the French ambassador to Equatorial Guinea dated 28 November 1976, in which the document presented in 2003 is referred to as “a general solution”.⁸⁷ The dispatch further notes that “[t]he years 1975 and 1976 brought neither improvement nor deterioration in the relations between the two countries apart from the recent overflights which provoked the reactions of the Head of State.”⁸⁸ Again, this account fails to support Gabon’s assertion that a final and binding treaty or convention was signed in 1974 which “definitively solved”⁸⁹ the boundary and sovereignty disputes between the Parties.⁹⁰

3.27 In sum, Gabon has presented no convincing evidence that the photocopy of a document allegedly created in September 1974, which was first presented by Gabon to Equatorial Guinea in 2003, was ever considered by the Parties to be an authentic or final or binding treaty or convention resolving their disputes over island sovereignty, land territory, or maritime areas, or that such document was sufficient to confirm or convey legal title to any insular or continental territory or adjacent maritime area. Indeed, the evidence presented by Gabon itself is more consistent with the conclusion that no final and binding agreement was reached by President Macias and President Bongo on 12 September 1974.

⁸⁷ *Dépêche n° 255/DAM/2 de l’ambassadeur de France en Guinée Équatoriale au ministre des Affaires étrangères français*, 28 novembre 1976. CMG, Vol V, Annex 160, p. 315 (“une solution générale”).

⁸⁸ *Dépêche n° 255/DAM/2 de l’ambassadeur de France en Guinée Équatoriale au ministre des Affaires étrangères français*, 28 novembre 1976. CMG, Vol V, Annex 160, p. 315 (“Les années 1975 et 1976 n’apportèrent ni amélioration ni détérioration des relations entre des deux pays à part les survols récents qui ont provoqué les réactions du Chef de l’Etat.”)

⁸⁹ CMG, Vol. I, para. 3.17, *quoting Télégramme No. 691/692 de l’ambassade de France au Gabon au ministère des Affaires étrangères français* (13 September 1974). CMG, Vol. V, Annex 148, p. 227 (“ce problème est définitivement réglé”).

⁹⁰ It should also be noted that this dispatch attaches an alleged copy of the Document presented in 2003, but it contains a large number of material differences when compared to the photocopy produced by Gabon. *See Dépêche No. 255/DAM/2 de l’ambassadeur de France en Guinée Équatoriale au ministre des Affaires étrangères français* (28 November 1976). CMG, Vol. V, Annex 160, pp. 316-319; *Lettre du président du Gabon à l’ambassadeur de France au Gabon* (28 October 1974). CMG, Vol. V, Annex 155, pp. 281-283.

B. THE HISTORICAL RECORD CONFIRMS THAT THE PARTIES DID NOT REACH AN AGREEMENT ON 12 SEPTEMBER 1974 WHICH “DEFINITELY SOLVED” THEIR DISPUTE OVER THE LAND AND MARITIME BOUNDARY, AND SOVEREIGNTY OVER MBAÑE, COCOTEROS AND CONGA

3.28 Gabon ignores the historical record relating to “the particular circumstances in which [the document presented in 2003] was [allegedly] drawn up”,⁹¹ which demonstrates that the Parties did not reach any agreement on 12 September 1974, much less one which “definitely solved”⁹² their dispute over the land and maritime boundary and sovereignty over Mbañe, Cocoterros and Conga, and that the Parties continued negotiations on these disputed issues in September and October 1974, in the immediate aftermath of the alleged “agreement”.

3.29 In a dispatch dated 17 September 1974—five days after the alleged agreement of 12 September—the French Ambassador to Equatorial Guinea reported to the French Ministry of Foreign Affairs that:

“It was announced that on September 12, before President Bongo’s departure for his capital, a joint communiqué would be signed. I presume that our embassy in Gabon is in possession of this text, if it exists, but in Malabo, where we are deprived of any written press and where the radio is broadcasting more and more in the Fang dialect, as of September 17 no one had the slightest indication of the result of this state visit and concerning the decisions that it may have brought with it, particularly concerning the delimitation of the boundary of Rio Muni. I would have appreciated it if the information, probably collected by Mr. Ribo [the Ambassador of France to Gabon] had been communicated to me by telegram. Deprived of any enlightenments coming from Libreville, and in the absence of my Gabonese

⁹¹ *Aegean Sea Continental Shelf (Greece v. Turkey)*, Judgment, I.C.J. Reports 1978, p. 39, para. 96; *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)*, Judgment, I.C.J. Reports 1994, p. 121, para. 23.

⁹² CMG, Vol. I, para. 3.17, quoting *Télégramme No. 691/692 de l’ambassade de France au Gabon au ministère des Affaires étrangères français* (13 September 1974). CMG, Vol. V, Annex 148 (“définitivement réglé”).

colleague (by the way, closed like a prison door for the last months), it is necessarily with reservations that I deliver the information that reached me today from Bata and that might well provide the explanation for the very suspicious silence that the Equatorial Guinean government continues to maintain, and of which the official radio has not even recounted the purely formal aspects of the end of the state visit. Even though President Bongo had agreed to extend his stay in Bata by several hours on September 12, *no specific common ground on the question of boundaries could be found between the president of Gabon and his difficult and suspicious interlocutor.* The latter is said to have further been met with a categorical refusal on the part of Mr. Bongo when he demanded, yet again, that the members of his opposition benefiting from the right of asylum in Gabon be handed over to him.

*The two presidents thus apparently left without signing any communiqué, all the contentious questions between the two countries remaining unresolved pending new and hypothetical meetings.”*⁹³

3.30 The French Ambassador thus reported to Paris that no final and binding agreement had been reached on 12 September 1974. He was not alone in that view. Spanish government representatives confirmed that the Parties had not concluded a final and binding agreement on 12 September 1974, and that they continued negotiations to resolve ongoing sovereignty and boundary disputes.

3.31 According to the Spanish Embassy in Equatorial Guinea, on 23 September 1974—just eleven days after the date on which Gabon alleges that a final and binding agreement was signed—an Equatoguinean delegation travelled to Libreville “to continue negotiations to resolve the boundary conflict with Gabon”.⁹⁴ The next day, on 24

⁹³ *Letter No. 38/DA/DM from the Embassy of the French Republic to Equatorial Guinea to the French Ministry of Foreign Affairs concerning the State Visit of President Bongo, 9/12 September 1974 (17 September 1974), pp. 4-5. REG, Vol. IV, Annex 33. (emphasis added).*

⁹⁴ *Letter No. 509/74 from the Spanish Ambassador in Malabo to the Spanish Minister of Foreign Affairs concerning the Conflict with Gabon (25 September 1974), p.1 (“[A] government commission from this Country has travelled to Libreville in order to continue negotiations to resolve the boundary conflict with*

September 1974, the Equatoguinean delegation returned to Malabo with a delegation from Gabon to continue these negotiations. Despite these efforts, the Spanish Embassy reported that the negotiations did not yield “an agreement between both parties”, and that it was “fundamentally false that Equatorial Guinea will cede even a single portion of National territory”.⁹⁵ These facts, contemporaneously documented by credible third parties—the diplomatic representatives of France and Spain—completely refute Gabon’s contention that the boundary and sovereignty disputes between the Parties had been definitively “resolved” on 12 September 1974.

3.32 On 24 September 1974, Equatorial Guinea made a request to Spain for documents pertaining to the eastern territorial boundary, explaining that this is what “most interests President Macias in the *current* phase of [the] conflict and the corresponding negotiations”.⁹⁶ Two days later, on 26 September 1974, President Macias’ request to Spain was reiterated, specifying that engineers were required to delimit the land boundary pursuant to the 1900 Convention, and that “such delimitation is prior condition *for reaching agreements in principle* between Gabon and Equatorial Guinea”.⁹⁷ Again, this contemporaneous correspondence refutes Gabon’s contention that the two Parties had reached a final and binding agreement, at least on the land boundary, on 12 September 1974.

3.33 On 28 September 1974, in the course of a lengthy conversation with the Spanish Ambassador to Equatorial Guinea, President Macias made no mention of any

Gabon. [...] [T]he negotiations have not, at present yielded an agreement between both parties.”). REG, Vol. IV, Annex 34.

⁹⁵ *Letter No. 509/74 from the Spanish Ambassador in Malabo to the Spanish Minister of Foreign Affairs concerning the Conflict with Gabon* (25 September 1974). REG, Vol. IV, Annex 34.

⁹⁶ *Letter No. 125 from the Spanish Ambassador in Malabo to the Spanish Minister of Foreign Affairs* (27 September 1974), p. 2 (emphasis added). REG, Vol. IV, Annex 35.

⁹⁷ *Letter No. 125 from the Spanish Ambassador in Malabo to the Spanish Minister of Foreign Affairs* (27 September 1974), p. 2 (“dicha delimitación es previa condición para llevar buen término acuerdos de principio entre Gabón y Guinea Ecuatorial”) (emphasis added). REG, Vol. IV, Annex 35.

agreement with Gabon.⁹⁸ To the contrary, referring specifically to Gabon's demands in relation to the maritime boundary, President Macias told Spain's representative that the Parties' differing positions concerning delimitation of territorial waters in Corisco Bay "is [the reason] why the conflict has not yet been resolved".⁹⁹ The Spanish Ambassador then duly reported that the Parties had not yet arrived at an agreement.¹⁰⁰ Two days later, on 30 September 1974, the Spanish Ministry of Foreign Affairs sent the documents that President Macias had requested on 24 September to the Spanish Ambassador in Malabo "in case they might be of use to it in connection with its sovereignty dispute over these islands with the Government of Gabon".¹⁰¹ Again, as of the end of September 1974, neither of the two principals, nor the colonial powers to whom they each turned for support, considered that an agreement had been reached earlier that month to resolve the disputed sovereignty and boundary issues, all of which remained under negotiation.

3.34 The negotiations continued past September into October 1974, but no progress was made toward reaching a final and binding agreement. As indicated above,¹⁰² during his address to the diplomatic corps on 13 October 1974, President Macias explained that, among other issues, a lack of agreement on the delimitation of territorial waters in Corisco Bay prevented the signature of an agreement between the Parties.¹⁰³

⁹⁸ *Letter No. 524/74 from the Ambassador of Spain to the Spanish Minister of Foreign Affairs concerning Meeting in Bata with the President for Life (2 October 1974)*. REG, Vol. IV, Annex 38.

⁹⁹ *Letter No. 524/74 from the Ambassador of Spain to the Spanish Minister of Foreign Affairs concerning Meeting in Bata with the President for Life (2 October 1974)*, p. 4, point 25 ("es la causa de que el conflicto no se haya resuelto aun."). REG, Vol. IV, Annex 38.

¹⁰⁰ *Letter No. 524/74 from the Ambassador of Spain to the Spanish Minister of Foreign Affairs concerning Meeting in Bata with the President for Life (2 October 1974)*, p. 5. REG, Vol. IV, Annex 38.

¹⁰¹ *Letter from the Director General of the Ministry of Foreign Affairs to the Spanish Ambassador in Malabo concerning Submission of Documents Concerning Corisco (30 September 1974)*. REG, Vol. IV, Annex 37.

¹⁰² *See, supra*, para. 3.18.

¹⁰³ *Letter No. 582/74 from the Spanish Embassy in Malabo to the Spanish Minister of Foreign Affairs concerning Statements by the President for Life Before Heads of Missions Accredited Here (16 October 1974)*, p. 6, point 10. REG, Vol. IV, Annex 40.

3.35 President Macias sought the support of the diplomatic community in persuading Gabon to accept its conditions for an agreement, especially in regard to the end of Gabon's occupation of Mbañe and its acceptance of Equatorial Guinea's sovereignty over that island. Among others, he reached out to France. In response, on 22 October 1974, the French Ministry of Foreign Affairs indicated that it would welcome a visit by President Macias but cautioned that it would not meddle in the *ongoing* dispute between Equatorial Guinea and Gabon.¹⁰⁴ Here again, the contemporaneous official correspondence between informed governments reflects their common understanding that no agreement had been reached in September 1974, and that the sovereignty and boundary disputes between Equatorial Guinea and Gabon were ongoing. President Macias also reached out to the United States and the United Kingdom for support in relation to the as-yet unsettled sovereignty and boundary disputes with Gabon.¹⁰⁵

3.36 France unequivocally maintained the view that no final and binding agreement was concluded at Bata in September 1974. A report from the French Embassy in Gabon, undated but included in the official French archives for diplomatic correspondence generated during the period 1986-1994—states that:

“The draft agreement that was to be signed in 1974 between the late President Macias Nguema and President Bongo, which allocated the disputed islands: Bagnet, Conga and Cocotier, was, in the end, not signed.”¹⁰⁶

¹⁰⁴ *Telegram No. 69-70 from the Ministry of Foreign Affairs of the French Republic concerning the Visit of a Ministerial Mission (22 October 1974)*, p. 1. REG, Vol. IV, Annex 41. Subsequently, the French Ministry of Foreign Affairs confirmed that the visit would not address the ongoing boundary dispute between Equatorial Guinea and Gabon (*see Telegram No. 106 from the Ministry of Foreign Affairs of the French Republic concerning visit of President Macias to France (26 October 1974)*), p. 1. REG, Vol. IV, Annex 42.

¹⁰⁵ *See Telegram No. 1113-14 from the Embassy of the French Republic to the United Republic of Cameroon concerning President Macias' Approach with the Ambassador of the United States (10 December 1974)*. REG, Vol. IV, Annex 43. *See also Telegram No. 69-70 from the Ministry of Foreign Affairs of the French Republic concerning the Visit of a Ministerial Mission (22 October 1974)*, p. 1. REG, Vol. IV, Annex 41.

¹⁰⁶ *Report from Ministry of Foreign Affairs of the French Republic concerning the Gabon-Equatorial Guinea Point of Cooperation (1986-1994)*, p. 3. REG, Vol. IV, Annex 45 (“Le projet d'Accord qui devait être signé

For France, which had closely followed the diplomatic negotiations between Equatorial Guinea and Gabon, the document presented in 2003 was merely a “draft agreement” (a “projet d’Accord”), which never entered into force between the two Parties, leaving their sovereignty and boundary disputes unresolved.

3.37 The contemporaneous evidence, consisting principally of official correspondence and statements by the four States with greatest knowledge of the critical events, leads therefore to a single conclusion: that in the days, weeks, months and years that followed the talks in Bata on 12 September 1974, Equatorial Guinea, Spain, France and Gabon (through its own Ambassador to Equatorial Guinea) all affirmed that no final or binding agreement had been concluded, that the sovereignty and boundary disputes that were addressed at the Bata meeting remained unresolved, and that subsequent efforts, including further negotiations between the two Parties, never succeeded in resolving these disputes. In sum, no agreement resolving the Parties’ sovereignty, territorial or maritime disputes, sufficient to qualify as a legal title under Article 1 of the Special Agreement, was ever reached.

II. THE PARTIES HAVE NEVER UNDERSTOOD OR TREATED THE DOCUMENT PRESENTED IN 2003 AS HAVING THE FORCE OF LAW IN THEIR RELATIONS OR ESTABLISHING LEGAL TITLE WITHIN THE MEANING OF ARTICLE 1 OF THE SPECIAL AGREEMENT

A. THE PARTIES NEVER TOOK ANY OF THE REQUIRED STEPS TO COMPLETE OR IMPLEMENT THE SO-CALLED “BATA CONVENTION”

3.38 Even if, *quod non*, Gabon had met its burden to prove the authenticity of the document it presented in 2003, which it has not, it is plain from the document’s own terms that it was not a definitive settlement of the sovereignty and boundary disputes between the Parties. In particular, it required the Parties to take additional steps to resolve the territorial issues and conclusively establish their boundaries.¹⁰⁷ Gabon admits that the

en 1974 entre [le] Président MACIAS NGUEMA et le Président BONGO qui attribuait les Iles litigieuses de BAGNET, CONGA et COCTIER n’a finalement pas été signé”).

¹⁰⁷ MEG, Vol. I, paras. 7.15-7.20.

Parties did not take any of these steps.¹⁰⁸ It seeks to compensate for this fatal flaw in its argument by rewriting the terms of the so-called agreement.

3.39 First, Gabon argues that Articles 1 and 2 regarding a purported land boundary “have immediate binding force” because “there are numerous territorial treaties that provide for a subsequent demarcation exercise like the [1900] Paris Convention [between France and Spain], whose binding force is accepted by both Parties”.¹⁰⁹ This argument is patently inapposite. Unlike the purported “Bata Convention” of 1974, the 1900 Paris Convention provides for subsequent demarcation *of an already defined and delimited boundary*, such that:

“[t]he boundaries delimited by this Convention shall be recorded on the attached maps (appendices numbers 2 and 3) with the reservations made in appendix no. 1 to this Convention. Both Governments agree to designate Commissioners, within four months of exchanging ratifications, who shall be responsible for tracing on the ground the demarcation lines between the Spanish and French possessions, in accordance with and in the spirit of the provisions of this Convention (a)”.¹¹⁰

3.40 As described below, the document presented in 2003 is unlike the Paris Convention because it requires delimitation of the boundaries not yet defined, not physical demarcation of boundaries already agreed. The sole legal authority that Gabon relies

¹⁰⁸ CMG, Vol. I, para. 4.3 (“À la suite de la conclusion de la Convention de Bata, les questions concernant les frontières terrestre et maritime, d’une part, et la souveraineté sur les îles Mbanié, Cocotiers et Conga, d’autre part, n’ont plus été abordées entre les deux États.”) (“Following the conclusion of the Bata Convention, the issues of land and maritime borders, on the one hand, and sovereignty over the Mbañe, Cocoteros and Conga islands, on the other, were no longer discussed between the two States.”).

¹⁰⁹ CMG, Vol. I, para. 6.40 (“il n’en demeure pas moins que les articles 1 et 2 sont revêtus d’une force contraignante immédiate” parce que “nombreux sont les traités territoriaux qui prévoient un exercice de démarcation ultérieur à l’instar de la Convention de Paris dont la valeur contraignante est acceptée par les deux Parties”).

¹¹⁰ MEG, Vol. III, Annex 4, art. VIII.

upon—Oppenheim’s International Law—clearly distinguishes between the *delimitation* of a boundary and the subsequent task of *demarcation* pursuant to that delimitation:

“The common practice for land boundaries is, in a boundary treaty or award, to describe the boundary line in words, *i.e.*, to “delimit” it; and then to appoint boundary commissions, usually joint, to apply the delimitation to the ground and if necessary to mark it with boundary posts or the like, ie to ‘demarcate’ it.”¹¹¹

3.41 The document presented in 2003 does not even deal with demarcation, since no agreement on delimitation was reached. The Parties did not “describe the boundary line in words”, as Oppenheim posits. In the case of Equatorial Guinea and Gabon, the delimitation of the boundary was yet to be completed in the future, as confirmed by the plain language of relevant provisions conspicuously ignored by Gabon. Article 7 states that:

*“Protocols shall be made ... to determine the surface area and exact limits of land area ceded to the Gabonese Republic and that ceded to the Republic of Equatorial Guinea, and ... to specify the terms and conditions of the application of the present Convention.”*¹¹²

Gabon admits that no such protocols were ever made pursuant to Article 7 or otherwise to determine the “surface area and the exact limits” of land allegedly ceded or “for specifying the means of application” of the alleged 1974 “agreement”. As a result, no delimitation was effected by the “agreement” itself, or pursuant to its terms.

3.42 Article 8 similarly requires the precise boundary to be *subsequently* defined by representatives of Gabon and Equatorial Guinea. It provides that:

¹¹¹ R. Jennings and A. Watts, *OPPENHEIM'S INTERNATIONAL LAW*, Ninth Edition (1996), p. 662. REG, Vol. V, Annex 61.

¹¹² The Republic of Equatorial Guinea and The Gabonese Republic, *Convention Delimiting the Land and Maritime Boundaries of Equatorial Guinea and Gabon* (12 September 1974) (French-language photocopy), art. 7. MEG, Vol. VII, Annex 215 (emphasis added).

“the *materialization* of the boundaries shall be done by a team composed of representatives of both countries, in equal number, with the aid or participation, as necessary, of technicians and observers from the Organization of African Unity or any other international body, chosen by mutual agreement”.¹¹³

Gabon admits that no teams of representatives, technicians or observers from the Organization of African Unity or any other international bodies were established to carry out the “materialization of the borders”. Gabon’s attempt to equate the language of “the materialization of the boundaries” with an agreement to demarcate the boundary in the future¹¹⁴ fails in light of the French version of Article 8, which states:

“La délimitation matérielle des frontières sera faite par une équipe composée de représentants en nombre égal des deux pays, avec – si cela est nécessaire – le concours ou la participation de spécialiste ou d’observateurs de l’Organisation de l’Unité Africaine, ou de toute autre organisme international.”¹¹⁵

In any event, even if, *quod non*, the text of Article 8 could be interpreted as a reference to demarcation rather than delimitation, there could be no demarcation without prior delimitation, and the alleged 1974 agreement fails to delimit the continental territory pertaining to, or to be ceded to, either of the Parties.

¹¹³ The Republic of Equatorial Guinea and The Gabonese Republic, *Convention Delimiting the Land and Maritime Boundaries of Equatorial Guinea and Gabon* (12 September 1974) (French-language photocopy), art. 8. MEG, Vol. VII, Annex 215 (emphasis added).

¹¹⁴ CMG, Vol. I, para. 6.45 (“la matérialisation des frontières”).

¹¹⁵ CMG, Vol. V, Annex 160, p. IV, art. 8 (“The physical delimitation of the borders shall be carried out by a team composed of equal numbers of representatives of the two countries, with - if necessary - the assistance or participation of specialists or observers from the Organisation of African Unity, or any other international body.”) (“La délimitation matérielle des frontières sera faite par une équipe composée de représentants en nombre égal des deux pays, avec – si cela est nécessaire – le concours ou la participation de spécialiste ou d’observateurs de l’Organisation de l’Unité Africaine, ou de toute autre organisme international”) (emphasis added).

3.43 Second, Gabon refers to the *Nota Bene* pertaining to Article 4 of the alleged “agreement”, which states that “[t]he two heads of state agree to subsequently proceed with a new drafting of Article 4 in order to bring it into conformity with the 1900 Convention.”¹¹⁶ This supports Equatorial Guinea’s view that the 1974 “agreement” was incomplete, and was not intended or understood as a final agreement on boundaries, but instead was seen by both Parties as a precursor to an anticipated subsequent agreement, and especially one that would conform to the delimitation of boundaries under the 1900 Convention. But that subsequent agreement never materialized, and the boundary “agreement” reflected in the 1974 document remained incomplete, un-agreed, and non-final.

3.44 Gabon unconvincingly relies on the Court’s judgment in *Libya v. Chad*, and Professor Shaw’s commentaries, for a misconceived argument that “the simple fact that the *nota bene* contemplates a subsequent revision of Article 4 of the Bata Convention cannot call into question the binding force of this article or of the Bata Convention as a whole”.¹¹⁷ But the terms of the *Nota Bene* make clear that Article 4 was *not* to be understood as a final agreement on delimitation of the land boundary, with binding force. Rather, it was a placeholder for an agreement yet to be reached, further indicating that more was required on delimitation of the boundaries before an “agreement”, binding on the Parties, could be considered to have been reached.

3.45 Professor Shaw’s observation—that “the fact that an instrument provides for modification by mutual agreement of its terms does not detract from the fact that a *fully delimited frontier line* has been established”—is premised on there being a pre-existing

¹¹⁶ MEG, Vol. VII, Annex 215, p.3, *Nota Bene*.

¹¹⁷ CMG, Vol. I, para. 6.53 (“le simple fait que le nota bene envisage une révision ultérieure de l’article 4 de la Convention de Bata ne peut remettre en question la force obligatoire de cet article ou de la Convention de Bata dans son ensemble.”).

“fully delimited frontier line”.¹¹⁸ This refutes, rather than assists, Gabon’s case because the so called “Bata Convention” does not include a “fully delimited frontier line”.

3.46 In *Libya v. Chad*, Libya argued that there was no existing boundary and asked the Court to determine one. Chad argued that the boundary was determined by the 1955 French-Libyan Treaty of Friendship and Good Neighbourliness, to which Chad was a party in succession to France. The threshold question for the Court was whether the 1955 Treaty conclusively established a boundary and whether the parties respected the boundary in their subsequent conduct. The Court found that “the terms of the Treaty signified that the parties thereby recognized complete frontiers between their respective territories”.¹¹⁹ The Court also stressed that the text of the Treaty “clearly conveys the intention of the parties to reach a definitive settlement of the question of their common frontier”,¹²⁰ and that “[t]here is nothing in the 1955 Treaty to indicate that the boundary agreed was to be provisional or temporary; on the contrary it bears all the hallmarks of finality”.¹²¹ Having concluded that a boundary resulted from the 1955 Treaty, and having established the course of the boundary, the Court proceeded to examine the subsequent conduct of the parties. It found that “the existence of a determined frontier was accepted and acted upon by the Parties”.¹²² Neither party questioned the validity of the 1955 Treaty, nor did Libya question

¹¹⁸ CMG, Vol. I, para. 6.51. (emphasis added).

¹¹⁹ *Territorial Dispute (Libya/Chad)*, Judgment, I.C.J. Reports 1994, paras. 43, 48.

¹²⁰ *Territorial Dispute (Libya/Chad)*, Judgment, I.C.J. Reports 1994, para. 51.

¹²¹ *Territorial Dispute (Libya/Chad)*, Judgment, I.C.J. Reports 1994, para. 72.

¹²² *Territorial Dispute (Libya/Chad)*, Judgment, I.C.J. Reports 1994, para. 66 (“No subsequent agreement, either between France and Libya, or between Chad and Libya, has called in question the frontier in this region deriving from the 1955 Treaty. On the contrary, if one considers treaties subsequent to the entry into force of the 1955 Treaty, there is support for the proposition that after 1955, the existence of a determined frontier was accepted and acted upon by the Parties. The Treaty between Libya and Chad of 2 March 1966, like the Treaty of 1955, refers to friendship and neighbourly relations between the Parties, and deals with frontier questions. Articles 1 and 2 mention “the frontier” between the two countries, with no suggestion of there being any uncertainty about it. Article 1 deals with order and security “along the frontier” and Article 2 with the movement of people living “on each side of the frontier.” Article 4 deals with frontier permits and Article 7 with frontier authorities. If a serious dispute had indeed existed regarding frontiers, eleven years after the conclusion of the 1955 Treaty, one would expect it to have been reflected in the 1966 Treaty.”).

Chad’s right to invoke against Libya any such provisions thereof as related to the frontiers of Chad.¹²³

3.47 Here, the situation is entirely different. As Equatorial Guinea showed in its Memorial, the document presented in 2003 did not conclusively establish any boundary or territorial regime. Unlike the 1955 Treaty before the Court in *Libya/Chad*, this document “bears [no] hallmarks of finality” with respect to reaching “a definitive settlement of the question of their common frontier”.¹²⁴ Additionally, unlike the subsequent conduct of the parties in *Libya/Chad*, the subsequent conduct of Equatorial Guinea and Gabon does not show that “the existence of a determined frontier was accepted and acted upon by the Parties”.¹²⁵ In fact, it shows the very opposite, as described below in subsection II.B.

3.48 Gabon acknowledges that the *Nota Bene* calls for the redrafting of Article 4, but weakly attempts to portray this as a mere *potential* future redrafting.¹²⁶ However, the plain text of the *Nota Bene* is to the contrary. It expressly calls for a “new drafting” of Article 4, not a potential one:

“The two heads of state agree to subsequently proceed with a new drafting of Article 4 in order to bring it into conformity with the 1900 Convention.”¹²⁷

3.49 Three conclusions flow inescapably from the terms of the *Nota Bene*:

¹²³ *Territorial Dispute (Libya/Chad)*, Judgment, I.C.J. Reports 1994, para. 36.

¹²⁴ *Territorial Dispute (Libya/Chad)*, Judgment, I.C.J. Reports 1994, para. 72.

¹²⁵ *Territorial Dispute (Libya/Chad)*, Judgment, I.C.J. Reports 1994, para. 68.

¹²⁶ CMG, Vol. I, paras. 6.50-1.

¹²⁷ MEG, Vol. VII, Annex 215, p. 3, *Nota Bene*.

- it recognizes that Article 4 was inconsistent with the 1900 Convention and that the two Heads of State were not prepared to accept any deviations from that Convention;
- a “new drafting of Article 4” was required to “bring it into conformity” with the Convention; and
- there is no guidance on what the “new drafting” would consist of, or how Article 4 would be recast (in order to bring it into conformity with the Convention), or whether the two heads of State had any common understanding of what, specifically, was required to achieve that objective.

3.50 What the *Nota Bene* makes certain is that Article 4 was to be redrafted to conform to the 1900 Convention. And it is equally certain, and undisputed, that this never occurred. It follows that Article 4 was, at most, an agreement in principle to attempt to negotiate a final and binding agreement on the basis of the 1900 Convention. Since this was never done, no final and binding agreement ever came into existence.

3.51 Gabon argues that the document presented in 2003 “expressly provides that it shall enter into force upon signature”.¹²⁸ However, this provision is not “indicative of the instrument’s binding character” as alleged by Gabon.¹²⁹ Rather, Gabon’s own evidence is that President Macias “would have hand-written that this text would not be valid before the ratification by the national assemblies of two countries. This had not been the case”.¹³⁰ It is thus more than coincidental that that *every copy of the Spanish version of the document*

¹²⁸ CMG, Vol. I, para. 6.47 (“prévoit expressément qu’elle entrera en vigueur dès sa signature”).

¹²⁹ CMG, Vol. I, para. 6.47 (“une indication de son caractère contraignant”).

¹³⁰ CMG, Vol. V, Annex 168, p. 3 (“y aurait écrit de sa main que ce texte ne serait valable avant la ratification par les assemblées nationales de deux pays. Tel n’avait pas été le cas”).

is cut off on the last page, before the full signature line. As a result, the signature page does not show the names of the signatories or anything below the signatures.

3.52 While signatures do appear on the French photocopy presented by Gabon in 2003, they do not prove that a legally binding settlement of the Parties' sovereignty and boundary disputes was reached. Neither President Macias nor President Bongo had the constitutional authority to conclude such an agreement. Article 7 of Equatorial Guinea's 1973 Constitution states that:

“Equatorial Guinea shall consider illegal and invalid conventions or treaties which infringe or diminish its jurisdiction or sovereignty over any portion whatsoever of the national territory, the territorial sea, and air space.”¹³¹

3.53 The conclusion of an agreement by which Equatorial Guinea would have ceded territory to Gabon would thus have required an amendment to the Constitution of Equatorial Guinea by the national parliament of Equatorial Guinea, in accordance with Articles 59 and 72 of its 1973 Constitution.¹³² On 13 December 1973, Equatorial Guinea's Constitution was transmitted to all UN Member States, including Gabon.¹³³ This explains why, as noted in Gabon's own evidence, President Macias “would have hand-written that

¹³¹ *Letter No. OR 511 EQGU* from the Permanent Representative of the Republic of Equatorial Guinea in the United Nations to the Secretary General of the United Nations *concerning* the Distribution of the Constitution of the Republic of Equatorial Guinea of 4 August 1973 (13 December 1973), p. 5, art. 7. REG, Vol. III, Annex 7 (“La Guinea Ecuatorial considera ilegales y nulos los pactos o tratados que atenten o disminuyan su jurisdicción y soberanía sobre cualquier porción del territorio nacional, mar territorial, y espacio aéreo.”).

¹³² Article 59 empowers the People's National Assembly (national parliament) to amend the Constitution and Article 72 indicates that the Constitution may be amended with the agreement of two thirds of the National Assembly and approval of the President of the Republic meeting with the Council of Ministers.

¹³³ *Letter No. OR 511 EQGU* from the Permanent Representative of the Republic of Equatorial Guinea in the United Nations to the Secretary General of the United Nations *concerning* the Distribution of Constitution of the Republic of Equatorial Guinea of 4 August 1973 (13 December 1973). REG, Vol. III, Annex 7.

this text would not be valid before the ratification by the national assemblies of two countries ...”¹³⁴

3.54 Likewise, Gabon’s constitution prohibited President Bongo from concluding without parliamentary ratification and a referendum an agreement with the territorial effects Gabon attributes to the document it invokes before the Court. Article 52 of Gabon’s Constitution of 1972 states that:

“Peace treaties, commercial treaties, treaties relating to international organization, *treaties* that commit the State’s finances, those that modify provisions of a legislative nature that relate to the status of persons or *that entail cession, exchange or addition of territory may be ratified only by virtue of a law.*”

The same article of Gabon’s constitution provides:

“*No cession, no exchange, no addition of territory shall be valid without the consent of the Gabonese people called upon to decide by referendum, after consultation with the populations concerned.*”¹³⁵

3.55 In the French version of the 2003 document, there are handwritten edits which replace the word “treaty” with “convention”. Gabon has not explained who made these handwritten changes to the text, when they were made, or whether they were approved by the Parties. Their existence casts further doubt on the alleged finality of this purported “agreement”. In its Counter-Memorial, Gabon offers only that the document was described as “convention” rather than a “treaty” in order to circumvent the requirements of Article 52 of its Constitution.¹³⁶ While “convention” and “treaty” are normally used interchangeably in international law, Gabon’s explanation suggests that President Bongo

¹³⁴ CMG, Vol. V, Annex 168, p. 3 (“y aurait écrit de sa main que ce texte ne serait valable avant la ratification par les assemblées nationales de deux pays”).

¹³⁵ MEG, Vol. VI, Annex 189, art. 52 (emphasis added).

¹³⁶ GCM, Vol. I, para. 3.19, citing GCM, Vol. V, Annex 156.

understood them differently for the purpose of exercising his powers under Gabon’s Constitution, which prohibited him from concluding a “treat[y] that entail[s] cession, exchange or addition of territory”¹³⁷ without submitting it to the national assembly for ratification by law and to a referendum by the people of Gabon.

3.56 Gabon does not deny that neither country ratified the alleged 1974 “agreement” and that it was not submitted to the Gabonese people for a referendum. On 25 February 1977, the Gabonese Foreign Minister stated that the document was never “submitted to [the Gabonese] Parliament or ratified” and that “[i]t has fallen by the wayside for now”.¹³⁸

3.57 The fact that both heads of State were not authorized to conclude a treaty relating to the cession or exchange of territory in the absence of parliamentary action—and that no such parliamentary process subsequently occurred—constitutes further evidence that President Macias and President Bongo did not conclude—or have the intention of concluding—a final and binding treaty on 12 September 1974.

B. THE PARTIES CONTINUED THEIR EFFORTS TO SETTLE THEIR ONGOING SOVEREIGNTY AND BOUNDARY DISPUTES WITHOUT INVOKING THE DOCUMENT PRESENTED IN 2003, RELYING INSTEAD ON OTHER LEGAL TITLES

3.58 To resolve their ongoing sovereignty and boundary disputes, the Parties returned to the negotiating table between November 1979 and May 2003. Three key conclusions can be drawn from the evidence, including Gabon’s own evidence, about the negotiations that took place during this 24-year period:

¹³⁷ The Gabonese Republic, *Constitution of The Gabonese Republic* (29 July 1972), p. 3, Art. 52. MEG, Vol. VI, Annex 189.

¹³⁸ *Letter No. 85 from the Director General of the Ministry of Foreign Affairs to the Spanish Ambassador in Malabo* (25 February 1977), p. 2. REG, Vol. IV, Annex 44.

- (i) the Parties understood that their sovereignty and boundary disputes—the same ones addressed in the so-called “Bata Convention”—remained unresolved after 12 September 1974;
- (ii) from 1979 to 2003 the Parties engaged in intensive bilateral negotiations on all the issues allegedly “resolved” by the alleged “agreement”; and
- (iii) during that entire period of frequent and ongoing negotiations, the Parties treated the alleged “agreement” as nonexistent, with neither Gabon nor Equatorial Guinea ever—not even once—asserting it as a basis for any claims of title to insular, land or maritime territory within the meaning of Article 1 of the Special Agreement.

3.59 It bears emphasis that, at no point during those twenty-four years did either Party rely on, or even mention, the document Gabon presented in 2003. To the contrary, they relied exclusively on other sources of legal title to support their sovereignty claims to Mbañe, Conga and Cocoteros, their disputed claims to continental land territory, and their maritime entitlements.

3.60 Notwithstanding these well-established facts, in its Counter-Memorial Gabon brazenly alleges that “[f]ollowing the conclusion of the [alleged “Bata Convention”] questions concerning land and maritime boundaries, on the one hand, and sovereignty over the islands of Mbañe, Cocoteros and Conga, on the other, *were no longer discussed between the two States*”.¹³⁹ This is an incredible distortion of the facts, including those admitted by Gabon or presented in its own Counter-Memorial, as noted above and further shown below.

¹³⁹ CMG, Vol. I, para. 4.3 (emphasis added) (“[à] la suite de la conclusion de la Convention de Bata, les questions concernant les frontières terrestre et maritime, d’une part, et la souveraineté sur les îles Mbanié, Cocotiers et Conga, d’autre part, n’ont plus été abordées entre les deux États”).

3.61 For example, Gabon acknowledges that beginning in 1979 the Parties attempted to reach a provisional agreement of a practical nature, as now provided for under UNCLOS Articles 74(3) and 83(3), pending the resolution of their sovereignty dispute over the islands in Corisco Bay and the delimitation of a maritime boundary in that area.¹⁴⁰ However, Sketch Map 4.1 of Gabon’s Counter-Memorial misrepresents the area of joint development subject to the provisional agreement.¹⁴¹ Specifically, Gabon’s Sketch Map shows lines around Corisco and the Elobey Islands, as if they were enclaved within waters belonging to Gabon. Those lines are not to be found in any text from 1979. They appear to have been added by Gabon in its Counter-Memorial to give the (wrong) impression that the maritime delimitation it seeks was agreed, at least provisionally, by Equatorial Guinea. It was not. To the contrary, negotiations continued for years thereafter between the Parties relating to the ongoing disputes over the same issues—sovereignty over Mbañe, Conga and Cocoteros, and the adjacent maritime boundary—that Gabon now (belatedly) alleges to have been resolved by the “agreement” allegedly reached in 1974.

3.62 Gabon’s own Minister of Foreign Affairs, Jean Ping, has made statements that directly contradict the position now adopted by Gabon before Court, namely that the document invoked by Gabon supposedly brought to an end the tensions between the Parties and that the 1979 Petroleum Cooperation Agreement did not concern a boundary dispute.¹⁴² In 2006, Minister Ping affirmed that

“with the ascension to power in Malabo of President Theodoro Obiang Nguema Mbasogo [in 1979], a new cycle of negotiations is opened. The first act of the negotiations with the new authorities of Malabo, on the questions touching the border is constituted by the signature in

¹⁴⁰ CMG, Vol. I, para. 4.9.

¹⁴¹ CMG, Vol. I, para. 4.6(b); CMG, Vol. I, p. 115.

¹⁴² CMG, Vol. I, paras. 4.1, 4.4, 4.6- 4.8, 6.22.

Libreville on September 22 (sic) 1979 ... of an Agreement of petroleum cooperation”.¹⁴³

There is no evidence that on any occasion during those negotiations, which began in November 1979 and continued until September 1984, either Party ever invoked the “agreement” now alleged by Gabon, or claimed that any of the issues under negotiation had been resolved by that purported instrument.

3.63 During the renewed negotiations in 1984, the Parties disputed the maritime area that would be covered by any provisional arrangements to which they might agree. Gabon now admits that Equatorial Guinea “considered the entire area to be under its sole sovereignty”.¹⁴⁴ Again, the “agreement” now alleged by Gabon was never mentioned. Neither Party referred to it in circumstances which plainly would have called for its invocation. Instead, reference was made to UNCLOS and Article 7 of Equatorial Guinea’s Constitution.¹⁴⁵

3.64 Gabon acknowledges that in further negotiations, in November 1985, the Parties disputed sovereignty over Mbañe, Cocoteros and Conga.¹⁴⁶ Again, the summary presented in 2006 by Gabon’s Minister of Foreign Affairs, Jean Ping, is revealing. Minister

¹⁴³ J. Ping, “Gabon: History of the talks between Gabon and Equatorial Guinea on Mbanié Island,” *all Africa* (29 September 2006), p. 2, point 10. REG, Vol. V, Annex 65 (“avec l’arrivée au pouvoir du Président Theodoro Obiang Nguema Mbasogo [en 1979], un nouveau cycle de négociations va s’ouvrir. L’acte premier des négociations avec les nouvelles autorités de Malabo, sur les questions touchant la frontière est constitué par la signature à Libreville le 22 septembre (sic) 1979 [...] d’un Accord de coopération pétrolière”).

¹⁴⁴ CMG, Vol. I, para. 4.10 (“a estimé l’ensemble de la zone comme relevant de sa seule souveraineté”).

¹⁴⁵ As detailed in the minutes from the Parties September 1984 negotiations, Article 7 of Equatorial Guinea’s 1982 constitution lists as Equatoguinean territory, not only the islands enumerated by Gabon in paragraph 4.10 of its counter-memorial, but also “adjacent islets” (“islotos adyacentes”) which includes Mbañe, Conga, and Cocoteros. MEG, Vol. VII, Annex 205, p. 140, Republic of Equatorial Guinea, *Constitution of 1982* (15 September 1982). REG, Vol. V, Annex 53. Note that Equatorial Guinea’s 1972 constitution, similarly, includes such “adjacent islets” (“islotos adyacentes”) in its national territory. See *Letter No. OR 511 EQGU from the Permanent Representative of the Republic of Equatorial Guinea in the United Nations to the Secretary General of the United Nations concerning the Distribution of Constitution of the Republic of Equatorial Guinea of 4 August 1973* (13 December 1973), p. 5, art. 5. REG, Vol. III, Annex 7.

¹⁴⁶ CMG, Vol. I, para. 4.1 (“[c]e n’est qu’en 1999 que le différend frontalier s’est cristallisé”). See also *Ibid.*, paras. 4.11-4.12.

Ping affirmed that the sovereignty dispute over Mbañe, Cocoteros and Conga was the subject of 1985 and 1993 negotiations, which repeatedly failed because each Party claimed sovereignty over the islets.¹⁴⁷ Significantly, despite Gabon's insistence on its sovereignty over the three insular features, it never cited any prior agreement as the basis of its sovereignty claims, or as the basis of Equatorial Guinea's acceptance of those claims.

3.65 In particular, although Gabon sought to establish a base point on Mbañe for delimitation purposes, it did not seek to justify its approach by reference to the document Gabon invokes before the Court, which it almost certainly would have done if it believed that the issue of its sovereignty over Mbañe had been settled by an alleged agreement.¹⁴⁸ Nor did Gabon contend that Equatorial Guinea's claim to sovereignty over Mbañe was inconsistent with the terms of the any existing agreement.

3.66 The Parties ultimately abandoned the idea of reaching a provisional arrangement of a practical nature and sought to conclude a treaty delimiting their maritime and land boundaries. As described below, throughout negotiations between November 1985 and January 2001, the Parties on no occasion invoked an existing agreement, and never asserted the document Gabon invokes before the Court as a basis for their claims of title to insular or continental land territory or to adjacent maritime zones. Instead, they consistently invoked, relied upon, and affirmed the principle of respect for boundaries inherited from their colonial predecessors, the applicability of the 1900 Convention (together with its agreed modifications) and UNCLOS as the legal bases to resolve their disputes and determine their titles.

3.67 For example, at a meeting of the *ad hoc* Equatorial Guinea-Gabon Boundary Commission from 10 to 16 November 1985, both Parties claimed sovereignty over *inter alia* Mbañe, Cocoteros and Conga, and proceeded on the basis that their dispute over these

¹⁴⁷ J. Ping, *News Article* "Gabon: History of the talks between Gabon and Equatorial Guinea on Mbanie Island," *all Africa*, p. 2, point 10. REG, Vol. V, Annex 65.

¹⁴⁸ CMG, Vol. I, para. 4.12.

islands was unresolved. The Parties went on to sign an Act on 16 November 1985 recognizing: (i) the principle of acceptance of the boundaries inherited from the former colonial powers, particularly the 1900 Convention; (ii) the application of international treaties regarding the law of the sea, notably UNCLOS; and (iii) respect for the sovereignty of each State over its own national territory.¹⁴⁹ The 1985 Act made no reference to the any existing agreement between Equatorial Guinea and Gabon, and certainly not to the document Gabon invokes before the Court, which Gabon did not even mention until 2003.

3.68 Similarly, when the *ad hoc* Equatorial Guinea-Gabon Boundary Commission met in Libreville from 17 to 19 January 1993, the Parties' disputes over island sovereignty and their land and maritime boundaries persisted. The Parties again affirmed that the 1900 Convention and UNCLOS are the applicable legal instruments for their legal titles.¹⁵⁰ Again, Gabon accepts that neither Party made any mention of the document Gabon invokes before the Court.

3.69 At paragraph 4.14 of its Counter-Memorial, Gabon admits that "the issue of sovereignty over Mbañe, Cocoteros and Conga and the related issue of borders" were discussed by the *ad hoc* Equatorial Guinea-Gabon Boundary Commission in Libreville from 17 to 19 January 1993, and that Equatorial Guinea "again claimed sovereignty over Mbañe, Conga and Cocoteros".¹⁵¹ Remarkably, and in the face of all the evidence to the contrary, Gabon blithely asserts that this was the only occasion on which these issues were discussed.¹⁵² In fact, the Parties repeatedly raised these issues, as set out in Equatorial Guinea's Memorial, at paragraphs 5.2-5.17, 7.9, and 7.24-7.25, and always did so on the basis that the dispute had never been resolved.

¹⁴⁹ MEG, Vol. I, para. 5.10.

¹⁵⁰ MEG, Vol. I, paras. 5.11-5.13.

¹⁵¹ CMG, Vol. I, para. 4.14 ("à nouveau revendiqué la souveraineté sur Mbanié, Conga et Cocotiers").

¹⁵² CMG, Vol. I, para. 4.14 ("la question de la souveraineté sur Mbanié, Cocotiers et Conga et celle y relative des frontières n'ont été évoquées qu'en une seule occasion...") (emphasis added).

3.70 Gabon ignores, *inter alia*, the meeting in Libreville from 29 to 31 January 2001, under the auspices of the *ad hoc* Equatorial Guinea-Gabon Boundary Commission, where the head of the Gabonese delegation opened the session by referring to the “legal framework” for resolving the Parties’ territorial and boundary disputes, which he said consisted of: (i) the 1900 Convention; (ii) the United Nations Charter; (iii) the Charter of the Organization of African Unity; and (iv) UNCLOS. Nothing else.¹⁵³ No member of the Gabonese delegation mentioned an “agreement” allegedly reached in 1974 as part of this legal framework, or made any other reference whatsoever to any prior agreement between the Parties.

3.71 The conduct of the Parties outside the formal negotiations further confirms that they never understood that an alleged “agreement” reached in 1974 had resolved their disputed claims relating to insular sovereignty, territorial boundaries or maritime areas. Their understanding is exemplified, in particular, by their respective assertion of maritime claims, their negotiation of maritime boundaries with third States, and their oil and gas concession agreements covering disputed maritime areas. In none of these cases did Gabon or Equatorial Guinea assert any legal rights or titles to the areas it claimed based on the document Gabon invokes before the Court. Nor did either Party invoke any purported agreement to justify its military activities in and around the disputed islands, or its protests of the other Party’s activities. Some examples follow.

3.72 On 4 May 1990, the Gabonese Ministry of Foreign Affairs wrote to the Equatoguinean Embassy in Libreville to protest an exploration permit that Equatorial Guinea granted to Clarion Petroleum. Gabon claimed that the concession area interfered with the purported Gabonese maritime area adjacent to Mbañe.¹⁵⁴ Gabon requested that

¹⁵³ MEG, Vol. I, paras. 5.15-5.16.

¹⁵⁴ *Letter No. 293 from the Minister of Foreign Affairs and Cooperation to the Embassy of the Republic of Equatorial Guinea in Gabon concerning Note. No 253.89/AMGE of 16 October 1989 in reference to the Clarion Petroleum Permit Issued to the Company of the Same Name (4 May 1990). REG, Vol. IV, Annex 46. The protest also mentioned that the concession disregarded a median line from the thalweg of the Muni River to the geographic half-point between Mbañe and Corisco.*

Equatorial Guinea suspend all petroleum exploration until the boundary in this area was defined. It did so without reference any alleged agreement.

3.73 On 28 June 1990, the Chargé d’Affaires of the Gabonese Embassy in London requested that the British Secretary of State ask Clarion Petroleum to suspend exploration activities in the disputed area until Gabon and Equatorial Guinea delimited their maritime boundary.¹⁵⁵ Gabon claimed that the permit infringed upon Gabonese territory because it “include[d] Mbañe, which belongs to Gabon”.¹⁵⁶ Again, it did so without invoking any alleged agreement or otherwise asserting that the Parties had agreed that sovereignty over Mbañe belonged to Gabon.

3.74 On 4 December 1992, Gabon adopted Decree No. 2066/PR, which purported to establish a 12 nautical mile territorial sea measured from straight and normal base lines, using Mbañe as one of the points for a straight baseline between Cocobeach and Cap Lopez.¹⁵⁷ Neither its Decree nor other related materials referred to the document now invoked by Gabon as the legal basis for using Mbañe as a basepoint.¹⁵⁸

3.75 On 6 March 1999, Equatorial Guinea adopted Decree N/1/1999 claiming a median line as the boundary with Gabon.¹⁵⁹ Equatorial Guinea placed base points on Mbañe, Cocoteros and Conga, thus claiming territory and maritime areas that purportedly would have fallen to Gabon under the document presented in 2003 that it claims is an

¹⁵⁵ *Letter No. 412/90/Amb/Gab/DB* from the Embassy of the Gabonese Republic in London to the Secretary of State for Foreign Affairs and the Commonwealth (28 June 1990). REG, Vol. IV, Annex 47.

¹⁵⁶ *Letter No. 412/90/Amb/Gab/DB* from the Embassy of the Gabonese Republic in London to the Secretary of State for Foreign Affairs and the Commonwealth (28 June 1990), p. 2. REG, Vol. IV, Annex 47.

¹⁵⁷ The Gabonese Republic, *Official Journal of the Gabonese Republic No. 48/52-385, containing* Decree No. 2066/PR/MHCUCDM (December 1992), p. 4. REG, Vol. V, Annex 54. On 16 July 1972, Gabon extended its territorial sea to 100 nautical miles from the low water line.

¹⁵⁸ See MEG, Vol. II, Figure 6.2.

¹⁵⁹ See MEG, Vol. II, Figure 6.1.

“agreement” reached in 1974.¹⁶⁰ Gabon acknowledges that on 13 September 1999 it “immediately protested” Equatorial Guinea’s Decree N/1/1999 “with a note verbale from its Embassy in Malabo”.¹⁶¹ In the same note verbale Gabon also claimed sovereignty over these islands and adjacent maritime areas.¹⁶² However, nowhere in that note verbale did Gabon justify its position based on an existing agreement.

3.76 In the Counter-Memorial, Gabon acknowledges that on 26 June 1999, Equatorial Guinea concluded a maritime delimitation agreement with São Tomé and Príncipe, and notes that the delimitation line was “well to the south” of the maritime boundary that Gabon alleges was “determined” by “agreement” in 1974.¹⁶³ However, Gabon made no made no mention whatsoever of such an agreement in its protest note.

3.77 On 21 December 2000, Equatorial Guinea protested Gabon’s petroleum exploration and exploitation license to Shell for the blocks identified as “Mbañe” and “Mbañe West”.¹⁶⁴ The protest stated that the license violated Equatorial Guinea’s sovereignty over Mbañe and its maritime area. Equatorial Guinea stressed that it would not recognize Gabon’s unilateral acts and urged Gabon that negotiations should continue to resolve the sovereignty dispute and delimit the maritime boundary.

¹⁶⁰ Republic of Equatorial Guinea, President of the Republic, Act No.1/1999 of 6 March 1999 Designating the Median Line as the Maritime Boundary of the Republic of Equatorial Guinea (6 March 1999). REG, Vol. V, Annex 57.

¹⁶¹ CMG, Vol. I, para. 4.17 (“a immédiatement protesté”, “par une note verbale de son ambassade à Malabo”).

¹⁶² *Note Verbale No. 001989/MAECF/SG/D1* from the Ministry of Foreign Affairs, Cooperation and Francophone of the Gabonese Republic to the Ministry of Foreign Affairs of the Republic of Equatorial Guinea concerning Decree No. n/1/1999 of 6 March 1999 (13 September 1999). REG, Vol. IV, Annex 48.

¹⁶³ CMG, Vol. I, para. 4.18 (“nettement au sud”).

¹⁶⁴ *Letter No. 4005* from the Ministry of Foreign Affairs, International and Francophone Cooperation of the Republic of Equatorial Guinea to the Ministry of Foreign Affairs, International and Francophone Cooperation of the Republic of the Gabonese Republic (3 January 2001). REG, Vol. IV, Annex 49.

3.78 On 26 February 2003, Gabon’s Minister of Defence visited Mbañe accompanied by high-ranking officers of the Gabonese military and the press.¹⁶⁵ The Gabonese Minister asserted Gabon’s claim to sovereignty over Mbañe, but, significantly, made no reference to the document Gabon would present four months later as an alleged “agreement” concluded in 1974.

3.79 On 1 March 2003, the Foreign Minister of Equatorial Guinea protested Gabon’s illegal occupation of Mbañe, reiterating Equatorial Guinea’s sovereignty over the island, and calling on Gabon to withdraw.¹⁶⁶ This protest was repeated in official statements on 11-12 March 2003 by the Equatoguinean Prime Minister,¹⁶⁷ emphasizing that Equatorial Guinea had always claimed Mbañe as its sovereign territory,¹⁶⁸ and expressing “deep preoccupation and indignation” with Gabon’s illegal occupation of the island.

3.80 It was not until on 23 May 2003, that Gabon invoked—for the first time—a poor-quality photocopy of a document it alleged was a 1974 treaty resolving all of the disputes about which the Parties had been intensively negotiating are arguing for three decades. As stated in Equatorial Guinea’s Memorial, the Members of the Equatoguinean delegation were taken completely by surprise and responded that they had never seen or

¹⁶⁵ J.D. Geslin, “The Island Coveted by All,” *Jeune Afrique L’Intelligent* (10-23 August 2003), p. 1. REG, Vol. V, Annex 64.

¹⁶⁶ *Note Verbale No. 0295* from the Ministry of Foreign Affairs, International Cooperation and Francophone of the Republic of Equatorial Guinea to the Embassy of the Gabonese Republic in Malabo (1 March 2003). REG, Vol. IV, Annex 50.

¹⁶⁷ Republic of Equatorial Guinea, *Communication from S.E. the Prime Minister-Head of the Government concerning the Visit Made by the National Minister of Defence of Gabon on 26 February to the Islet of Mbañe* (11 March 2003). REG, Vol. IV, Annex 51; J.D. Geslin, “Gabon- Equatorial Guinea, The Islet of Contention,” *Jeune Afrique L’Intelligent* (16-22 March 2003). REG, Vol. V, Annex 63.

¹⁶⁸ Republic of Equatorial Guinea, *Communication from S.E. the Prime Minister-Head of the Government concerning the Visit Made by the National Minister of Defence of Gabon on 26 of February to the Islet of Mbañe* (11 March 2003). REG, Vol. IV, Annex 51; J.D. Geslin, *News Article* “Gabon - Equatorial Guinea, The Islet of Contention” *Jeune Afrique L’Intelligent* (16-22 March 2003). REG, Vol. V, Annex 63.

heard of such a document, and had no inkling of its existence.¹⁶⁹ Gabon does not dispute this in its Counter-Memorial.

3.81 The evidence thus demonstrates that, until it was suddenly presented by Gabon on 23 May 2003, the alleged “Bata Convention” had never been mentioned, much less understood or treated as having been adopted or having the force of law with regard to sovereignty over the islands of Mbañe, Cocoteros and Conga, or the delimitation of the Parties’ land and/or maritime boundaries. Indeed, for three decades after the alleged “conclusion” of the document, the Parties continued to treat all of these disputed issues as though they had never been resolved, and they carried out extensive negotiations to resolve them without ever invoking any “agreement” that was supposedly reached in 1974. In these circumstances, Gabon has come nowhere near discharging its burden of demonstrating that the Parties concluded a final and binding agreement on 12 September 1974. Moreover, because Gabon never relied on (or even mentioned) the document presented in 2003 over the course of nearly 30 years in circumstances which plainly called for its invocation, Gabon has acquiesced, through such conduct, to the document’s lack of legal effect between the Parties. It is, thus, precluded from relying on that document for the purpose of seeking to establish legal title within the meaning of Article 1 of the Special Agreement.¹⁷⁰

3.82 Further conclusive evidence that the Parties never regarded the document invoked by Gabon as a final or legally binding treaty consists of their conduct, between 1974 and the present, in regard to the continental land territory that was supposedly, according to Gabon, delimited by that purported “agreement.” In fact, Equatorial Guinea has continued to administer and exercise sovereignty over all the disputed territory

¹⁶⁹ MEG, Vol. I, para. 5.19.

¹⁷⁰ The Court has held that the subsequent conduct of the Parties may be determinative of whether a treaty constitutes a valid legal title. *See Temple of Preah Vihear (Cambodia v. Thailand)*, Merits, Judgment, I.C.J. Reports 1962, p. 32 (“Even if there were any doubt as to Siam’s acceptance of the map in 1908, and hence of the frontier indicated thereon, the Court would consider, in the light of the subsequent course of events, that Thailand is now precluded by her conduct from asserting that she did not accept it.”).

allegedly ceded to Gabon under that instrument. And it is done so not only without protest by Gabon, but, in some areas, with Gabon's active cooperation and consent.

3.83 For example, as described in detail in Chapter 5 of this Reply, Equatorial Guinea's administration of the Utamboni River Area has continued without interruption after independence in 1968, wholly consistent with Equatorial Guinea's contention that no final or binding agreement was reached on 12 September 1974.¹⁷¹ Likewise, the talks on 12 September 1974 brought about no change to the *boundary* that existed in the Kie River area since the 1919 Governors' Agreement. The 2007 Border Bridges Agreement makes no mention of Gabon's alleged 1974 "agreement": Instead, it directly contradicts that document by recognizing the land border as following the Kie River (rather than 9° East of Paris referred to in Article 1 of the document Gabon invokes before the Court). The Parties agreed to and subsequently inaugurated two border bridges over the Kie River and recognized cities west of the River Kie as Equatoguinean territory.¹⁷² All of the villages listed at paragraph 5.86 of this Reply that purportedly would have fallen to Gabon pursuant to the alleged 1974 "agreement" continue today to be under Equatorial Guinea's sovereignty, with Gabon's full knowledge and consent, confirming that the document first presented in 2003 never had the force of law in the relations between the Parties.

¹⁷¹ See *infra* Chapter 5, Section II.D.

¹⁷² See *infra* Chapter 5, Section III.C.2.(a).

CHAPTER 4

LEGAL TITLE TO THE ISLANDS AND ISLETS OF CORISCO BAY

4.1 As demonstrated in Chapters 3 and 6 of Equatorial Guinea's Memorial, the law of succession plays a central role among the legal titles that have the force of law in the relations between Gabon and Equatorial Guinea with respect to sovereignty over Mbañe, Cocoteros, and Conga. This is a consequence of the succession of Equatorial Guinea, upon its independence, to the legal titles held by Spain over these islands.

4.2 As Equatorial Guinea set out in the Memorial, during the colonial period Spain acquired and maintained its legal title to the islands of Corisco Bay by virtue of various specific acts:

- the general cession of rights from Portugal in the 1778 Treaty of El Pardo;¹⁷³
- Spain's 1843 Declaration of Spanish Sovereignty for Corisco Island;¹⁷⁴
- Spain's 1846 Record of Annexation signed with King I. Oregek of Corisco Island;¹⁷⁵
- Spain's 1846 Charter of Spanish Citizenship Given to the Inhabitants of Corisco, Elobey and their Dependencies;¹⁷⁶

¹⁷³ See MEG, Vol. I, para. 3.2; *Treaty of Amity, Guarantee, and Commerce between Portugal and Spain, Signed at El Pardo* (11 March 1778), art. 13. MEG, Vol. III, Annex 1. France acceded to the Treaty of El Pardo as well, see CMG, Vol. I, para. 1.4.

¹⁷⁴ See MEG, Vol. I, para 3.3; Kingdom of Spain, Royal Commissioner for the Islands Fernando Póo, Annobón and Corisco on the Coast of Africa, *Declaration of Corisco* (16 March 1843). MEG, Vol. V, Annex 110.

¹⁷⁵ See MEG, Vol. I, para. 3.5; Kingdom of Spain, Ministry of State, *Record of Annexation* (18 February 1846). MEG, Vol. V, Annex 112.

¹⁷⁶ See MEG, Vol. I, para. 3.5; Kingdom of Spain, Ministry of State, *Letter of Spanish Citizenship Given to the Inhabitants of Corisco, Elobey and their Dependencies* (18 February 1846). MEG, Vol. IV, Annex 47.

- Spain’s 1858 Charter Reaffirming Spanish Possession of the Island of Corisco;¹⁷⁷ and
- Spain’s uncontested public and effective occupation of, and administration and exercise of sovereignty over, these islands from 1843 until Equatorial Guinea’s independence on 12 October 1968.¹⁷⁸

4.3 Notwithstanding these legal facts, Gabon argues in its Counter-Memorial that the document it presented in 2003 constitutes the sole applicable legal title relating to the Corisco Dependencies.¹⁷⁹ However, as discussed in Chapter 3 of this Reply and Chapter 7 of the Memorial, that document does not—and cannot—have the force of law between the Parties with regard to sovereignty over the islands of Mbañe, Cocoteros and Conga (or any other matter addressed).

4.4 Gabon argues that there was uncertainty about title to the Corisco Dependencies up to and immediately following the independence of Gabon and Equatorial Guinea.¹⁸⁰ Gabon’s argument is unsupported by any evidence. As explained in Chapter 3 of Equatorial Guinea’s Memorial, the historical record makes clear, without ambiguity, that Spain had legal title and exercised sovereignty over the Corisco Dependencies, and that France fully recognized Spain’s legal title and never contested Spain’s sovereign acts. There were no disputes after 1843 over the Corisco Dependencies between Spain and France, or between Spain and Gabon. A dispute between Equatorial Guinea and Gabon did

¹⁷⁷ See MEG, Vol. I, para. 3.6; The Spanish State, Ministry of State, *Letter Reaffirming Spanish Possession of the Island of Corisco* (21 July 1858). MEG, Vol. IV, Annex 48.

¹⁷⁸ See MEG, Vol. I, paras. 3.2-3.35, 3.85-3.101.

¹⁷⁹ CMG, paras. 8.48-8.52. As defined in the Memorial, “Corisco Dependencies” refers to the islets Mbañe, Cocoteros and Conga. MEG, Vol. I, para. 2.4.

¹⁸⁰ See CMG, Vol. I, paras. 12, 8.2.

not arise until March 1972, when, for the first time, Gabon asserted a claim to the islands and then subsequently invaded and occupied Mbañe in August 1972.¹⁸¹

4.5 Gabon does not claim that France ever possessed legal title or exercised sovereignty over the Corisco Dependencies. Rather, as noted, Gabon asserts that there was uncertainty regarding title to the Corisco Dependencies that was not resolved in the 1900 Convention,¹⁸² and that this uncertainty continued until the independence of Gabon and Equatorial Guinea. This is not correct, as the record before the Court makes clear: Spanish sovereignty over the Corisco Dependencies was always clear, and was not challenged by France at any time after 1843. Such sovereignty was confirmed by the 1900 Convention, the provisions of which are premised upon the colonial powers' recognition of Spain's legal title to the islands in Corisco Bay. The 1900 Convention did not create new or separate legal title to these islands.

4.6 After the 1900 Convention, Spain's legal title was confirmed on each occasion that title to the Corisco Dependencies was addressed. Gabon argues that "at times" French claims to sovereignty over certain islands of Corisco Bay prior to 1900 "touched on" the Corisco Dependencies;¹⁸³ yet, across some two hundred years of colonial history, Gabon fails to identify even a single instance in which France made a claim to sovereignty over the Corisco Dependencies. It cannot point to even one time that France challenged Spain's sovereignty over them. Gabon provides not a shred of evidence that France ever made any claim to islands in Corisco Bay after 1900, and that is because it never did so. Similarly, Gabon does not present a single document to show that, following its independence in 1960, Gabon ever asserted a claim to any of the Corisco Dependencies prior to 1972.

¹⁸¹ MEG, Vol. I, para. 6.24.

¹⁸² See, e.g., CMG, Vol. I, paras. 12, 8.2.

¹⁸³ See CMG, Vol. I, para. 8.4 ("par moments"; "touchaient ... aux").

4.7 This Chapter: **(I)** addresses Gabon’s misrepresentation of the history of the Corisco Dependencies, which, correctly understood, clearly establishes that Spain possessed legal title to those islands; **(II)** establishes Equatorial Guinea’s succession to Spain’s legal title to the islands; and **(III)** confirms that Gabon has no legal title to the Corisco Dependencies.

I. SPAIN POSSESSED LEGAL TITLE TO THE CORISCO DEPENDENCIES

4.8 In arguing that there was uncertainty as to legal title over the Corisco Dependencies during the colonial period, Gabon’s Counter-Memorial completely ignores the historical record presented in Equatorial Guinea’s Memorial. That record clearly establishes Spain’s sovereignty over the Corisco Dependencies, and France’s explicit acknowledgement of it. Gabon’s efforts to sow doubt about the historical record are entirely without merit. Indeed, they confirm that, on the date of the independence of Equatorial Guinea, Spain possessed legal title over the Corisco Dependencies, which was uncontested by France and Gabon.

A. THE PERIOD BEFORE THE 1900 CONVENTION

4.9 Gabon’s Counter-Memorial concedes that Spain took possession of Corisco Island, among other insular territories, in the mid-1800s.¹⁸⁴ Gabon lists various agreements that France claimed to have entered into with local figures during that time period, but Gabon does not assert that *any* of those agreements purported to include Corisco Island or the Corisco Dependencies.¹⁸⁵ Indeed, in summarizing the claims of Spain and France in the late 1800s, Gabon makes clear that there was no assertion by France of any claim to, or French legal title over, Corisco Island or the Corisco Dependencies.¹⁸⁶

¹⁸⁴ CMG, Vol. I, paras. 1.5, 1.11; *See* MEG, Vol. I, paras. 3.3-3.6.

¹⁸⁵ CMG, Vol. I, paras. 1.8-1.10; Agreements between France and local chiefs up to 1885. CMG, Vol. I, Sketch 1.2.

¹⁸⁶ CMG, Vol. I, para. 1.16.

4.10 Gabon states that France protested certain of Spain’s claims in the Gulf of Guinea in 1860. Yet the evidence makes clear that France’s protest was related only to Spanish claims to territory on the mainland coast, and not to Spain’s assertion of sovereignty over Corisco Island or the Corisco Dependencies.¹⁸⁷ At that time, Spain asserted legal title to certain mainland coastal territory as pertaining to Corisco and the Elobey islands.¹⁸⁸ While France disputed Spain’s claim that the mainland territory was connected to the islands, it never contested the Spanish claim to the islands themselves, or, specifically, that Mbañe, Cocoteros and Conga islands were dependencies of Corisco under Spanish title.

4.11 As Equatorial Guinea demonstrated in its Memorial, during the Mixed Commission discussions from 1886-1891, France affirmed—in two separate documents dated 1886 and 1887—that the “natural dependencies” or “geographic dependencies” of Corisco included “Laval [Leval]” and “Baynia [Mbañe]”.¹⁸⁹ In its Counter-Memorial, Gabon tries to limit the effect of France’s statements by arguing that the French officials were only saying that “from a geographic point of view the term ‘dependencies’ in the [Spanish] agreements ... could, at most, refer to the islets of” Leva and Mbañe.¹⁹⁰ The text of these documents shows otherwise. The French officials did not say that “at most” the

¹⁸⁷ CMG, Vol. I, para. 1.11.

¹⁸⁸ MEG, Vol. I, para. 3.10. Spain also explicitly included Mbañe as one such dependency of Corisco. *See Letter No. 368* from the Spanish Governor-General of Fernando Póo to the General Commissioner of the French Congo (22 November 1895), pp. 1-2. MEG, Vol. IV, Annex 50 (“Since *Corisco belongs to Spain, Embagna [Mbañe] is a dependency attached thereto.*”).

¹⁸⁹ *See* MEG, Vol. I, para. 3.11; French-Spanish Commission, Conference on the Delimitation in West Africa, Archives of the French Ministry of Foreign Affairs, Annex to Protocol No. 17 (24 December 1886), p. 2. MEG, Vol. III, Annex 11 (“The geographical dependencies of Corisco are: Laval and the one named Baynia.”) (“Les dépendances géographiques de Corisco sont: Laval et celle nommée Baynia”); *Protocol No. 30*, Session between The Kingdom of Spain and The French Republic (excerpt) (16 September 1887), p. 13. MEG, Vol. III, Annex 3 (“In effect, the act of 1843 is the one to which Spain owes the annexation of Corisco and its natural dependencies, the Laval and Baynia islets, included in the area of the territorial waters of this island.”) (“En effet, l’acte de 1843 est celui auquel l’Espagne doit l’annexion de Corisco et de ses dépendances naturelles, les îlots Laval et Baynia, compris dans la zone des eaux territoriales de cette île.”).

¹⁹⁰ CMG, Vol. I, para. 8.27 (“du point de vue géographique le terme « dépendances » dans les accords [espagnols] ... pourrait, tout au plus, renvoyer aux îlots”).

dependencies referred to Leva and Mbañe; they said that, “[t]he geographical dependencies of Corisco are: Laval [Leva] and the one called Baynia [Mbañe]”.¹⁹¹ France further stated that Mbañe was part of the territory acquired by Spain under the 1843 Declaration of Spanish Sovereignty for Corisco Island, and that Leva and Mbañe were in the territorial waters of Corisco Island: “In effect, the act of 1843 is the one to which Spain owes the annexation of Corisco and its natural dependencies, the Laval and Baynia islets, included in the area of the territorial waters of this island.”¹⁹²

4.12 Gabon seeks to minimize the importance of these critical statements by arguing that a party is not bound to a position taken in a negotiation,¹⁹³ but that principle is inapposite. The protocols of the Mixed Commission reflect that these acknowledgments of Spanish sovereignty by France were made in recognition of the existing legal situation, not as an offer of settlement in which France was willing to make certain concessions to obtain corresponding concessions from Spain. Gabon does not appear to dispute this point; to the contrary, it confirms that this was in fact the case. It states that “the Mixed Commission [was] guided by the desire to identify which of the legal titles invoked by each of the two States were valid”.¹⁹⁴ It was in this context that French officials represented on two separate occasions, a year apart, that Spain possessed legal title to Laval and Mbañe as natural dependencies of Corisco Island based on the 1843 Declaration of Spanish

¹⁹¹ French-Spanish Commission, Conference on the Delimitation in West Africa, Archives of the French Ministry of Foreign Affairs, *Annex to Protocol No. 17* (24 December 1886), p. 2 (“Les dépendances géographiques de Corisco sont: Laval et celle nommée Baynia.”) (emphasis added). MEG, Vol. III, Annex 11.

¹⁹² *Protocol No. 30*, Session between The Kingdom of Spain and The French Republic (excerpt) (16 September 1887), p. 13 (“*En effet, l’acte de 1843 est celui auquel l’Espagne doit l’annexion de Corisco et de ses dépendances naturelles, les îlots Laval et Baynia, compris dans la zone des eaux territoriales de cette île.*”). MEG, Vol. III, Annex 3.

¹⁹³ CMG, Vol. I, paras. 8.28-8.29.

¹⁹⁴ CMG, Vol. I, para. 8.33 (“la commission mixte avaient été guidées par la volonté d’identifier, parmi les titres juridiques invoqués par chacun des deux États, lequel ou lesquels faisaient droit”).

Sovereignty for Corisco Island. Gabon has no answer to the fact that this was, indeed, France’s official and formal position.

4.13 Gabon argues that the 1843 Declaration, the 1846 Record of Annexation, the 1846 Charter of Spanish Citizenship, and the 1858 Charter Reaffirming Spanish Possession of the Island of Corisco do not define the Corisco Island “dependencies”.¹⁹⁵ Here again, Gabon grasps at straws. As noted above, France explicitly recognized that Leva and Mbañe were dependencies of Corisco Island, and thus subject to Spanish sovereignty, under the 1843 Declaration. Moreover, during incidents in 1895 and 1896, Spain made clear to France that Mbañe was a dependency of Corisco, and that Corisco’s residents had occupied and carried out activities in Mbañe since time immemorial, thereby creating a right of possession over it, and France did not contest Spain’s position in this regard.¹⁹⁶

4.14 Gabon attempts to excuse the fact that France never made a claim during the colonial period because these are “uninhabited islands of small area ... they did not constitute a point of friction in the relations between the colonial powers”.¹⁹⁷ This ignores the evidence, including the extensive accounts of Spain’s assertion of title and France’s express recognition and acquiescence. Gabon cannot so blithely dismiss or erase the undisputed fact that France never asserted a claim to any of the Corisco Dependencies.

4.15 In the hope of finding some ground on which to contest Spain’s legal title to the Corisco Dependencies (as distinguished from Corisco Island itself), Gabon now seeks to recast the exchanges in 1895-1896 between Spain and France as reflecting some degree of uncertainty over their status.¹⁹⁸ The evidence dispels any hint of such uncertainty.

¹⁹⁵ CMG, Vol. I, para. 8.19 (“dépendances”).

¹⁹⁶ See MEG, Vol. I, para. 3.14; *Letter No. 368 from the Spanish Governor-General of Fernando Póo to the General Commissioner of the French Congo* (22 November 1895), pp. 1-2. MEG, Vol. IV, Annex 50.

¹⁹⁷ CMG, Vol. I, para. 8.3 (“îles inhabitées d’une superficie réduite ... elles n’ont pas constitué un point de friction dans les rapports entre les puissances coloniales”).

¹⁹⁸ CMG, Vol. I, paras. 1.20, 8.8.

As recounted in Equatorial Guinea’s Memorial, the Spanish Governor General of Fernando Poo wrote to the General Commissar of the French Congo in 1895 regarding a rumour that France was planning to establish a post on Mbañe,¹⁹⁹ emphasizing that “Corisco belongs to Spain, Embagna [Mbañe] is a dependency attached thereto”, and the residents of Corisco “have been making [use] of [Mbañe] since time immemorial”, which “amounts to a right of possession ... that Spain cannot relinquish”.²⁰⁰ The French General Commissar replied that the rumour was “unfounded”.²⁰¹ There was no denial that Corisco “belongs to Spain” or that Mbañe “is a dependency attached thereto”. There was no French claim to these insular features, and no uncertainty that they belonged to Spain.²⁰²

4.16 Gabon invokes a 1899 memo from the “French Colonial Union”, a pro-colonization “business interest group”,²⁰³ i.e., not officially part of the French State, to suggest that, at the time, *all* the islands in the Gulf of Guinea “remained disputed”.²⁰⁴ Yet, in addition to its irrelevance, that memo shows the opposite of what Gabon claims: “Spain currently occupies ... Corisco”; “the Spaniards have established themselves on this island and we have never protested for fifty-five years”; and “the chief Boucaro, of Corisco, ceded

¹⁹⁹ See MEG, Vol. I, para. 3.14; *Letter No. 368 from the Spanish Governor-General of Fernando Póo to the General Commissioner of the French Congo* (22 November 1895), pp. 1-2. MEG, Vol. IV, Annex 50.

²⁰⁰ *Ibid.*, pp.10-11 (“Desde que Corisco pertenece a España, viene Embagna siendo una dependencia anexa a ella [...] es indudable que el uso hecho de ella desde tiempos inmemoriales [por los Coriscos], constituye un derecho de posesión, derecho al que no puede España renunciar.”).

²⁰¹ See MEG, Vol. I, para. 3.15; *Letter No. 203 from the Commissioner-General of the Colonial Administration of the French Republic to the Governor-General of Fernando Póo and Dependencies of the Kingdom of Spain* (4 February 1896), p. 1 (“The information she mentions about the establishment of a post on an island 6 miles S.E. of Corisco is unfounded”) (“Les informations qu’elle mentionne au sujet de l’établissement d’un poste sur un îlot situé à 6 milles au S.E. de Corisco sont dénuées de fondement.”). MEG, Vol. IV, Annex 51.

²⁰² See France, *Account of the Rights of Spain to Certain Territories in the Gulf of Guinea* (1896). CMG, Vol III, Annex 35 (indicating that France had no claim to the Corisco Dependencies, and that it recognized Spain’s sovereignty over Corisco and its dependencies).

²⁰³ CMG, Vol. I, para. 8.31 (“groupement d’intérêts commerciaux”).

²⁰⁴ CMG, Vol. I, para. 8.30 (“restait disputé”).

to Spain, the Island Corisco & its dependencies”.²⁰⁵ The views of this pro-colonization business group in the nineteenth century, like those of the French Government, thus confirm Spain’s legal title to “Corisco & and its dependencies” on the eve of the 1900 Convention.

4.17 Lacking any documentary evidence, Gabon attempts to rely on a small number of maps to generate “uncertainty” about legal title to the islands in Corisco Bay. But, as shown in Equatorial Guinea’s Memorial, cartographic evidence from 1899 confirms the official view of France at the time that Mbañe was under Spanish sovereignty.²⁰⁶ In particular, a map from the *Atlas des Colonies Françaises* identifies both Corisco and Mbañe as being subject to Spanish sovereignty.²⁰⁷ The following year, in *Atlas Larousse*, the Island and Bay of Corisco are jointly identified as Spanish.²⁰⁸ **See Figure R4.1.** Older French maps referred to by Gabon do not contradict these clear representations of Spanish sovereignty.²⁰⁹

²⁰⁵ CMG, Vol. I, para. 8.31 (“L’Espagne occupe actuellement ... Corisco”; “les Espagnols se sont établis dans cette Ile & nous n’avons jamais protesté depuis cinquante-cinq ans”; and “le chef Boucaro, de Corisco, céda à l’Espagne, l’Ile Corisco & ses dépendances”).

²⁰⁶ *Frontier Dispute (Burkina Faso/Mali), Judgment, I.C.J. Reports 1986*, p. 554, para. 56 (describing maps as providing “evidence of an auxiliary or confirmatory kind”).

²⁰⁷ MEG, Vol. I, para. 3.16; French Source Map Showing the Corisco Dependencies as Spanish (1899). MEG, Vol. II, Figure 3.3.

²⁰⁸ *Atlas Larousse, French Colonies of Africa (1900)*. MEG, Vol. II, Annex M1.

²⁰⁹ See Service géographique de l’armée française, Feuille n° 34 (Libreville) de la carte de l’Afrique (région équatoriale), échelle au 1/2.000.000, dressée et dessinée par le chef de bataillon du génie Regnauld de Lannoy de Bissy (dite « carte Lannoy ») (1892). CMG, Vol. II, Appendices C4 and C7; Service géographique des Colonies (J. Hansen), Carte du Congo français échelle au 1/1.500.000 (avec tracé des propositions de frontières) (1895). CMG, Vol. II, Annex C6. Gabon refers to maps from 1892 and 1896 from the Geographical Service of the French Army, as well as an 1895 map by the French Colonial Geographic Service. These maps confirm that Corisco belonged to Spain and depict Mbañe in close geographic proximity. See also A. Largent (Chef du service des douanes de la colonie), Carte générale du Gabon, échelle de 0,004 par mille, feuille 1 et feuille 3, (April 1884). CMG, Vol. II, Annex C1. An even older map from 1884 by A. Largent, Head of French Colonial Customs, is similarly irrelevant and contradicted by the official French views on Mbañe expressed in 1886 and 1887 during the Mixed Commission discussions.

1900 FRENCH MAP SHOWING ISLAND AND BAY OF CORISCO AS SPANISH



SOURCE: Atlas Larousse, *Colonies of Africa – Senegal and French Sudan, establishment of the Coast, French Congo* (1900). Map excerpt, annotations added.



Figure R4.1

4.18 In sum, by 1900, when the Franco-Spanish Convention was adopted, there was no uncertainty about Spain's legal title to Mbañe.

B. THE 1900 CONVENTION IS PREMISED UPON A RECOGNITION OF SPAIN'S EXISTING LEGAL TITLE TO THE ISLANDS OF CORISCO BAY

4.19 The 1900 Convention²¹⁰ neither created nor transferred any legal title to the islands of Corisco Bay. Rather, the Convention granted France a "right of first refusal" in the event that Spain ever wished to cede the Elobey Islands or Corisco Island to a third State.²¹¹ In granting such a right, the Convention was premised on France's recognition of Spain's pre-existing legal title to the Elobey Islands and Corisco. Thus, the 1900 Convention confirmed Spain's legal title to Corisco, and by extension to Mbañe, Cocoteros and Conga, which, although not mentioned specifically in the Convention, were recognized by France as dependencies of Corisco prior to 1900.²¹²

4.20 Gabon appears to be of two minds about the legal consequences of the 1900 Convention. First, it agrees that by accepting a right of first refusal France recognized that the Elobey islands and Corisco belonged to Spain: "the incorporation of this preferential right is equivalent, on the part of France, to a recognition of the belonging of these named islands to Spain".²¹³ On the other hand, Gabon states that the Convention "... made it possible to resolve ... a forty-year-old territorial dispute by ... granting sovereignty to Spain over the Elobey islands and Corisco island".²¹⁴ But, as shown above, and in Equatorial Guinea's Memorial, in 1900 there was no "territorial dispute" over Corisco Island or its dependencies, including Mbañe, let alone a "forty-year old" dispute. Nevertheless, Gabon

²¹⁰ 1900 Convention, MEG, Vol. III, Annex 4.

²¹¹ 1900 Convention, art. VII.

²¹² See *supra* para. 4.11.

²¹³ CMG, Vol. I, para. 8.36 ("l'incorporation de ce droit de préférence équivaut, de la part de la France, à une reconnaissance de l'appartenance de ces îles nommément identifiées à l'Espagne").

²¹⁴ CMG, Vol. I, para. 1.50 ("... a permis de résoudre ... un différend territorial vieux de quarante ans ... en attribuant à l'Espagne la souveraineté sur les îles Elobey et sur l'île de Corisco").

argues that “it is only from its adoption that the Spanish sovereignty becomes opposable to France”.²¹⁵ The evidence is entirely to the contrary. It shows that Spain’s legal title to these islands, acquired in the nineteenth century, and recognized as such by France before the 1900 Convention, was already opposable to France. It was France’s right of first refusal granted in the Convention that became opposable to Spain. The 1900 Convention thus served as a confirmation of France’s recognition of Spain’s pre-existing legal title.

4.21 Gabon argues that because the 1900 Convention did not mention Mbañe, Cocoteros and Conga,²¹⁶ their status must have been disputed. Here again, the evidence proves the opposite: it was precisely because they were understood to be dependencies of Corisco Island, which France recognized as belonging to Spain long before the Convention was signed, that there was no need for the Convention to mention them specifically. As recounted above, during the discussions of the Mixed Commission in 1886 and 1887, France made clear that it recognized Spain’s legal title to Corisco and its insular dependencies, which France specified as including Leva and Mbañe. The dependencies were understood by both France and Spain to be inseparable from Corisco Island.

4.22 Gabon does not point to any document of France from that time, or any time up to and including the conclusion of the 1900 Convention, that shows that the Corisco Dependencies were ever treated separately from Corisco Island in regard to sovereignty. Gabon observes that the second draft of Article 7 of the Convention “reflected earlier discussions between the parties regarding Elobey and Corisco Islands”.²¹⁷ But this text does not support its argument. Those earlier discussions included the Mixed Commission meetings, where the colonial powers’ shared understanding of Spain’s legal title to the Corisco Dependencies was clearly and specifically articulated. And the text of Article 7

²¹⁵ CMG, Vol. I, para. 8.36 (“ce n’est qu’à partir de son adoption que la souveraineté espagnole devient opposable à la France”).

²¹⁶ CMG, Vol. I, para. 8.37.

²¹⁷ CMG, Vol. I, para. 1.27 (“réflétait des discussions antérieures entre les parties au sujet des îles Elobey et de Corisco”).

(both the second draft and the final version) clearly juxtaposed Spain’s “possessions on the Coast, as recognized *by the Present Convention*” and “the Elobey Islands and Corisco Island”, which were simply referred to as Spanish territory subject to France’s new right—established by the Convention—of first refusal.

4.23 Gabon also notes that the map at Annex 3 of the 1900 Convention did not depict Mbañe, Cocoterros and Conga in Corisco Bay.²¹⁸ That is correct, but the lack of depiction of the Corisco Dependencies confirmed that the Parties to the 1900 Convention did not consider those islands to be separate from Corisco. They were part and parcel of Corisco: they shared its legal status and were not in dispute.

4.24 Gabon further argues that “Spanish maps drawn up in 1900 to report on the results of the Paris Convention illustrate this exclusion of the three islands by the parties”,²¹⁹ but the maps that it cites merely confirm that those islands were Spanish. First, the *Deposito de la Guerra* map of 1900 does not shade any of Corisco’s dependencies, not even Leva, thus treating all of the insular dependencies of Corisco in the same way—as part of Corisco itself.²²⁰ Second, the undated *Mapa del Muni* is not a Spanish government map.²²¹ Its lack of depiction of the Corisco Dependencies can be of no significance.

4.25 In contrast to these non-probative maps presented by Gabon, Equatorial Guinea has presented numerous official maps that confirm the legal titles of Spain and Equatorial Guinea to Corisco Island and its dependencies. These include French

²¹⁸ CMG, Vol. I, para. 8.37.

²¹⁹ CMG, Vol. I, para. 8.39 (“cartes espagnoles dressées en 1900 pour rendre compte des résultats de la Convention de Paris illustrent cette mise à l’écart des trois îles par les parties”).

²²⁰ *Depósito de la Guerra, Mapa de la Guinea Española*, scale 1/500.000 (1900). CMG, Vol. II, Annex C8.

²²¹ *Annuarios Bailly Baillièrre y Riera Reunidos, Mapa del Muni*. CMG, Vol. II, Annex 21.

government maps from before and after the 1900 Convention that show Corisco and the Corisco Dependencies as Spanish or Equatoguinean.²²²

C. THE STATUS OF CORISCO ISLAND AND ITS DEPENDENCIES REMAINED UNCHANGED DURING THE PERIOD FROM THE 1900 CONVENTION TO EQUATORIAL GUINEA'S INDEPENDENCE

4.26 Gabon asserts that until “the end of the colonial period, the greatest uncertainties remained concerning sovereignty over the [Corisco Dependencies]”.²²³ Yet, in its Counter-Memorial Gabon is able to offer no credible evidence to support this bald, and plainly erroneous assertion.²²⁴ In fact, Spain’s legal title to the Corisco Dependencies was repeatedly and explicitly confirmed by France and recognized by other States during this period.

4.27 Most significantly, in the face of all the evidence of Spanish legal title and France’s recognition of it, Gabon fails to provide evidence of even a single instance of a French claim to the Corisco Dependencies during the sixty-eight year period from the 1900 Convention to Equatorial Guinea’s independence. Gabon completely ignores the historical record detailed in Equatorial Guinea’s Memorial documenting Spanish presence on Mbañe, including the stationing of officials and troops, and the raising of Spain’s flag, without protest from France.²²⁵ It ignores the *Pierre Loti* incident, in which British officials confirmed that the shipwreck near Mbañe was located in waters “adjacent to a Spanish colony”.²²⁶ It fails to rebut Spain’s unequivocal assertion of legal title during the 1954-

²²² See *supra* para. 4.17; French Source Map Showing the Corisco Dependencies as Spanish (1899). MEG, Vol. II, Figure 3.3; Atlas Larousse, French Colonies of Africa (1900). MEG, Vol. II, Annex M1. See also Official French Map Showing the Corisco Dependencies as Equatoguinean (1968). MEG, Vol. I, Figure 3.25.

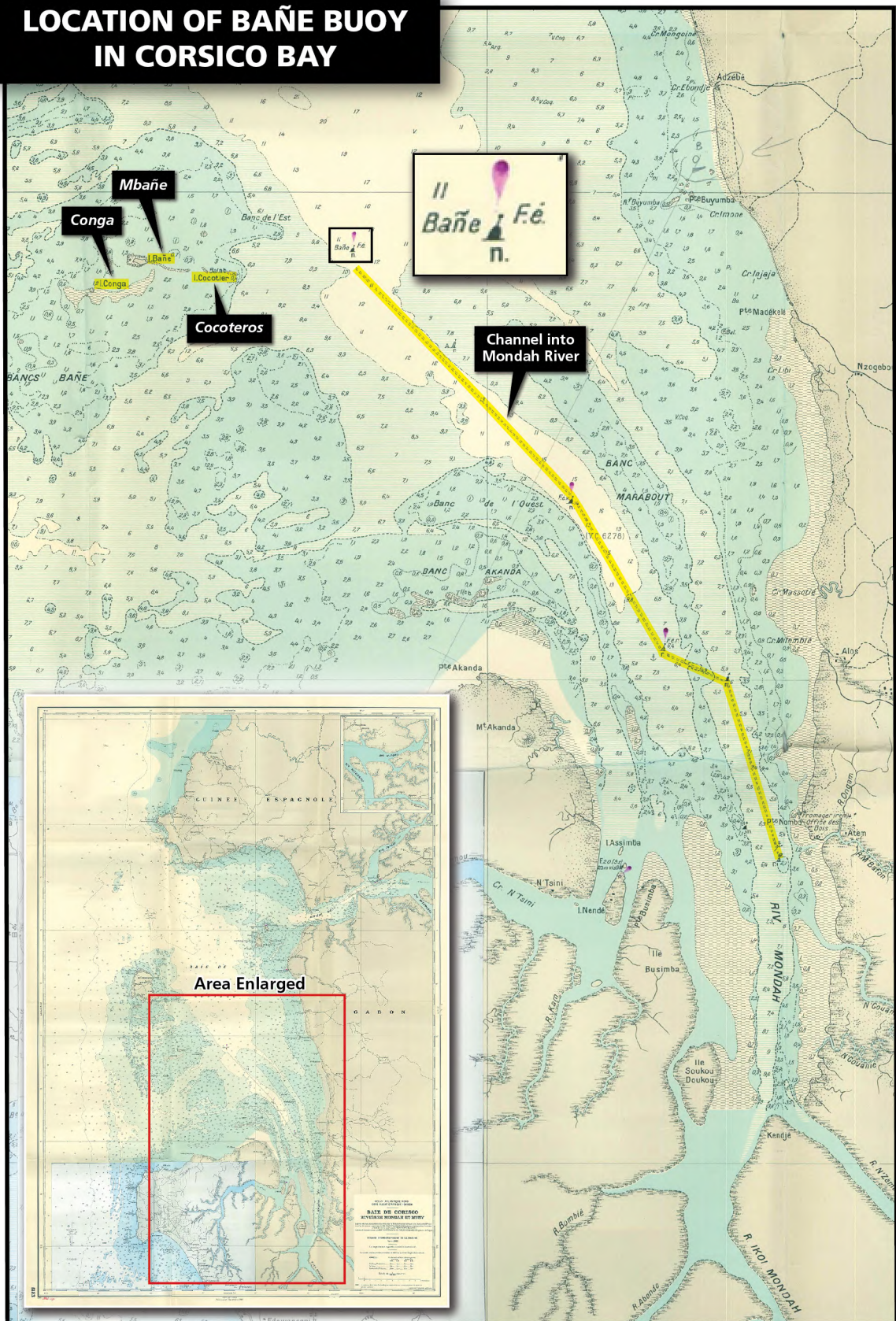
²²³ CMG, Vol. I, para. 2.31 (“la fin de la période coloniale, les plus grandes incertitudes ont subsisté concernant la souveraineté sur les [dépendances de Corisco]”).

²²⁴ CMG, Vol. I, paras. 2.32-2.36.

²²⁵ MEG, Vol. I, paras. 3.20-3.23.

²²⁶ MEG, Vol. I, paras. 3.24-3.25.

LOCATION OF BAÑE BUOY IN CORSICO BAY



SOURCE: French Hydrographic Service, Corsico Bay - Mondah and Munya Rivers (1960). Map excerpt, annotations added.

Figure R4.2

1955 Cocoteros beaconing incident,²²⁷ or France’s indisputable recognition of that title just a few years before Gabon’s independence.²²⁸

4.28 Gabon also fails to rebut the evidence which makes clear that from 1911 to 1916, when Germany possessed the mainland territories surrounding Spanish Guinea that are now Gabon, neither the Berlin Convention nor the Bern Declaration refer to any islands in Corisco Bay as falling under the territory ceded by France to Germany.²²⁹ In defining the territory it received from France, Germany described the western boundary simply as “the sea”—again, no islands are described.²³⁰ This is consistent with France’s position on these islands since at least 1843: France had no claim to them and lacked any legal title that could be transferred to Germany.

4.29 Gabon notes that “French authorities regularly carried out buoyage work” in the sea near the Corisco Dependencies, which it did in order to mark the channel into the Mondah River.²³¹ **See Figure R4.2.** But the one incident regarding such work that Gabon discusses—the beacon on Cocoteros in 1954 and 1955—confirms French recognition of Spanish title to Mbañe and Cocoteros and, by extension, the other Corisco Dependencies. As detailed in Equatorial Guinea’s Memorial,²³² France began work on the beacon in 1955 believing it had received Spanish authorization in 1954 for such work, but Spain had only authorized temporary installations, not permanent ones. When Spain ordered the work to halt in 1955, France obeyed the order, since it recognized this to be

²²⁷ MEG, Vol. I, paras.3.26-3.33.

²²⁸ MEG, Vol. I, para. 3.32.

²²⁹ *See* CMG, Vol. I, paras. 2.2-2.3.

²³⁰ The German Reich, Order of the Imperial Governor Creating Administrative Districts in New Cameroon (6 March 1913), CMG, Vol. IV, Annex 70, p. 3 (“Frontières au [...] Ouest: la mer”).

²³¹ CMG, Vol. I, para. 2.32 (“autorités françaises ont régulièrement effectué des travaux de balisage”); *see also* CMG, Vol. IV, Annexes 79, 82, and 84.

²³² *See* MEG, Vol. I, paras. 3.26-3.33.

Spanish territory. France subsequently asked Spain for permission to re-start the work, and Spain gave that permission, having asserted without challenge its sovereignty over Cocoteros. When, as a result of this incident, Spain ordered the further placement of its Colonial Guard on Mbañe in February 1955, France did not protest.²³³

4.30 Gabon cites a Gabonese government document that is dated *after* its invasion of Mbañe in 1972 to assert that “French authorities considered themselves in their right” regarding the Cocoteros beacon.²³⁴ But France’s contemporaneous actions and statements on the matter contradict Gabon’s belated and self-serving claim. In addition to France’s unequivocal recognition of Spanish legal title when it withdrew its crew from Cocoteros upon order from Spain, an excerpt from a 1955 letter from France’s Minister of Foreign Affairs to its Minister of Overseas France conclusively shows that France viewed Spain as sovereign over Mbañe:

“Over the past fifty years, Baynia [Mbañe] Island was occupied by the Spanish on several occasions, without protest or alternate occupation by us.

Baynia [Mbañe] Island is located within the six nautical mile-limit forming the boundary of Spanish territorial waters. ... [and that] the situation of the islet within Corisco’s territorial waters places [France] in a disadvantageous basic legal position.”²³⁵

²³³ MEG, Vol. I, para. 3.29.

²³⁴ CMG, Vol. I, para. 2.34 (“autorités françaises s’estimaient dans leur bon droit”).

²³⁵ The French Republic, *Letter from the Minister of Foreign Affairs to the Minister of Overseas France* (6 May 1955), pp. 3-4 (“the ‘Cocoteros’ islet must be considered as following the fate of Baynia Island, of which it is a geographical dependency... Baynia Island was occupied by the Spanish on several occasions, without protest or alternate occupation by us. Baynia Island is located within the six nautical mile-limit forming the boundary of Spanish territorial waters. ... Furthermore, the situation of the islet within Corisco’s territorial waters places us in a disadvantageous basic legal position.”) (“l’îlot ‘Cocotier’ doit être considéré comme suivant le sort de l’île Baynia dont il est une dépendance géographique ... Que l’île Baynia a été à plusieurs reprises, au cours des cinquante dernières années occupée alternée de notre part. Que l’île Baynia se trouve située à l’intérieur des six milles marins formant la limite des eaux territoriales espagnoles. ... De plus la situation de l’îlot à l’intérieur des eaux territoriales de Corisco nous place dans une position juridique de base désavantageuse.”). MEG, Vol. IV, Annex 94. Another letter to and from these same officials, dated just one week after this one, reiterates these conclusions regarding the Corisco Dependencies. The French

4.31 A 1955 letter, annexed by Gabon to its Counter-Memorial, from the French Captain of the *Beautemps-Beaupré* to the Governor of Overseas France, is to the same effect. The Captain identifies Cocoteros as belonging to Spain, by referring to it as “COCOTIER (Spanish)” and noting that “Spanish agreement” would be required to place a light on the beacon.²³⁶ Another letter annexed to Gabon’s Counter-Memorial, from the French Director of the Lighthouse and Beacon Service in 1956, further reflects France’s recognition of Spain’s legal title to Mbañe and Cocoteros:

“... installation of a light on the Cocoteros beacon, after approval by the Spanish authorities, whose sovereignty over the islet of Cocoteros was recognized ... Following a minor dispute with the Spanish authorities, *Spanish sovereignty over the islet of Baynis [Mbañe] and the islet of Cocoteros had to be recognized.* The Spanish authorized the completion, by the French services, of the construction of the beacon at the islet of Cocoteros as well as the placement, by these same services, of a light at the summit of the beacon, subject to the fact that the expenses incurred for this work be reimbursed by the Spanish sovereign nation.”²³⁷

France even issued a formal Notice to Mariners in June 1955 declaring that “Spanish sovereignty over Cocoteros Island has been recognized by the French High Officials, the Cocotiers beacon located in Spanish territory is Spanish”.²³⁸ In 1958, France’s Naval

Republic, *Letter from the Minister of Foreign Affairs to the Minister of Overseas France* (13 May 1955). REG, Vol. III, Annex 16.

²³⁶ Letter No. 247 from the Captain of the *Beautemps-Beaupré* and the hydrographic mission of the west coast of Africa to the Governor of Overseas France (8 October 1955). CMG, Vol. IV, Annex 101.

²³⁷ The French Republic, *Letter from the Director of the Lighthouse and Beacon Service to the Director General of Public Works of French Equatorial Africa* (26 January 1956) (emphasis added). CMG, Vol. IV, Annex 102, p. 4-6 (“[...] installation d’un feu sur la balise Cocotier, après accord des autorités espagnoles dont la souveraineté a été reconnue sur l’îlot Cocotier [...] *A la suite d’un léger différend avec les autorités espagnoles, la souveraineté espagnole a du être reconnue sur l’îlot de Baynie et sur l’îlot Cocotier.* Les espagnols ont autorisé l’achèvement, par les services français, de la construction de la balise de l’îlot Cocotier ainsi que la mise en place, par ces mêmes services, d’un feu au sommet de la balise, sous réserve que les dépenses engagées pour ces travaux soient remboursées par la nation souveraine espagnole.”) (emphasis added).

²³⁸ Bulletin to Advise Sailors, Bulletin of Information No. 626 (1955), p. 1. REG, Vol. III, Annex 17.

Hydrographic Department listed the coordinates for the beacon on Cocoteros and, once more, specified that the islet was Spanish.²³⁹

4.32 Gabon asserts without evidence that Spain “never bore the costs of the installation and maintenance of the beacon”.²⁴⁰ In fact, the evidence makes clear that Spain made arrangements for payment to France of the 800,000 francs that had been expended on the Cocoteros beacon,²⁴¹ and that there was an agreement “that the payment of this reimbursement will be made directly by the Authorities of PORT IRADIER and COCOBEACH”.²⁴²

4.33 Just as France sought and received Spanish permission for the beacon on Cocoteros, France also regularly sought permission from Spain to allow the French Ambassador in Libreville to visit Mbañe for fishing.²⁴³

4.34 Gabon argues that Spanish decrees in 1931 and 1935 did not specifically mention Mbañe, Cocoteros and Conga, but, for the reasons described above, there was no need to do so. Those islets were always treated as dependencies of Corisco Island, so the specific mention of Corisco in the legislation was considered sufficient to include them. In any event, many Spanish decrees and colonial laws used the phrase “adjacent islets” to

²³⁹ The French Republic, Navy Hydrographic Department, *Lights and Fog Signals, English Channel and Eastern Atlantic Ocean*, [No. 212] (12 April 1958), p. 9. MEG, Vol. V, Annex 132.

²⁴⁰ CMG, Vol. I, para. 2.34 (“n’ont jamais supporté les charges de l’installation et de l’entretien de la balise”).

²⁴¹ Spanish Territories of the Gulf of Guinea, Bulletin of Information No. 2 (1955). REG, Vol. III, Annex 15.

²⁴² Letter No. 207 from Guyot Navy to the Governor of Spanish Territories of the Gulf of Guinea (6 September 1955), p. 2. REG, Vol. III, Annex 18 (“Se ha convenido que la liquidación de este reembolso se realizará directamente entre las Autoridades de PUERTO-IRADIER y COCOBEACH.”).

²⁴³ See, e.g., *Telegram No. 14 from the Ministry of Foreign Affairs to General Commissioner concerning Solicitation of Permission For Ambassador to France* (11 May 1972). REG, Vol. IV, Annex 29.

include the Corisco Dependencies.²⁴⁴ Later legislation, described below, confirms that Spain always considered the islets adjacent to Corisco as part of its territory.

4.35 First, the 1958 draft law reorganizing Spain's territories initially listed "the islet of Mbañe", but that reference was broadened to "adjacent islets" in the version adopted in 1959, so as to capture all of the islets associated with Corisco, including Mbañe, Cocoteros, and Conga.²⁴⁵ Other States, including the United Kingdom, understood the words "adjacent islets" to include Mbañe.²⁴⁶ Second, the 21 October 1961 Resolution of the Governor General of Spanish Guinea, which Gabon fails to address, officially defined Corisco to include "the islets of Mbanye [Mbañe], Leva, Hoko, Tombambiko [Cocoteros], and Newgemanga".²⁴⁷ This was consistent with historical practice and understanding: that references to "Corisco" in Spanish law and official documents included the islets were been considered its dependencies since the mid-nineteenth century.

²⁴⁴ See, e.g., F. Olesa Munido, "Criminal Law Applicable to Indigenous People in the Spanish Territories of the Gulf of Guinea", INSTITUTE OF AFRICAN STUDIES, SUPERIOR COUNCIL OF SCIENTIFIC RESEARCH, Madrid (1953) (noting that 1938 Organic Law on Indigenous Justice applied to "Corisco and its adjacent islets"). REG, Vol. V, Annex 58; The Spanish State, *Decree of 22 March 1946 Stipulating the Division of the Coast of the Spanish Territories of Sovereignty of Morocco, Western Africa, and Guinea and Adjacent Islands into Maritime Provinces and Districts* (22 March 1946) (identifying the boundaries of Continental Guinea as including "the islands of Corisco and Elobey, with the adjacent islets"). REG, Vol. IV, Annex 23; The Spanish State, *Law 191/1963, on Bases on the Autonomous Regime of Equatorial Guinea* (30 December 1963) (defining the territory of Fernando Poo to include "the islands of Corisco, Elobey Grande, Elobey Chico and the adjacent islets"). REG, Vol. IV, Annex 26.

²⁴⁵ MEG, Vol. I, para. 3.34.

²⁴⁶ The United Kingdom, *Letter No. 10132/14 from the Ministry of Foreign Affairs to the British Embassy to The Spanish State* (4 August 1959), p. 1 ("the Province of Rio Muni will comprise the territories of continental Guinea and the islands of Corisco, Elobey Grande, Elobey Chico, and Mbañe"). MEG, Vol. IV, Annex 96.

²⁴⁷ The Spanish State, *Official Bulletin of 15 November 1961* (15 November 1961). MEG, Vol. V, Annex 138. ("CORISCO – Comprende la isla de dicho nombre delimitada por sus costas en la Bahía de Corisco y además los islotes Mbanye, Leva, Hoko, Tombambiko y Newgemanga."). Tombambiko is the M'Benga word for Cocoteros. Republic of Equatorial Guinea, *Declaration of H.E. Domingo Mba Esono* (25 September 2022), para. 5.

4.36 As noted in Equatorial Guinea’s Memorial,²⁴⁸ Spain’s 1959 regulation on oil and gas concessions included “Elobey and Corisco and their jurisdictional waters” in Spain’s concession blocks.²⁴⁹ A 1960 map of the concession granted by Spain under this regulation to the Spanish Gulf Oil Company and the Compañía Española de Petróleos, S.A.U (“CEPSA”)²⁵⁰ shows Corisco, Mbañe, and Conga as Spanish islands, as well as an equidistance line boundary with Gabon using those islands as Spanish base points.²⁵¹ Gabon ignores this concession and concession map completely in its Counter-Memorial, as well as the fact that neither France, before 1960, nor Gabon after its independence, protested the concession or the map. The lack of reaction is understandable, because, as discussed below, Gabon used a nearly identical median line, also drawn from Spanish base points on the Corisco Dependencies, for its Libreville Marin permit granted to Gulf Oil Company and Shell during this period.²⁵²

4.37 Indeed, like France, for more than a decade after its independence, Gabon recognized Spain’s legal title to Mbañe, Cocoteros, and Conga. Spain and Gabon entered into a protocol regulating maritime signals in Corisco Bay and the Muni River on 23 May 1962 (“1962 Maritime Protocol”).²⁵³ The 1962 Maritime Protocol documented Spain’s

²⁴⁸ MEG, Vol. I, para. 3.35.

²⁴⁹ See Spanish Decree No. 977/1959 (12 June 1959), p. 469. CMG, Vol. IV, Annex 103. (“La cuadrícula 1 comprende de Elobey y Corisco u sus aguas jurisdiccionales.”).

²⁵⁰ H. D. Hedberg, “Summary of Wildcat Drilling in 1959,” *Petroleum Developments in Africa* (1959). MEG, Vol. VII, Annex 227.

²⁵¹ Spanish Gulf Oil Company Map Showing the Corisco Dependencies as Spanish (1960). MEG, Vol. II, Figure 3.5 (*Circular No. 142* from the Ministry of Foreign Affairs of the State of Spain to the Ambassadors of the Spanish State to the Republic of Equatorial Guinea, to The Gabonese Republic, to The Ethiopian Empire, The French Republic, and the Permanent Representative at the United Nations (19 September 1972). MEG, Vol. VI, Annex 163.

²⁵² CMG, Vol. I, para. 2.39; see also MEG, Vol. I, para. 3.98; Gabon’s Libreville Marin Permit Northern Limit is a Median Line Using Corisco Dependencies as Spanish Basepoints (1967). MEG, Vol. I, Figure 3.23.

²⁵³ Implementation Protocol in Compliance with the Maritime Signal Organization for the Buoyage and Signaling of Corisco Bay and the Muni River (23 May 1962). REG, Vol. III, Annex 1.

**GABON'S LIBREVILLE MARIN PERMIT
NORTHERN LIMIT IS A MEDIAN LINE
USING CORSICO DEPENDENCIES AS
EQUATOGUINEAN BASEPOINTS, 1969**

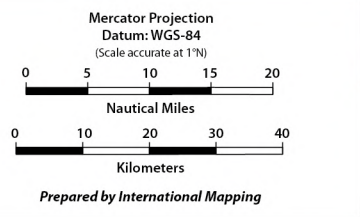
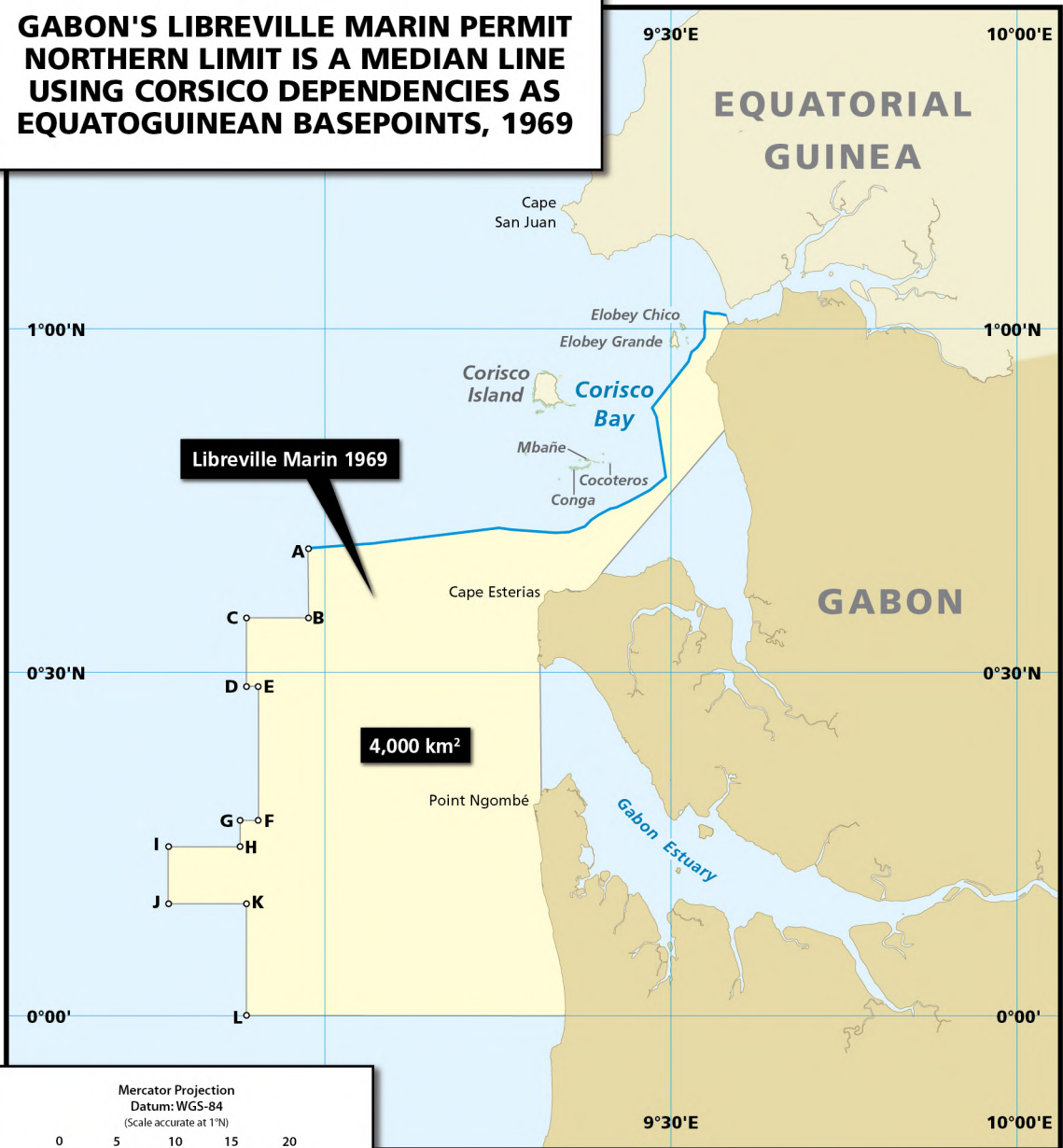


Figure R4.3

sovereign authority and responsibility for maintaining the maritime signals in all of Corisco Bay. Gabon had to notify Spain one month prior to undertaking any beaconing work, which “shall be carried out in the presence and under the authority of the Spanish government”.²⁵⁴ In this context, Article 3(C) of the 1962 Maritime Protocol refers to the beacon on Cocoteros placed by the French as falling under Spanish authority and paid for by Spain.²⁵⁵ Thus, like France, Gabon accepted Spain’s legal title to Cocoteros at the time of its independence.

4.38 Around the same time in 1962, the Petroleos del Africa Ecuatorial company sought to build a radio and topographic station on “one of the Spanish islands of Corisco, Bayna, or Laval”.²⁵⁶ It requested, and Spain approved in July 1963, the installation of the station on Cocoteros instead, with requirements of inspections by Spanish authorities, coordination with Spanish Naval authorities, and the flying of the Spanish flag on the station.²⁵⁷ Gabon has offered no evidence that it protested these exercises of Spanish sovereignty.

4.39 Gabon’s establishment of the Libreville Marin permit area—applied for by Shell in 1964, issued in 1967, and reissued in 1969 as depicted in **Figure R4.3**—also manifests its recognition that the Corisco Dependencies were under Spanish sovereignty.²⁵⁸ In its Counter-Memorial, Gabon ignores the evidence that the permit area followed a median line between Gabon’s mainland and Spain’s island possessions, including Mbañe,

²⁵⁴ *Ibid.*, art. 2 (“... se llevará a cabo en presencia de las autoridades españolas y bajo su responsabilidad ...”).

²⁵⁵ *Ibid.*, art. 3(C).

²⁵⁶ Explanations on the Installation of a Toran Station at a Point on One of the Spanish Islands of Corisco, Bayna or Laval, Petroleos del Africa Ecuatorial (29 December 1962) (“Explicaciones sobre instalación de una estación Toran en un punto de [...] una de las islas españolas de Corisco, Bayna o Laval.”), p. 1. REG, Vol. III, Annex 20.

²⁵⁷ *Letter No. 819 from the General Governor of the Equatorial Region to the Civil Governor of Rio Muni concerning Authorization of Installation of Radio Station and Topography “Toran.”* (22 July 1963). REG, Vol. III, Annex 21.

²⁵⁸ *See supra* para. 4.36; MEG, Vol. I, paras. 3.92-3.98.

Cocoteros and Conga.²⁵⁹ That Gabonese median line—drawn from Spanish base points on those features—was depicted in Shell’s concession maps from 1964 and 1967.²⁶⁰

4.40 Around this time, in a 1965 letter from France’s Ambassador in Libreville to its Foreign Minister, France again acknowledged that Spain possessed the islands of Corisco Bay, and recognized that maritime delimitation was called for due to the planned offshore drilling of hydrocarbons.²⁶¹

4.41 Gabon goes to the extreme of mischaracterizing the text of a 1966 internal Spanish memorandum, in an effort to sow uncertainty over the legal status of the islets. In this confidential report, Spain reacts to Gabon’s 1966 decree that created a closing line across Mondah Bay. Significantly, Gabon’s closing line did *not* include Mbañe, Cocoteros and Conga as within Gabonese territorial waters. Gabon incorrectly claims that the authors of the Spanish memorandum were concerned that Spain’s use of base points on the Corisco Dependencies could “cloud[]” negotiations with Gabon. To the contrary, *it was Gabon’s new straight baseline*, its “A B line”, which Spain suspected was drawn with the intent to maximize Gabon’s claims to potential offshore hydrocarbon resources, not the Spanish basepoints, that caused Spain to fear the “negotiations [would] be clouded with

²⁵⁹ In addition to the Shell maps, the median line northern boundary is the only logically possible shape of the northern limit when the coordinates issued by Gabon (which clearly define certain endpoints of the block) are combined with the specific surface areas specified in the permits. The coordinates of Point A of the 1969 permit area—the northern most point on the western limit and the only point defined for the northern limit—falls exactly on a median line drawn between Gabon’s mainland coast and Spain’s insular features of Conga, Mbañe, and Cocoteros. CMG para 2.39; MEG Vol VI, Annex 183, pp 275-76. See **Figure R4.3**. The same is true for the definition of the permit area in the 1967 decree. See MEG, Vol. I, para. 3.98 and Figure 3.23.

²⁶⁰ MEG, Vol. II, Figures 3.21 and 3.23.

²⁶¹ The French Republic, *Letter from the French Ambassador to Gabon to the French Minister of Foreign Affairs* (4 February 1965). CMG, Vol. IV, Annex 108 (“the deep inlets of the Gabonese coast and the presence off the coast of the islands attached to Equatorial Guinea will require sooner or later the delimitation of the maritime domain of the two countries. This issue is now a timely one because of the offshore drilling planned by COSREG and the litigation that could arise in the event of the discovery of oil slicks or gas.”); (“les échancrures profondes de la cote gabonaise et la présence au large d’îles rattachées à la Guinée Equatoriale nécessiteront tôt ou tard la délimitation du domaine maritime des deux pays. Cette question est maintenant d’actualité en raison des forages en mer prévus par la COSREG et du contentieux qui pourrait s’ouvrir en cas de découverte de nappes d’huile ou de gaz”).

difficulties”. Contrary to Gabon’s characterization, the report stated that *Spain’s waters could be measured from any of its islands, including Corisco, Cocoteros and Mbañe*. Indeed, as noted in Equatorial Guinea’s Memorial, several other internal Spanish memoranda, which include map depictions, confirm that Spain was sovereign over the Corisco Dependencies, that it used those islands in developing a prospective maritime boundary with Gabon, and that Gabon never asserted any claim to them.²⁶²

4.42 Finally, Gabon mentions that certain French maps from 1932, 1935, and 1950 depicted Spanish sovereignty over Corisco, but did not include the same notation for the Corisco Dependencies. Gabon fails to mention that those maps do not denote French sovereignty over the Corisco Dependencies, either. As discussed above, this is because France, like Spain, consistently regarded Mbañe, Cocoteros and Conga as appertaining to Corisco, such that there was no need for a particular denotation of their legal status. In any event, French maps from 1899, 1900 and 1968 specifically designated Mbañe as falling under Spanish or Equatoguinean sovereignty.²⁶³ Again, the cartographic evidence confirms consistent recognition by France of Spain’s legal title over Mbañe and the other Corisco Dependencies.

4.43 In sum, for the entire period from the 1900 Convention to the independence of Gabon and Equatorial Guinea, the evidence confirms Spain’s unchallenged legal title to the Corisco Dependencies, including the islands of Mbañe, Conga and Cocoteros. The evidence shows that neither France nor Gabon made any claims to these islands or islets, and that their actions and statements reflect their recognition and acceptance of Spain’s legal title to them.

²⁶² MEG, Vol. I, paras. 3.87-3.90.

²⁶³ French Source Map Showing the Corisco Dependencies as Spanish (1899). MEG, Vol. I, Figure 3.3; Official French Map Showing the Corisco Dependencies as Equatoguinean (1968). MEG, Vol. I, Figure 3.25; Atlas Larousse, French Colonies of Africa (1900). MEG, Vol. I, Annex M1.

II. EQUATORIAL GUINEA SUCCEEDED TO SPAIN'S LEGAL TITLE TO THE CORISCO DEPENDENCIES

4.44 As set out in the Memorial, Spain's legal title to the Corisco Dependencies originated with the cession to it of Portugal's rights in the 1778 Treaty of El Pardo, and then with Spain's peaceful occupation and annexation of the Corisco Dependencies beginning in 1843. Spain's rights to the islands were documented and supported by numerous agreements with the local rulers of the islands and declarations of Spanish sovereignty. For the next 125 years following 1843, France, and then Gabon, recognized Spain's legal title.

4.45 On 12 October 1968, Equatorial Guinea attained independence from Spain, and acquired legal title to Corisco Island and its dependencies, including Mbañe, Cocoteros, and Conga as the successor State to Spain. Equatorial Guinea's Constitution at independence specifically defined the province of Rio Muni as including "the islands of Corisco, Elobey Grande, Elobey Chico and adjacent islets". This reference to "adjacent islets" is consistent with Spain's use of that phrase to refer to the Corisco Dependencies in its legislation regarding its colonial territory.²⁶⁴

4.46 In the first twelve years following its own independence in 1960, Gabon accepted Spain's (from 1960 to 1968) and then Equatorial Guinea's (1968 to 1972) legal title to the Corisco Dependencies. At the moment of Equatorial Guinea's independence, Gabon did not object to the inclusion of the "adjacent islets" in Equatorial Guinea's territory under the 1968 Constitution. Nor did Gabon object to Equatorial Guinea's Decree No. 17/1970 of 24 September 1970, which expressly referred to Mbañe, Cocoteros and Conga as part of its territory and claimed the median line between these islands and Gabon

²⁶⁴ See *supra* para 4.35-4.36. See also Exposé des droits de l'Espagne sur certains territoires du golfe de Guinée (1896). CMG, vol. III, Annex 35 (demonstrating France's recognition of Spain's sovereignty based on these various forms of legal title).

as the maritime boundary.²⁶⁵ That decree was sent to all UN Member States, including Gabon, together with a communication noting that the decree set “the limits of the territorial waters of Guinea surrounding the Elobey Islands, Corisco and the Mbañe, Conga and Cocoteros Islets, which are an integral part of the national territory of Guinea”.²⁶⁶ Gabon has produced no evidence of any contemporaneous protest of this decree.²⁶⁷

4.47 Gabon’s acceptance of Equatorial Guinea’s sovereignty over the Corisco Dependencies of Mbañe, Cocoteros and Conga was confirmed a year later. In 1971, Equatorial Guinea issued oil exploration concessions based on the prior year’s Decree No. 17/1970.²⁶⁸ Gabon did not contest Equatorial Guinea’s legal title to Mbañe, Cocoteros and Conga. Rather, it protested only Equatorial Guinea’s use of equidistance to benefit from “these islets [generating] the maximum breadth possible of territorial sea”, since Gabon believed the use of equidistance “encroach[ed] upon [its] continental shelf”.²⁶⁹

4.48 The evidence is thus clear that Equatorial Guinea succeeded to Spain’s legal title with respect to all of its colonial territory as a unified whole, including Mbañe, Cocoteros and Conga, and that Gabon recognized that legal title.²⁷⁰ Spain itself has also

²⁶⁵ MEG, Vol. I, para. 6.22; Republic of Equatorial Guinea, *Presidential Decree No. 17/1970* (24 September 1970). MEG, Vol. VI, Annex 186.

²⁶⁶ *Cable from the UN to Permanent Missions* (13 October 1970), *enclosing Letter from Equatorial Guinea to UN Secretary-General* (8 October 1970). MEG, Vol. III, Annex 23, p. 4.

²⁶⁷ MEG, Vol. I, para. 6.22. *See* CMG, Vol. I, para. 2.44.

²⁶⁸ MEG, Vol. I, para. 6.23; *Letter No. 002967 from the Ministry of Foreign Affairs of the Gabonese Republic to the Ministry of Foreign Affairs of the Republic of Equatorial Guinea* (28 August 1971). MEG, Vol. VI, Annex 154.

²⁶⁹ *Ibid.*

²⁷⁰ *See* MEG, Vol. I, paras. 6.17-6.21.

affirmed that it possessed legal title to the islands, which passed to Equatorial Guinea upon independence.²⁷¹

4.49 In its pleading, Gabon concedes the applicability of the international legal principles of State succession and does not deny that the rule of “the intangibility of the frontiers existing at the time of independence of African States” is binding in the relations between Gabon and Equatorial Guinea.²⁷² It nevertheless attempts to rebut Equatorial Guinea’s legal title with the argument that:

“succession itself is not a ‘title’, even in the broadest sense. It is only the phenomenon by which previous titles acquired by the predecessor State are transmitted to the successor State—which, incidentally, Equatorial Guinea seems to agree with, albeit ambiguously.”²⁷³

4.50 This supports, rather than contradicts, Equatorial Guinea’s position. In conceding that “succession” is a “phenomenon by which previous titles acquired by the predecessor State are transmitted to the successor State”²⁷⁴, Gabon necessarily accepts that Equatorial Guinea has succeeded to the titles previously acquired by Spain, and that as successor, it now holds those titles. The evidence shows beyond any doubt that Spain’s sovereignty extended to Corisco Island and its dependencies from at least the mid-19th century continuously until Equatorial Guinea’s independence in 1968. Under Gabon’s own legal understanding of succession, that sovereignty passed to Equatorial Guinea at the moment of its independence. Whether Equatorial Guinea’s legal title is understood as the

²⁷¹ Spain, Memorandum: Sovereignty and Administration over the Islands Mbañe, Conga y Cocoterros (16 October 1972). CMG, Vol. V, Annex 130.

²⁷² Frontier Dispute (Burkina Faso/Mali), Judgment, I.C.J. Reports 1986, p. 554, para. 24. *See* CMG, Vol. I, para. 5.79. *See also* MEG, Vol. I, paras. 6.1-6.9.

²⁷³ CMG, Vol. I, para. 5.79 (“la succession elle-même n’est pas un « titre », même entendu au sens large. Elle est seulement le phénomène par lequel les titres antérieurs acquis par l’État prédécesseur se transmettent à l’État successeur – ce dont, du reste, la Guinée Équatoriale semble convenir, quoique de manière ambiguë.”).

²⁷⁴ *Ibid.*

title of succession or the title inherited from Spain, there can be no doubt that Equatorial Guinea's legal title to the Corisco Dependencies has the force of law between the Parties.

III. GABON HAS NO LEGAL TITLE TO THE CORISCO DEPENDENCIES

4.51 France never had legal title to Mbañe, Cocoteros and Conga. Gabon has failed to present any documentary or other evidence of a claim by France to those islets at any point in time prior to Gabon's independence in 1960. To the contrary, the historical record documented by Equatorial Guinea in Chapter 3 of its Memorial and in **Section I** above establish that France recognized Spain's legal title to Corisco Island and its insular dependencies, including Mbañe, Cocoteros, and Conga.

4.52 Thus, upon its independence in 1960, Gabon did not inherit any legal title to Mbañe, Cocoteros and Conga. Gabon's Constitution upon independence does not refer to any insular territories in Corisco Bay as comprising part of Gabon's sovereign territory.²⁷⁵ When Gabon was presented for admission as a UN Member State, the description of its territory did not include any islands in Corisco Bay.²⁷⁶ Moreover, when Gabon's President Léon M'ba proclaimed independence, he described Gabon's territory, inherited from France, as the territory France acquired in the 1839 Treaty of Alliance between France and King Denis. That treaty, premised on a recognition of title by succession, did not include any island territory, or convey any islands or islets to France.²⁷⁷

²⁷⁵ MEG, Vol. I, para. 3.91. The Gabonese Republic, *Constitution*, "Preamble" (14 November 1960). MEG, Vol. VI, Annex 180.

²⁷⁶ MEG, Vol. I, para. 3.91; UN Security Council, *890th Meeting held in New York*, Security Council Official Records, UN Doc. S/PV.890 (23 August 1960). MEG, Vol. III, Annex 17.

²⁷⁷ See MEG, Vol. I, para. 3.91. UN Security Council, *890th Meeting held in New York*, Security Council Official Records, UN Doc. S/PV.890 (23 August 1960), para. 178. MEG, Vol. III, Annex 17; *Treaty between France and King Denis of Gabon (Senegal)*, signed in Gabon (9 February 1839). MEG, Vol. III, Annex 2.

4.53 France’s own internal legal opinion from September 1972 affirms that Gabon did not inherit legal title to the Corisco Dependencies. France’s Directorate of Legal Affairs in its Ministry of Foreign Affairs, made clear that:

“In the specific case of the M’Banie Islands, the Directorate of Legal Affairs Directorate must stress that the response that would appear most accurate to the Directorate would hardly be favorable to Gabon. ... [W]e lack a definite legal basis to assert that, on the eve of Gabon’s independence, France was responsible for the administration of the islands in question. This was already the Department’s opinion during the 1955 incident and the Directorate of Legal Affairs sees even less reason to go back on this opinion because the way this incident was settled (which unfortunately remains unknown) risks being a major argument in support of Equatorial Guinea’s claims.”²⁷⁸

4.54 After recognizing Spain’s and Equatorial Guinea’s legal title to the Corisco Dependencies for the first 12 years of its existence as a State, Gabon made its first formal claim to the islets in March 1972.²⁷⁹ Five months later, on 23 August 1972,²⁸⁰ Gabonese armed forces invaded Mbañe, captured and abused four Equatoguinean soldiers who had been stationed on the islet, and detained and abused 24 Equatoguinean fishermen who were also present.²⁸¹ The Equatoguinean soldiers who were present at the time represented a line of Spanish and Equatoguinean presence on Mbañe stretching back to at least 1907.²⁸²

4.55 Using law enforcement language to obscure the military nature of its actions, Gabon euphemistically refers to its 1972 invasion of Mbañe as a “police

²⁷⁸ The French Republic, Note for the Secretary General from the Directorate of Legal Affairs, Ministry of Foreign Affairs (21 September 1972), p. 2. REG, Vol. IV, Annex 31.

²⁷⁹ MEG, Vol. I, paras. 6.24-6.25.

²⁸⁰ CMG, Vol. I, para. 2.49.

²⁸¹ MEG, Vol. I, para. 4.9.

²⁸² See MEG, Vol. I, para. 3.20.

operation”, by which it set up a “light gendarmerie station” on the islet.²⁸³ Gabon can only cite its own unsupported and self-serving assertions in attempting to provide a pretext for the invasion.²⁸⁴ As Spanish officials had feared as early as 1966,²⁸⁵ Gabon’s desire to maximize its access to offshore hydrocarbon resources prompted its invasion, which only took place after President Macias refused Gabon’s proposal to jointly exploit and exercise sovereignty over the area Equatorial Guinea had inherited from Spain.²⁸⁶ The French Ambassador in Equatorial Guinea, reacting a few days after Gabon’s invasion, confirmed that the invasion was spurred by Gabon’s interest in accessing offshore hydrocarbons, while, at the same time, doubting its legality:

“The Gabonese Government could use force, but its adversary, by remaining on the level of the law and by insisting on peaceable means, would in the end win over it. ... For us, our petroleum interests, which coincide with those of the Gabonese, would take precedence over any other consideration. ... the Gabonese Command, whose government, jealous of its prerogatives, certainly did not consult us on the advisability this maneuver, initially presented in Libreville as a routine exercise. ... I will permit myself only to convey the impression that the good faith of the Gabonese position has not been emphatically demonstrated on a purely legal level.”²⁸⁷

²⁸³ CMG, Vol. I, paras. 6, 2.49, and 2.50 (“opération de police”; “un poste léger de gendarmerie”).

²⁸⁴ See CMG, Vol. I, para. 2.49.

²⁸⁵ See *supra* para. 4.42

²⁸⁶ CMG, Vol. V, Annex 122, p. 69-70. *Interview*, Interview Granted to Journalists in Libreville on September 10, 1972 by H.E.M Albert Bernard Bongo, President of the Gabonese Republic about the Border Incident between Gabon and Equatorial Guinea (10 September 1972). REG, Vol. V, Annex 60 (“[J]’ai proposé le 18 juillet 1972, au Président Francisco Macias Nguema, que soit instituée pour nos deux Nations, une zone neutre dans le baie de Corisco. [...] [L]e Président Macias a décliné mon invitation et refuse le dialogue [...] J’ai donc estimé que je me devais de garantir la sécurité de mes compatriotes et j’ai décidé la mise en place permanent d’un poste léger de gendarmerie. »).

²⁸⁷ *Letter No. 161/DAM* from the Embassy of the Republic of France to the Republic of Equatorial Guinea to the Ministry of Foreign Affairs concerning Maneuvers from Gabonese Armies at Corisco Bay (6 September 1972), pp. 2-3. REG, Vol. IV, Annex 30.

4.56 The legal consequences are clear: seizure and annexation of the territory of another State by force is unlawful and invalid, and incapable of transferring legal title to the occupying State.²⁸⁸ Moreover, since the legal dispute between the Parties crystallized in March 1972, Gabon’s unilateral acts after that date cannot affect Equatorial Guinea’s legal title to the Corisco Dependencies.²⁸⁹

4.57 Gabon asserts that the so-called “Bata Convention” that it presented in 2003 established its legal title to the Corisco Dependencies. However, as set out in Chapter 3 of this Reply and Chapter 7 of the Memorial, the argument is entirely without merit: that document has never had any legal effect in relations between Gabon and Equatorial Guinea. Such a document, of unproven authenticity and lacking the elements of a final and legally binding treaty, cannot, as Gabon would have it, transform an unlawful invasion and occupation into a legal title.²⁹⁰

²⁸⁸ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004, p. 171, para 87 (“the principles as to the use of force incorporated in the Charter reflect customary international law ... the same is true of its corollary entailing the illegality of territorial acquisition resulting from the threat or use of force). UN General Assembly, Resolution 2625 (XXV), *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations* (24 October 1970), para. 80. REG, Vol. III, Annex 6.

²⁸⁹ *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)*, Judgment, I.C.J. Reports 2007, p. 659, para. 117; *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)*, Judgment, I.C.J. Reports 2002, p. 625, para. 135.

²⁹⁰ The alleged 2003 Document only mentions Mbañe—it is silent on the islets of Cocoterros and Conga. Since all three islets were in dispute since March 1972, the omission of Cocoterros and Conga means that the alleged 2003 Document, if it had the force of law (*quod non*), would not constitute a legal title to those two islets.

CHAPTER 5 LEGAL TITLES TO CONTINENTAL LAND TERRITORY

5.1 Upon independence, Gabon and Equatorial Guinea succeeded to the legal titles, treaties and international conventions of France and Spain, respectively, in regard to their continental land territory. The Parties agree that the 1900 Convention is applicable to their dispute regarding their common land boundaries. The Parties also agree that the boundaries set out in the 1900 Convention had to be adjusted to conform to the reality on the ground and that the Convention provided a procedure for adjusting the boundaries through agreements reached by designated Commissioners or local Delegates.

5.2 In its Memorial, Equatorial Guinea established that Spain and France utilized these procedures to adjust parts of the land boundary in the Utamboni River Area in the southwest, and in the Kie River Area in the northeast, as depicted in **Figure R5.1**. Such adjustments were made by the Commissioners and local Delegates in accordance with the terms of the 1900 Convention prior to the Parties' respective dates of independence. In addition, the Memorial documented numerous unchallenged administrative acts and agreements—*infra legem effectivités*—during the colonial period and after independence, which confirmed the agreed adjustments, or gave rise to a separate source of legal title.²⁹¹

5.3 As the Court has repeatedly made clear, the legal relationship between *effectivités* and legal title “must be drawn among several eventualities”:

- (i) “where effective administration is additional to the *uti possidetis juris*, the only role of *effectivité* is to confirm the exercise of the right derived from a legal title”;

²⁹¹ See MEG, Vol. I, paras. 3.36-3.84, 3.102-3.111; *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)*, Judgment, I.C.J. Reports 2002, pp. 353-355, paras. 68-70; *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)*, Judgment, I.C.J. Reports 1992, pp. 54, 61-62, paras. 67, 80.

**THE PARTIES ADJUSTED THE
ARTICLE 4 LINES IN THE
UTAMBONI AND KIE RIVER AREAS**

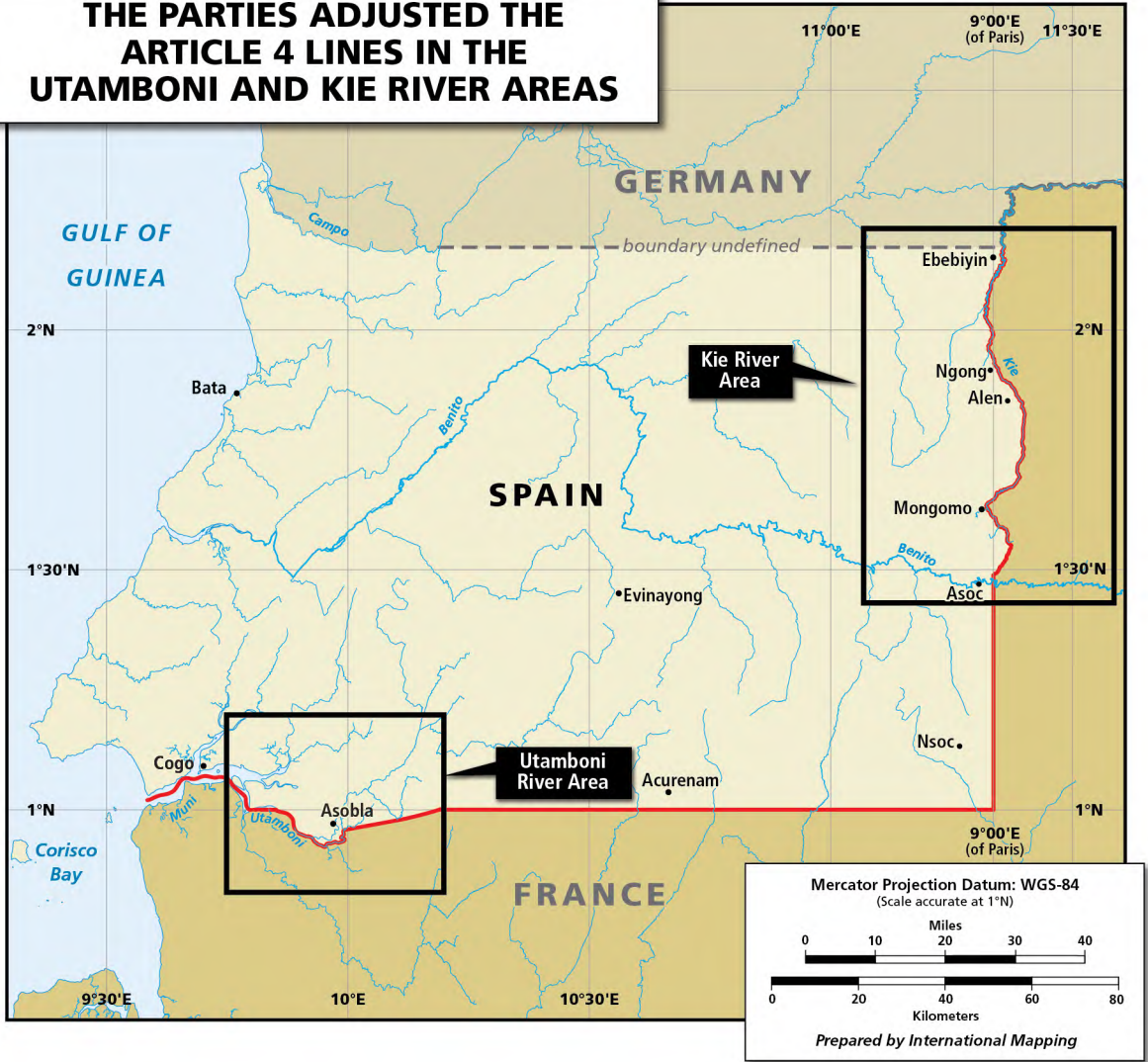


Figure R5.1

- (ii) “where the territory which is the subject of the dispute is effectively administered by a State other than the one possessing the legal title, preference should be given to the holder of the title”;
- (iii) where “the *effectivité* does not co-exist with any legal title, it must invariably be taken into consideration”; and
- (iv) where “the legal title is not capable of showing exactly the territorial expanse to which it relates”, “*effectivités* can then play an essential role in showing how the title is interpreted in practice”.²⁹²

Effectivités falling within the second category have been described by the Court as *contra legem*.²⁹³ By contrast, *effectivités* that fall within the first or fourth categories—that either “confirm the exercise of the right derived from a legal title” or “show[] how the title is interpreted in practice”—are *infra legem*.²⁹⁴

5.4 There is no dispute between Equatorial Guinea and Gabon that the 1900 Convention is applicable to their dispute. However, the Parties dispute whether the boundary described in Article 4 of the 1900 Convention has been modified under the terms of Article 8 and Annex 1 or international law, and they disagree on the territorial areas covered by their legal titles. Equatorial Guinea has provided ample evidence of Spain’s *infra legem effectivités* undertaken in conformity with the provisions of the 1900 Convention as applied by the Parties. For Equatorial Guinea, these constitute additional sources of its legal title to territory in the Utamboni River and Kie River Areas.

²⁹² *Frontier Dispute (Burkina Faso v. Republic of Mali)*, Judgment, I.C.J. reports 1986, p. 586, para. 63.

²⁹³ *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)*, Judgment, I.C.J. reports 2002, p. 351, para. 64 (“any Nigerian *effectivités* are indeed to be evaluated for their legal consequences as acts *contra legem*”).

²⁹⁴ See, e.g., *Frontier Dispute (Burkina Faso v. Republic of Mali)*, Judgment, I.C.J. reports 1986, pp. 567-568, para. 28 (discussing application of equity *infra legem*).

5.5 In its Counter-Memorial, Gabon asks the Court to ignore the pre-independence modifications to the land boundary, Gabon’s acceptance of those changes, and the *infra legem effectivités* of the Parties and their colonial predecessors. Instead, Gabon asserts that the document it presented for the first time in 2003 constitutes the sole source of legal title to the Parties’ respective land territories. Gabon’s reliance on that document is misplaced, however, since, as shown in Chapter 7 of the Memorial and Chapter 3 of this Reply, it does not have the force of law between the Parties.

5.6 This Chapter responds to the arguments put forth by Gabon in its Counter-Memorial concerning: (I) the 1900 Convention and its procedures for modifying the land boundary, and the agreed modifications (II) in the Utamboni River Area, and (III) the Kie River Area, respectively, as confirmed by the pre- and post-independence *infra legem effectivités* of the two Parties and their colonial predecessors.

I. THE 1900 CONVENTION AND ITS PROCEDURES FOR MODIFYING THE LAND BOUNDARY

5.7 As shown in Equatorial Guinea’s Memorial, France and Spain agreed in Article 8 and Annex 1 of the 1900 Convention to procedures for modifying the boundaries described in Article 4 of the Convention. In its Counter-Memorial, Gabon confuses these procedures so as to avoid the consequences of the boundary modifications made by France and Spain pursuant to them, which were accepted by the Parties and implemented in the border-areas for over a century. This Section explains the procedures set out in Annex 1 and the modifications made thereunder by Spain and France prior to independence, and the modifications made by Equatorial Guinea and Gabon thereafter.

5.8 In contrast with Article 8 of the Convention, which required France and Spain to “designate Commissioners” within “four months of exchanging ratifications”, Annex 1 is neither time-bound nor limited to designated Commissioners. Annex 1 provided that “Commissioners *or local Delegates*” of the contracting parties “that are subsequently responsible for delimiting the boundaries on the ground of all or some of the boundaries” may propose modifications to the boundaries described in Article 4 of the Convention.

Thus, any “Commissioners *or* local Delegates”, regardless of whether they were specially designated by the contracting parties, who were “subsequently responsible” for delimiting “all or *some* of the boundaries”, fell within the scope of Annex 1.

5.9 Annex 1 defined the mandate for these “Commissioners or local Delegates”. As a starting point, they were required to “use as a basis the description of the boundaries as established in the Convention”. However, Annex 1 did not require them to adhere strictly to the terms of Article 4 or the map in Annex 3; rather, it required only that the Commissioners or local Delegates start with Article 4’s description of the boundary as the basis for their work. Annex 1 further provided: “At the same time, *they may modify said lines of demarcation* in order to delimit them more accurately and to rectify the position of the dividing lines of roads, rivers, cities, or villages indicated on the above-mentioned maps”.

5.10 Thus, by the express terms of Annex 1, “Commissioners or local Delegates” were authorized to modify the boundaries set out in Article 4 to take account of natural or man-made features such as rivers, villages, and roads. Gabon is therefore mistaken in suggesting that the Commissioners and local Delegates responsible for the 1901 Commission and the 1919 Governors’ Agreement exceeded their mandate when they used rivers, villages, and roads to justify modifications to the 1900 Convention’s lines of demarcation.²⁹⁵ Indeed, Gabon’s restrictive interpretation of the mandate of the Commissioners and local Delegates is manifestly inconsistent with the last sentence of Article 8, which recognized their authority to attribute sovereignty over islands in the Utamboni River. This shows that Spain and France intended for the Commissioners and local Delegates to have significant authority, within the parameters of Article 4 and Annex 1, to reach agreement on the attribution of territory to one party or the other.

5.11 Gabon is likewise incorrect to read out of Annex 1 the words “or local Delegates”, as if only “Commissioners” were authorized to modify boundaries. On the

²⁹⁵ See, e.g., CMG, Vol. I, paras. 1.41, 7.41.

basis of this distortion of the text, Gabon dismisses the 1919 Governors' Agreement as a boundary modification outside the framework of the Convention on the ground that the two Governors were not "designated" as Commissioners. However, Annex 1 empowered "Commissioners or local Delegates" "that are subsequently responsible for delimiting the boundaries on the ground of all or some of the boundaries" to modify the land boundaries described in Article 4. To be sure, the colonial Governors were not "Commissioners", *per se*; they were, however, "local Delegates" within the meaning of Annex 1.

5.12 Gabon also erroneously attempts to use Article 8 of the Convention to limit the mandate of the "Commissioners or local Delegates" established by Annex 1. The time-bound Article 8, which only applied to the 1901 Commission, provided that the "designate[d] Commissioners ... shall be responsible for tracing on the ground the demarcation lines between the Spanish and French possessions, in accordance with and in the spirit of the provisions of the present Convention". The Article 8 mandate for the designated Commissioners, however, was distinct from the Annex 1 mandate for "Commissioners or local Delegates". While both applied to the work of the 1901 Commission, the Annex 1 mandate for those who are "subsequently responsible" applied also to the work of the 1914 Commission and the 1919 Governors' Agreement.

5.13 Annex 1 provided that "[t]he changes or corrections proposed by mutual agreement by said Commissioners or Delegates shall be submitted to the respective Governments for approval". Whereas Article X of the 1900 Convention stipulated the requirements of ratification and exchange of ratifications for the Convention itself, in Annex 1 there were no special procedures adopted for "approval" of boundary modification proposals. Thus, any form of approval by the contracting parties—including implied approval, or approval demonstrated by practice—sufficed in regard to boundary modifications mutually agreed to by the relevant Commissioners or local Delegates. In particular, Annex 1 did not require a further agreement between the "Contracting Powers" but approval by the respective "Governments". Thus, it did not require a bilateral exchange. Each government could unilaterally approve the modifications for them to take effect.

5.14 As shown in the following Sections, which address the Utamboni River Area and Kie River Area, respectively, nothing in the Counter-Memorial calls into question the fact that Spain and France approved modification of the boundaries in those areas in accordance with the procedures set out in Annex 1 of the 1900 Convention.

II. THE LAND BOUNDARY IN THE UTAMBONI RIVER AREA

5.15 The Governments of Spain and France modified the boundary in the Utamboni River Area²⁹⁶ by designating the 1901 Commission in accordance with Article 8 of the 1900 Convention, to modify the boundary and, by approving through subsequent practice, the Commission's modifications in that area. The approval of those modifications was evidenced by the conduct of Spain, France, and Germany throughout the pre-independence period, and by the acts of Equatorial Guinea and Gabon following independence.

A. 1901 COMMISSION

5.16 The Parties agree that Spain and France established the 1901 Commission in accordance with Article 8 of the Convention.²⁹⁷ They also agree that the 1901 Commission completed its work and submitted proposed modifications of the boundary in the east and the south.²⁹⁸ The Parties agree as well that while the 1901 Commission made certain geographic errors in seeking to determine the boundary due to problems with their instruments, those errors were mostly in relation to measurements of longitude in the

²⁹⁶ See MEG, Vol. I, para. 2.13 (“The Utamboni River Area is centred around the Utamboni River and its tributaries in the south-western region of Rio Muni/north-western coastal region of Gabon on Corisco Bay and is depicted at Figure [R5.1]. The western half of this area is low-lying while the eastern half is occupied by the Crystal Mountains, a range that runs north-south from Equatorial Guinea’s Rio Muni region into Gabon. The Utamboni River rises in the Crystal Mountains in Rio Muni and then crosses the 1° north parallel twice before emptying into the Muni River near the coast on Corisco Bay.”).

²⁹⁷ See MEG, Vol. I, paras. 3.42-3.43; CMG, Vol. I, para. 1.41.

²⁹⁸ See MEG, Vol. I, para. 3.51; CMG, Vol. I, para. 1.44.

eastern portion of the boundary.²⁹⁹ Gabon does not dispute that, instead of following the 1° North parallel set forth in Article 4 of the Convention, the 1901 Commission proposed that the boundary in the southwest follow the Utamboni River to its confluence with the Mitombe River, then to the source of the Mitombe, over the Crystal Mountains and beyond.³⁰⁰ The boundary as modified by the Commission in this area was shown in a contemporaneous map prepared by the Commission. The relevant part of the Commission’s map is at **Figure R5.2**.

5.17 On the basis of new information, including a full scan of the Commission’s map and a first-hand, contemporaneous account of the expedition route authored by Spanish commissioner Lopez Vilches,³⁰¹ Equatorial Guinea has revised its depiction of the modifications proposed by the 1901 Commission, as depicted at **Figure R5.3**.³⁰²

5.18 Gabon does not dispute that the Commission proposed a boundary following rivers and paths in the Utamboni River Area. Rather, it now argues that this was not in the spirit of the Convention.³⁰³ There is no basis for this argument. The 1901 Commission’s mandate was to adopt a boundary that “best reflects the spirit of the

²⁹⁹ See MEG, Vol. I, para. 3.52; CMG, Vol. I, para. 1.46.

³⁰⁰ The Mitombe River is also called the Ntom or Ntomo on some maps. From the confluence of the Utamboni River with the Mitombe, the 1901 Commission proposed that the boundary follow: the Mitombe River to its source in the Crystal Mountains; the path connecting the Spanish village of Mandung with the Spanish village of Anguma; the path from Anguma to the French village of Masile until that path meets the Adu (Aduo) River; the Adu River to its tributary Bekon (Beikon) River; the Bekon River to its source, reuniting with the path to Masile; the path from Masile to Ebe until it meets the Abobo River; and the channel of the Abobo River to the Spanish second village of Akoniké. See Vilches’ Diary of Operations, *The Territory of Biafra*, Franco-Spanish Delimitation Commission (1901). REG, Vol. III, Annex 8.

³⁰¹ See Vilches’ Diary of Operations, *The Territory of Biafra*, Franco-Spanish Delimitation Commission (1901), pp. 18, 24, 28, and 30 REG, Vol. III, Annex 8.

³⁰² This revision reflects the choice of the Commission to follow the south fork of the Mitombe River instead of the north fork, or M’Bian [Midyobo] River, and the Commission’s decision to proceed east into the Crystal Mountains on a direct route to Anguma instead of taking the more roundabout, but less steep, route up the M’Bian River and back down the Miang River to Anguma. See Vilches’ Diary of Operations, *The Territory of Biafra*, Franco-Spanish Delimitation Commission (1901). REG, Vol. III, Annex 8.

³⁰³ CMG, Vol. I, para. 7.31.

1901 COMMISSION'S MAP (UTAMBONI RIVER AREA)

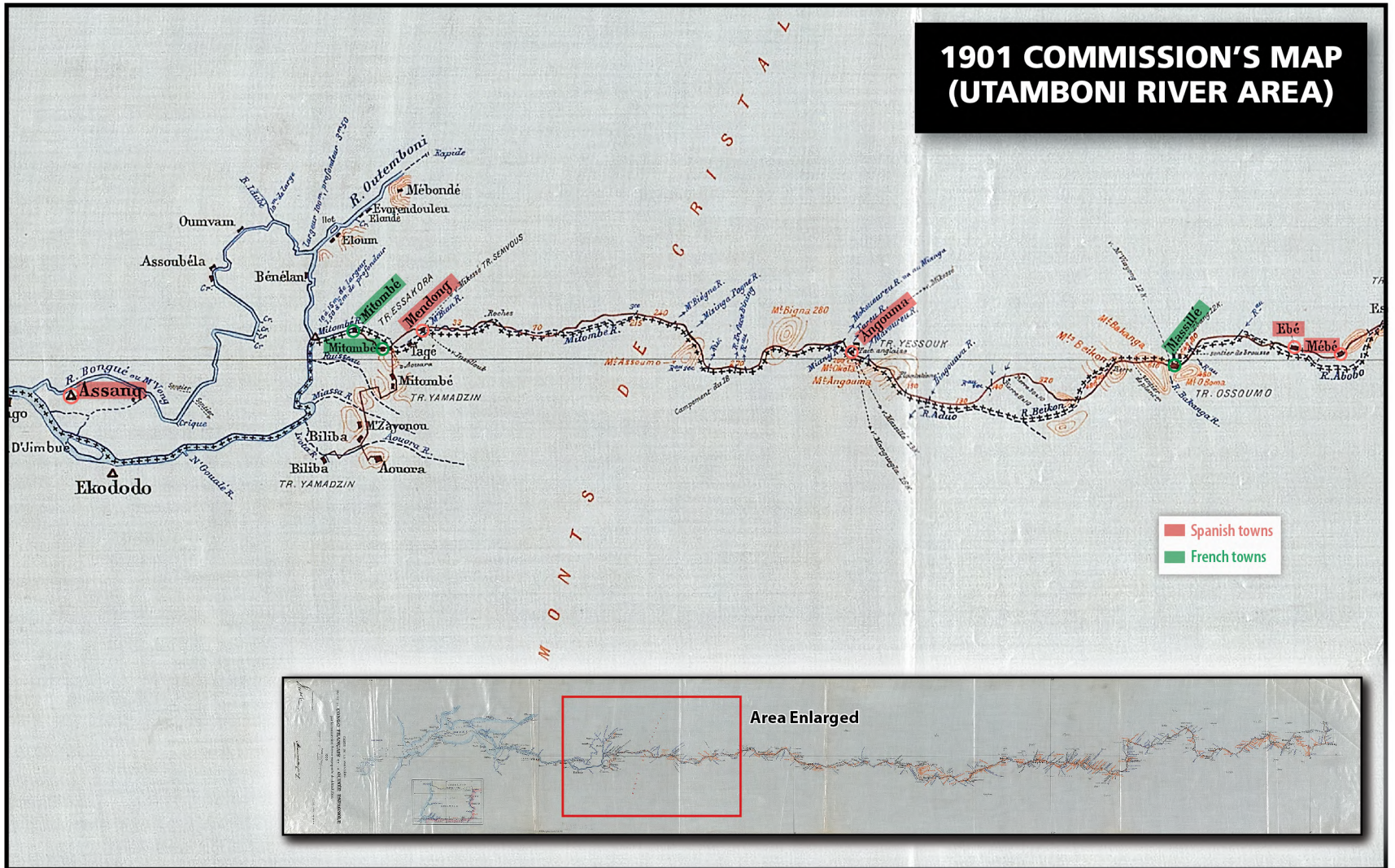


Figure R5.2

SOURCE: Carte de la Frontière entre le Congo Français et la Guinée Espagnole par la commission franco-espagnole de délimitation, 1903. Map excerpt, annotations added.

1901 COMMISSION'S PROPOSED BOUNDARY (UTAMBONI RIVER AREA)

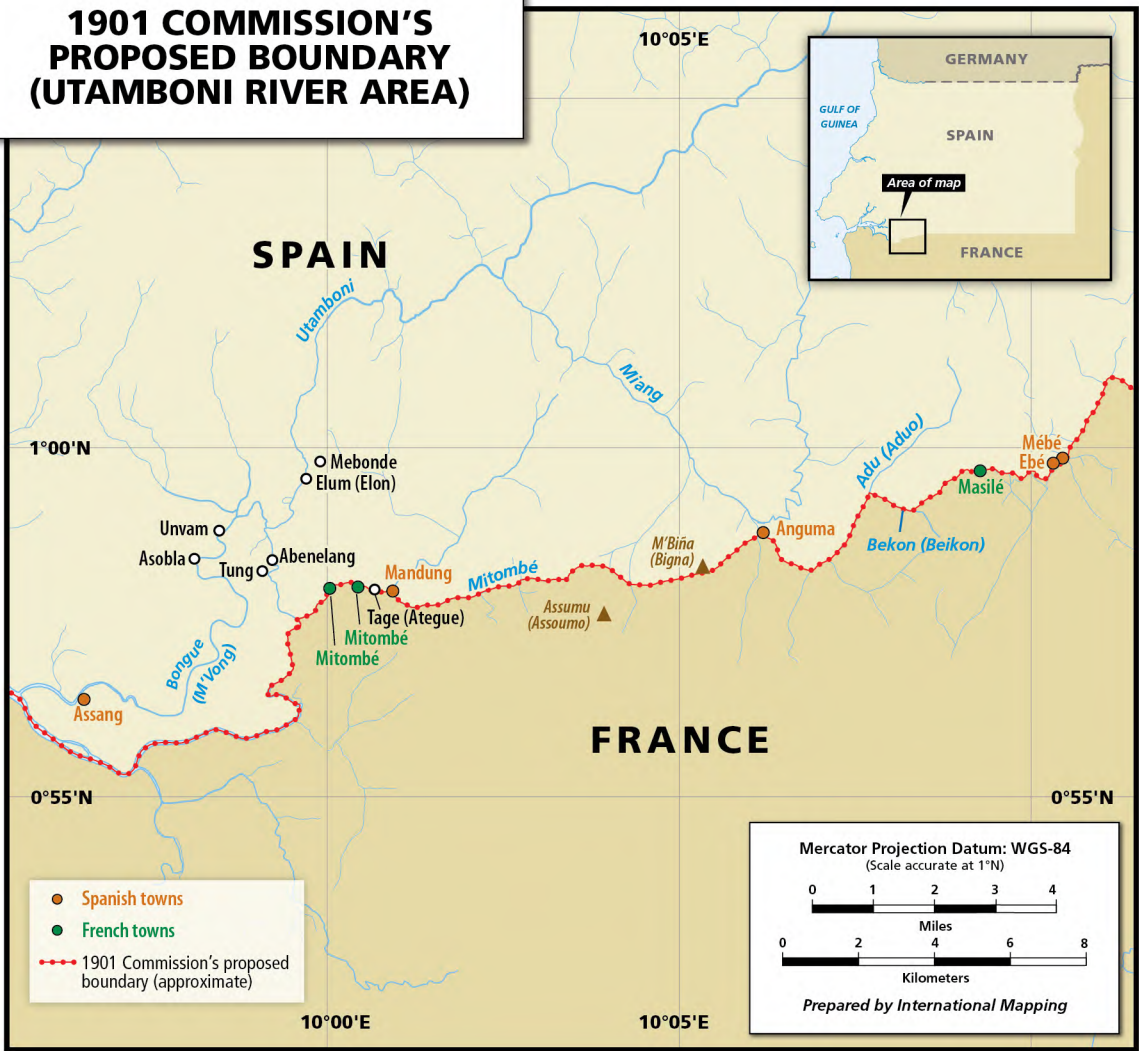


Figure R5.3

treaty”³⁰⁴ (as per Article 8), taking into account rivers, villages and roads (as per Annex 1), which is precisely what the Commission did. Gabon refers to a passage from the 1901 Commission’s report stating that the Commission’s proposal was “[the] most in keeping with the spirit of the Convention”.³⁰⁵ Tellingly, Gabon is unable to cite any contemporaneous evidence from Spain or France that suggests that either colonial power considered the 1901 Commission to have exceeded its mandate or otherwise acted contrary to the spirit of the 1900 Convention in the Utamboni River Area.³⁰⁶

5.19 In proposing the Utamboni and Mitombe rivers, among others, as the boundary in the Utamboni River Area, the 1901 Commission was not only following its mandate to take rivers into account, but also was taking account of the on-the-ground realities in the area. Gabon does not dispute that the 1901 Commission assigned Spanish or French nationality to several villages in the Utamboni River Area on the basis of the location of these villages relative to the Commission’s proposed boundary: Assang, Mandung, Anguma, Ebé and Mebé were identified as Spanish, whereas Mitombe and Masile were identified as French.³⁰⁷ As the Commission itself explained, by creating a boundary composed of a continuous series of rivers, streams, and paths, the Commission’s proposed boundary allowed for shared usage of those rivers and paths for nationals of either side, consistent with the spirit of the Convention: “Whenever the border runs along a path, it is understood that both lines [the boundary and path] conjoin and that the use and

³⁰⁴ MEG, Vol. I, para. 3.43.

³⁰⁵ See CMG, Vol. I, para. 7.30 (*quoting* Franco-Spanish Delimitation Commission of the Gulf of Guinea, *Border Project: Southern Border* (1 January 1902), p. 1 (“la plus conforme à l’esprit de la Convention”). MEG, Vol. III, Annex 14.

³⁰⁶ Gabon also argues that because the contracting parties had initially considered setting the Southwest boundary as following the Utamboni River up to its source but ultimately decided on the language of Article 4, a properly constituted Commission could not propose such a boundary modification consistently within the spirit of the Convention. CMG, Vol. I, para. 7.31. By this logic, no boundary modifications could be proposed that may have been considered at some point in the process of negotiating the 1900 Convention. There is no such limitation in the Commission’s mandate in Article 8 or Annex 1.

³⁰⁷ MEG, Vol. I, para. 3.47; *ibid.* Figure 3.8.

utilization of such roads is equally free for the subjects of the two nations in the same fashion as was agreed upon for the rivers that meet the same conditions”.³⁰⁸ There is no basis for Gabon’s argument that, in proposing such a boundary, the 1901 Commission exceeded its mandate under the 1900 Convention.

5.20 Gabon’s argument that France and Spain rejected the 1901 Commission’s proposals in the Utamboni River Area is also without merit.³⁰⁹ It is true that the colonial powers refused to approve the 1901 Commission’s proposals for the boundary further to the east, due to the Commission’s substantial measurement errors in that area. However, they did approve the proposed modification of the boundary in the southwest, that is, in the Utamboni River Area, as demonstrated by their subsequent acts in that Area. In particular, France, through its conduct, affirmatively accepted and consented to Spain’s administration of those and other villages south of the 1° North parallel set forth in Article 4 of the Convention, but north of the Utamboni and Mitombe Rivers without challenge or protest. For example, as detailed in the Memorial, in addition to the Spanish villages noted by the 1901 Commission, Spain administered Asobla, where it established a customs post, maintained a police force and collected taxes.³¹⁰ Additionally, Spain administered, among many others, the villages of Ngamb [Ngabe] west of Asobla, and the villages of Mibonde, Elon, Midyobo [Michobo], and Anguma, east of the Utamboni River and south of 1° North, all without protest from France or Gabon.³¹¹ Notably, France did not indicate that the

³⁰⁸ Franco-Spanish Delimitation Commission of the Gulf of Guinea, *Border Project: Southern Border* (1 January 1902) p. 3. REG, Vol. III, Annex 4.

³⁰⁹ CMG, Vol. I, paras. 1.47, 7.32.

³¹⁰ MEG, Vol. I, paras. 3.55, 3.60-3.63.

³¹¹ MEG, Vol. I, paras. 3.55, 3.60-3.65. To this day, many of these formerly Spanish villages, including Ngamb [Ngabe], Asobla, Elon, Mibonde and Midyobo (Esemvus) [Michobo] remain populated places under the administration and control of Equatorial Guinea, replete with schools, military posts, health clinics, churches, cemeteries and meeting houses (casas de palabra). Republic of Equatorial Guinea, *Declaration of H.E. Domingo Mba Esono, Vice-President of Commerce and Promotion of Small and Middle Sized Enterprises, and President of the Sub-technical Division of the Special Borders Commission* (25 September 2022), para. 8. REG, Vol. III, Annex 5.

Spanish villages south of 1° North (i.e., on the French side of the parallel under Article 4 of the 1900 Convention) should be abandoned or change their nationality.

5.21 Unable to challenge or undermine the evidence that Spain administered the territory north of the 1901 Commission's proposed boundary in the Utamboni River Area without protest for at least sixty-seven years, Gabon points to the absence of a formal instrument memorializing the boundary's modification. But such formalism was not required by Annex 1 of the 1900 Convention. All that was needed was the respective approval of the two Governments, without any particular form of approval being required. Approval could thus be manifested by the parties' actions: for example, Spain's designation of Asobla as the seat of an administrative sub-district within the colonial district of Elobey in an official Spanish decree published in 1907, and France's acceptance of that designation and of other Spanish acts of administration.³¹² As noted below in Section II.C., such other administrative acts in Asobla included establishing a customs post, police force, postal service, tax collection system, school, stationing troops, and conducting censuses, all without protest from France.³¹³

B. 1914 COMMISSION

5.22 Pursuant to a 1911 treaty, Germany succeeded to the territory formerly held by France in an area south and east of Spain's territory, which they renamed Neukamerun. Gabon asserts that "[t]his transfer of territories between France and Germany did not call into question the land boundary with Spanish Guinea established by, and described in, the [1900] Convention."³¹⁴ While questions were raised about the land boundary with Spanish Guinea during this period, they pertained to areas *east* of the Utamboni River Area; the transfer did not call into question the land boundary established by the 1900 Convention

³¹² CMG, Vol. I, para. 3.55.

³¹³ MEG, Vol. I, para. 3.60-3.65.

³¹⁴ CMG, Vol. I, para. 2.3 ("Ce transfert de territoires entre la France et l'Allemagne n'a pas remis en question la frontière terrestre avec la Guinée espagnole établie par, et décrite dans, la Convention de Paris.").

as modified by the 1901 Commission in the Utamboni River Area and approved in practice by Spain and France.

5.23 Germany was aware of the work of the 1901 Commission,³¹⁵ the inaccuracies in the Commission's work in the area east of the Utamboni River Area, and the reality that Spain administered, occupied, and controlled villages south of 1° North across the entire Utamboni River Area consistent with the Commission's proposal in this area.³¹⁶ In November 1912, a German station chief reported: (i) that the villages of Tung, Abenelang, Umvam and Asobla were considered to be Spanish even though they were south of 1° North on the maps in his possession; (ii) that Asobla housed a Spanish military post manned by Spanish soldiers; (iii) that European merchants with trading posts south of 1° North (in Tung and at the confluence of the Utamboni and Bongue rivers) reported being located in Spanish territory and acted accordingly in relation to customs tariffs; and (iv) that he was told that "the Spanish border was shortly after Ategue [Tage]", which is on the left or south bank of the Mitombe River just south of the boundary as modified in 1901.³¹⁷

5.24 In July 1913, the Governor-General of Spanish Guinea, Angel Barrera, and the German delegate, reached a "specific status quo" agreement for the southern and southeastern boundary of Spanish Guinea.³¹⁸ Contrary to Gabon's attempt to claim

³¹⁵ *Report No. 1196 from the Government of Kamerun (German Colony) to the State Secretary of the Imperial Colonial Office Berlin W. concerning Agreements with the Spanish Governor-General Regarding a Certain Amount of Freedom of Movement for our Troops on the Spanish-Muni Border (6 August 1913) (Barrera describing the work of the 1901 Commission in a letter to Olshausen proposing a status quo agreement on the southern boundary.). REG, Vol. III, Annex 9.*

³¹⁶ Before and after the work of the 1914 Commission, German officials were fully aware of the relationship between 1° North and villages in the Utamboni River Area. Dr. Olshausen, for example, correctly identified Elum [Elon] as a village near intersection of 1° North with the Utamboni River (MEG, Vol. IV, Annex 63, p. 234) and he correctly described Asobla as "about 4 kilometers south of the first degree of latitude." (CMG, Vol. IV, Annex 71, p. 207).

³¹⁷ CMG, Vol. IV, Annex 69, p. 177 ("À Ategue, on m'a dit que la frontière espagnole se trouvait peu après Ategue). See Figure R5.3 for the locations of these villages relative to 1° North and the 1901 Commission proposal.").

³¹⁸ Certification from Head of Archives of the General Government of the Spanish Territories on the Gulf of Guinea of Frontiers Delimitation (27 December 1948) p. 11. REG, Vol. III, Annex 14.

otherwise,³¹⁹ the agreement does not indicate that the 1° North parallel continued to serve as the boundary in the Utamboni River Area. Rather, the agreement identified the confluence of the Mitombe and Utamboni Rivers as the starting point for the “theoretical border” to the east.³²⁰ East of that point, the parties presumed that the lines shown on the most current German map were accurate until they had the opportunity to carry out a site visit.³²¹ The agreement excluded the area *west* of this confluence, as that was already delineated by the Utamboni River per the 1901 Commission’s proposal as accepted in practice by Spain and France.³²²

5.25 In 1914, by internal correspondence, the officials of both States acknowledged the continuing validity of the July 1913 agreement³²³ and credited the agreement with the close, friendly relationship between Spain and Germany.³²⁴ Thus, in the Utamboni River Area, the pattern of administration and control remained as it was.³²⁵

³¹⁹ CMG, Vol. I, para. 2.5(b).

³²⁰ *Report No. 1196 from the Government of Kamerun (German Colony) to the State Secretary of the Imperial Colonial Office Berlin W. concerning Agreements with the Spanish Governor-General Regarding a Certain Amount of Freedom of Movement for our Troops on the Spanish-Muni Border (6 August 1913)*, p. 25 (Barrera’s proposal to Olshausen: “Starting from this basis, I believe we must take the position that is fixed at the confluence of the Mitombe with the Utamboni, as explained above, and consider as border points those to the East of this location...”). REG, Vol. III, Annex 9.

³²¹ CMG, Vol. II, annex C11 (Moisel map of 1912).

³²² *Certification from Head of Archives of the General Government of the Spanish Territories on the Gulf of Guinea of Frontiers Delimitation (27 December 1948)* pp. 11-12 (Barrera on 12 August 1913 describing his agreement with Olshausen: “To establish this status quo, we have started at the confluence of the Mitombe and Utamboni rivers, with this confluence supposedly located in Spanish territory, that is, at 1°0’14”77N, 7°37’39” 67 east of Paris, without modifying any of the points located to the West of this confluence, which shall continue as they have been until now.”). REG, Vol. III, Annex 14.

³²³ MEG, Vol. IV, Annex 63, p. 234 (Olshausen writing 16 June 1914: “... in this respect, the agreement entered into in July of last year is still valid, according to which the theoretical border should be binding as drawn on Moisel’s map until the new borders have been determined.”).

³²⁴ MEG, Vol. IV, Annex 62, p. 224 (Spanish Minister of State, Marques de Lema, writing 4 February 1914: “the relationships of which fortunately are very close and friendly today, due to some opinions exchanged between the governors of Spanish Guinea and Cameroon regarding the borders, who in the end both agreed to a status quo regarding our southern border and part of the eastern border ...”).

³²⁵ *Ibid.*

On this basis, Spain and Germany formed the “1914 Commission” which, in July 1914, undertook to identify on the ground those villages located in Spanish territory and those located in German territory.

5.26 Equatorial Guinea and Gabon agree that Spain and Germany established a boundary demarcation Commission in 1914; that the 1914 Commission met in the Utamboni River Area (in the Spanish villages of Asobla and Mebonde) and conducted work further east in July 1914; and that the Commission possessed the Moisel maps of the area published in 1914.³²⁶ The Parties agree as well that, although the 1914 Commission did not complete its work, it created a document, signed by the Spanish and German commissioners, Barrera and Olshausen, attesting to the findings of the Commission. Regardless of whether that document is called a record, report, or decree,³²⁷ its import is the same: it described the conclusion of the 1914 Commission that certain villages in the Utamboni River Area were in Spanish territory and others were in German territory. The 1914 Commission identified that, among others, the villages of Asobla, N’sogodam, Anguma and Mebé were in Spanish territory, and the village of Mitombe was in German territory, as depicted in **Figure R5.4**.³²⁸

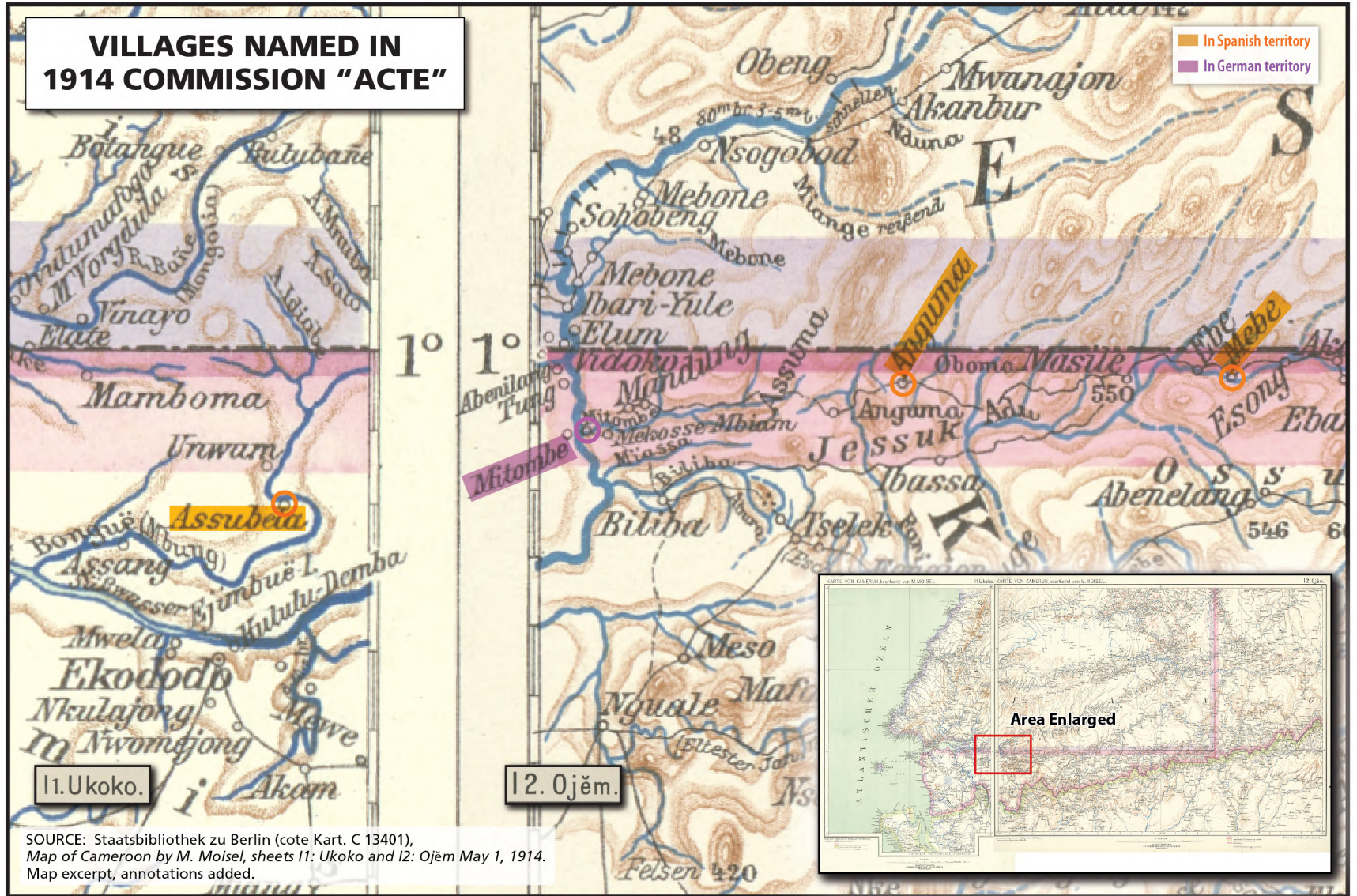
5.27 Thus, in the Utamboni River Area, the 1914 Commission did not follow the boundary described in Article 4 of the 1900 Convention. Rather, the 1914 Commission’s division of territory in the Utamboni River Area aligned with the boundary developed by the 1901 Commission: the four villages identified as Spanish all lie north of the 1901 Commission boundary. Both Commissions expressly located Anguma and Mebe in Spanish territory and Mitombe in French/German territory. Asobla and N’sogodam, both

³²⁶ MEG, Vol. I, para. 3.58; CMG, Vol. I, paras. 2.5-2.6.

³²⁷ See CMG, Vol. I, para. 2.6. All of Equatorial Guinea’s translations of annexed documents are certified by professional translators.

³²⁸ MEG, Vol. I, para. 3.60; *Decree Signed by the German Empire and the Kingdom of Spain for the Delimitation Between Spanish Guinea and the Protectorate of Cameroon* (18 August 1914). MEG, Vol. V, Annex 115. The town Mitombe is at the confluence of the Mitombe and Utamboni rivers; it is located east of the Utamboni and south of the Mitombe River.

**VILLAGES NAMED IN
1914 COMMISSION "ACTE"**



SOURCE: Staatsbibliothek zu Berlin (cote Kart. C 13401),
Map of Cameroon by M. Moisel, sheets 11: Ukoko and 12: Ojëm May 1, 1914.
Map excerpt, annotations added.

Figure R5.4

north of the line proposed by the 1901 Commission, were found by the 1914 Commission to be in Spanish territory.³²⁹

5.28 Gabon does not dispute that these were the findings of the 1914 Commission. Instead, it argues that the minutes of the 1914 Commission’s meetings indicated that the Commissioners made their findings based on “astronomical observations” and “by the routes followed”, not by assigning nationality to the villages.³³⁰ This claim misses the point. The 1914 Commission did not “assign” nationality to any villages; rather, it reported on what it found, specifically, that the villages north of the Utamboni and Mitombe Rivers (but south of the 1° North parallel) were in Spanish territory, as Gabon acknowledges in its Counter-Memorial.³³¹ This was because the boundary modifications proposed by the 1901 Commission had been accepted and implemented by Spain and France. Otherwise, without acceptance of the modification, these villages south of 1° North would have been considered French. Like the 1901 Commission, the 1914 Commission recognized the reality that Spain administered those villages and that the boundary in that area should reflect those villages as being part of Spain’s colonial territory.³³²

5.29 Gabon erroneously asserts that Germany protested Spain’s presence in Asobla.³³³ In fact, German officials did no more than express surprise (in internal communications) that Spain controlled Asobla.³³⁴ Moreover, as indicated in the 1914

³²⁹ MEG, Vol. I, para. 3.59-3.60.

³³⁰ CMG, Vol. I, para. 2.7 (“observations astronomiques”; “[et aux] itinéraires levés”) (quoting *Decree Signed by the German Empire and the Kingdom of Spain for the Delimitation Between Spanish Guinea and the Protectorate of Cameroon* (18 August 1914). MEG, Vol. V, Annex 115).

³³¹ See CMG, Vol. I, para. 2.5(c), noting that Asobla is south of the 1° North parallel on the Moisel maps of the area.

³³² See MEG, Vol. I, Figure 3.10.

³³³ CMG, Vol. I, para. 2.5(c).

³³⁴ See MEG, Vol. I, para. 3.59; CMG, Vol. I, para. 2.4.

Commission's conclusions, the German Commissioner agreed that Asobla was located in Spanish territory.³³⁵

5.30 In sum, the 1914 Commission confirmed the findings of the 1901 Commission and identified various villages in the Utamboni River Area, south of the 1° North parallel, as falling under Spanish sovereignty. Germany did not protest Spain's administration of those villages; rather, Germany accepted Spain's presence and control over them. The 1914 Commission's findings thus confirmed that Spain administered those villages, as well as the conclusion that the 1901 Commission's proposal for modification of the southwest border to follow the Utamboni and Mitombe Rivers had been approved in practice by Spain and France.

C. THE PRE-INDEPENDENCE PERIOD AFTER GERMANY RETURNED THE RELEVANT TERRITORY TO FRANCE

5.31 The transfer of territory from France to Germany had no effect on the division of territory set forth by the 1901 Commission in the Utamboni River Area; nor did the French reoccupation of the territory in 1916, or the formal relinquishment by Germany of Neukamerun in 1919. Consistent with the modification of the boundary in the Utamboni River Area, Spain continued to administer the territory north of the Utamboni and Mitombe Rivers. France was fully aware of this Spanish administration and did not object to it. After gaining control once again of its former colonial territory from Germany in 1916, France continued to accept Spain's administration of the territory south of the 1° North parallel, until Gabon's independence in 1960. Gabon, in its Counter-Memorial, provides no evidence of any sovereign acts undertaken by France in the Utamboni River Area during the colonial period, or of any French challenge to Spanish authority in this area.

³³⁵ MEG, Vol. I, para. 3.60; *Decree Signed by the German Empire and the Kingdom of Spain for the Delimitation Between Spanish Guinea and the Protectorate of Cameroon* (18 August 1914). MEG, Vol. V, Annex 115.

5.32 Gabon ignores Spain's numerous unchallenged administrative acts that demonstrate its sovereignty over the territory north of the Utamboni and Mitombe Rivers. These acts, mostly addressed in Equatorial Guinea's Memorial, included:

- by 1907, establishing an outpost and customs post in Asobla that included an infirmary, treasury, postal service, police force and tax collection system, and designating Asobla as the seat of an administrative sub-district of the Elobey district;³³⁶
- by 1916, expanding the infrastructure in Asobla, to include a post commander house, and stationing 40-50 Spanish soldiers in the town;³³⁷
- by 1927, operating a school in Asobla;³³⁸
- in 1932, conducting a census that included the following towns south of 1° North: Akánabúr, Anguma, Asobla, Bo, Edjuba, Elón, Mebonde, Michoba, Ngámbe, Sogocham, Tekg and Tum;³³⁹
- in 1942, conducting a census that included the following towns south of 1° North, as depicted in Figure 3.11 of the Memorial: Akanabor (Abaiñ), Anguma, Asobla, Echuba, Elon (Yesuk), Michobo (Esebus), Ngabe, Nniefala, Sugocham (Esebus), Tek and Tom;³⁴⁰
- in 1950, conducting a census that included the following towns south of 1° North, as depicted in Figure 3.12 of the Memorial: Akanabor (Abé), Angume, Asobla, Bilingual, Boo, Echuba, Elon, Enigabe, Michobo (Esebus), Ngambe, Nniefala, Sugocham, Tek and Tom;³⁴¹

³³⁶ MEG, Vol. I, para. 3.55.

³³⁷ MEG, Vol. I, para. 3.60.

³³⁸ MEG, Vol. I, para. 3.62.

³³⁹ Spanish Territories of the Gulf of Guinea, Statistical Office of the General Government, *Statistical Summaries: Province of Rio Muni 1932 (1932)* (within The Spanish State, Ministry of Labor, Health and Social Security, *Population and Nomenclature of the Spanish Possessions of the Gulf of Guinea (1936)*), pp. 38, 40, 44, 46. REG, Vol. III, Annex 11.

³⁴⁰ MEG, Vol. I, para. 3.63; *ibid.*, Figure 3.11.

³⁴¹ MEG, Vol. I, para. 3.65; *ibid.*, Figure 3.12.

- in 1953, confirming, through adoption of a criminal law, the role of colonial administrators based in Asobla in judicial matters and criminal law enforcement in these areas;³⁴²
- from the 1920s to the 1960s, issuing forestry concessions in these areas, including the “Miang” Concession.³⁴³ This activity necessitated the construction of substantial infrastructure, including a crane at Elon and road infrastructure extending deep into the Miang concession area.

The villages and concessions referred to above are depicted on **Figures R5.5** (1932 census) and **R5.6** (Miang concession area). Subsequent concession activity in this area, discussed in further detail below in Section D.1.(b), is depicted on **Figures R5.7** (Miang and neighboring concession areas), and **R5.8** (concession-related infrastructure).

5.33 Gabon does not contest *any* of these *infra legem effectivités* in the Utamboni River Area. Instead, it refers to a handful of border incidents along the southern border outside the Utamboni River Area discussed in letters exchanged between France and Spain and referenced in internal Spanish and French communications between 1917 and 1928.³⁴⁴ Gabon refers to these incidents only in generally terms, because their specifics make clear that they are unrelated to the acceptance by Spain and France of the modified boundary in the Utamboni River Area.

5.34 All of the villages at issue in those letters are located far to the east of the Utamboni River Area. Correspondence cited by Gabon refers to: (i) N’vanaya (1917);³⁴⁵

³⁴² MEG, Vol. I, para. 3.62.

³⁴³ MEG, Vol. I, paras. 3.64-3.65; Spanish Equatorial Provinces of Fernando Póo and Rio Muni, Forestry Section, *Forestry Concession of Miang River (District of Kogo)* (28 January 1961), pp. 5, 22 (awarded to Sbarbi Martin in 1929 for a period of 20 years; extended multiple times; last extension granted to Vasco Africana in 1961 for a period of 5 years). REG, Vol. III, Annex 19.

³⁴⁴ CMG, Vol. I, para. 2.12.

³⁴⁵ MEG, Vol. IV, Annex 65.

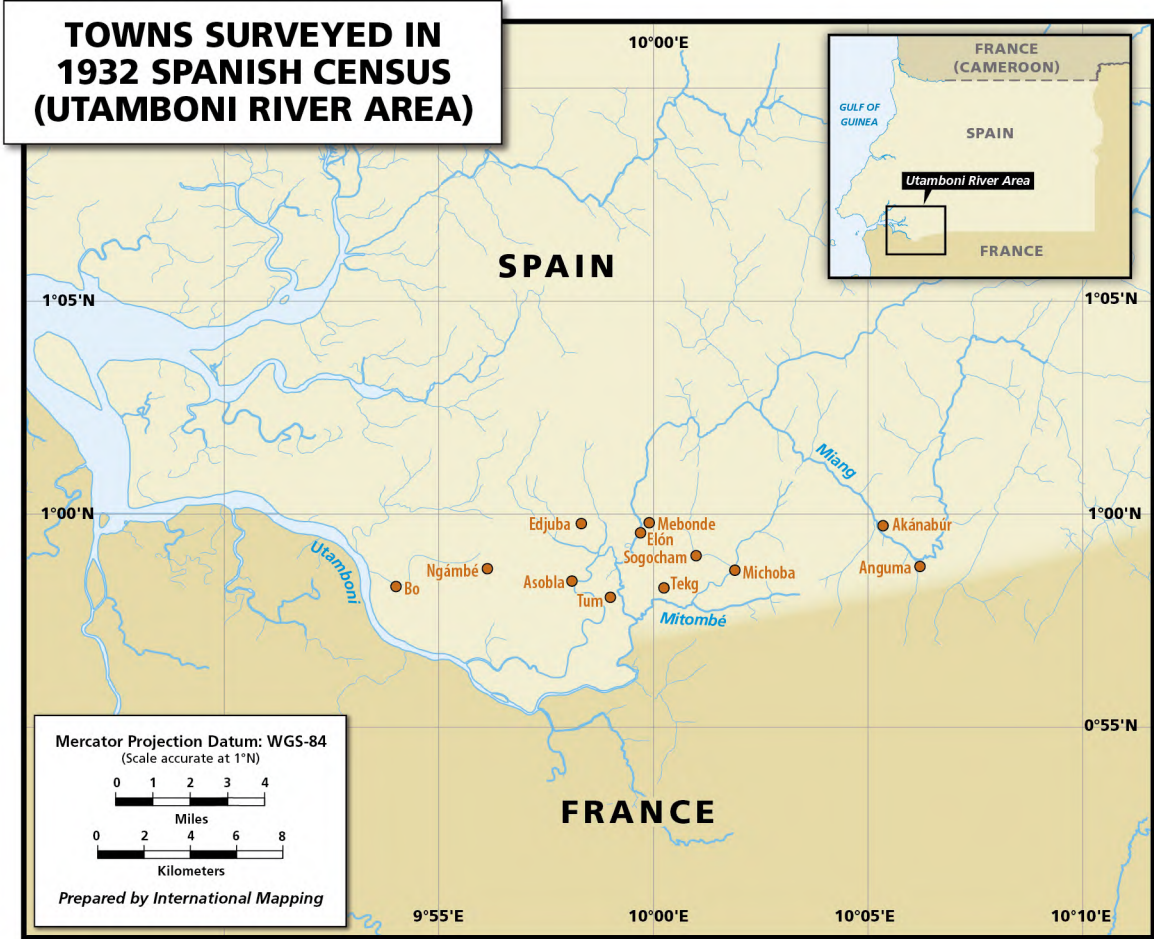


Figure R5.5

VASCO AFRICANA'S MIANG CONCESSION, 1944-1966

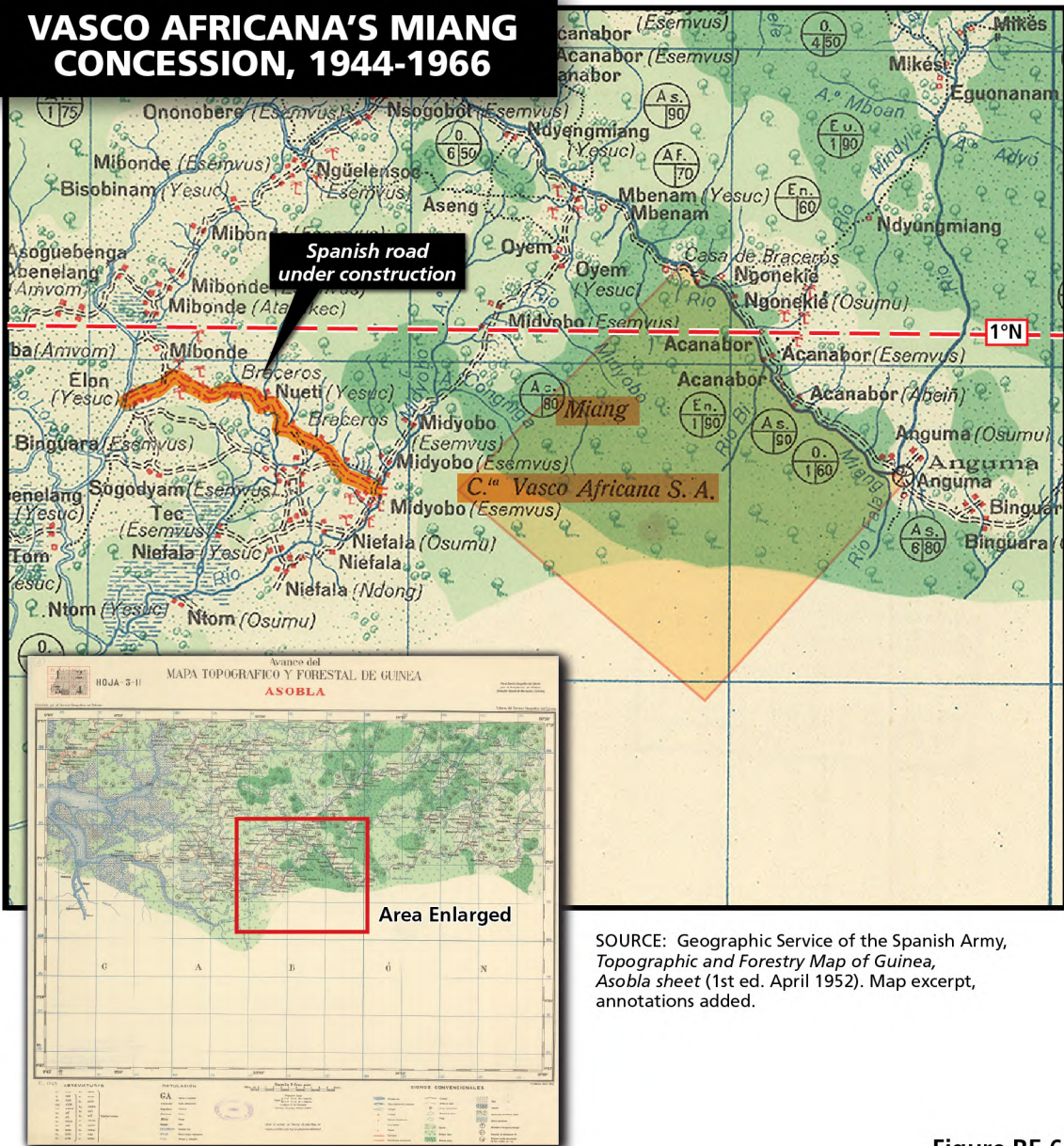


Figure R5.6

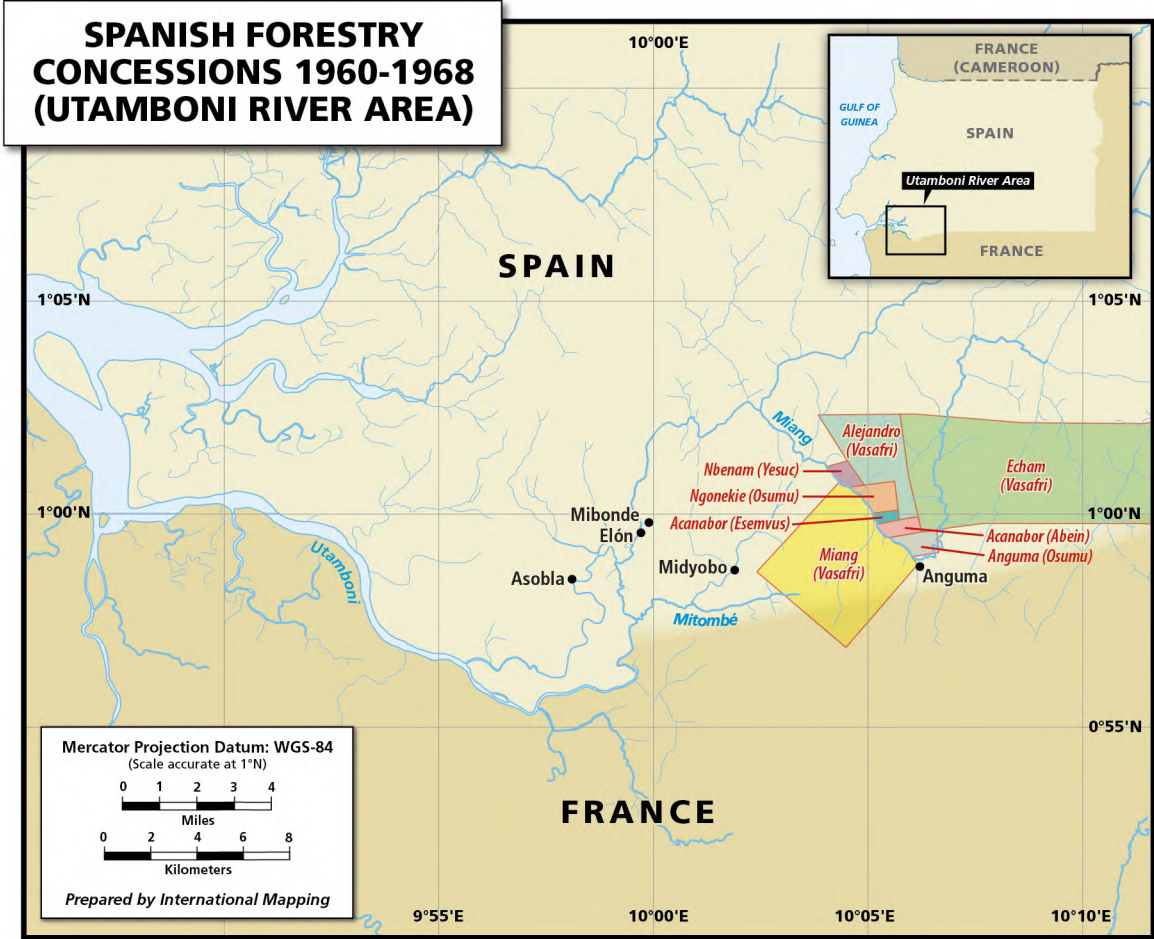
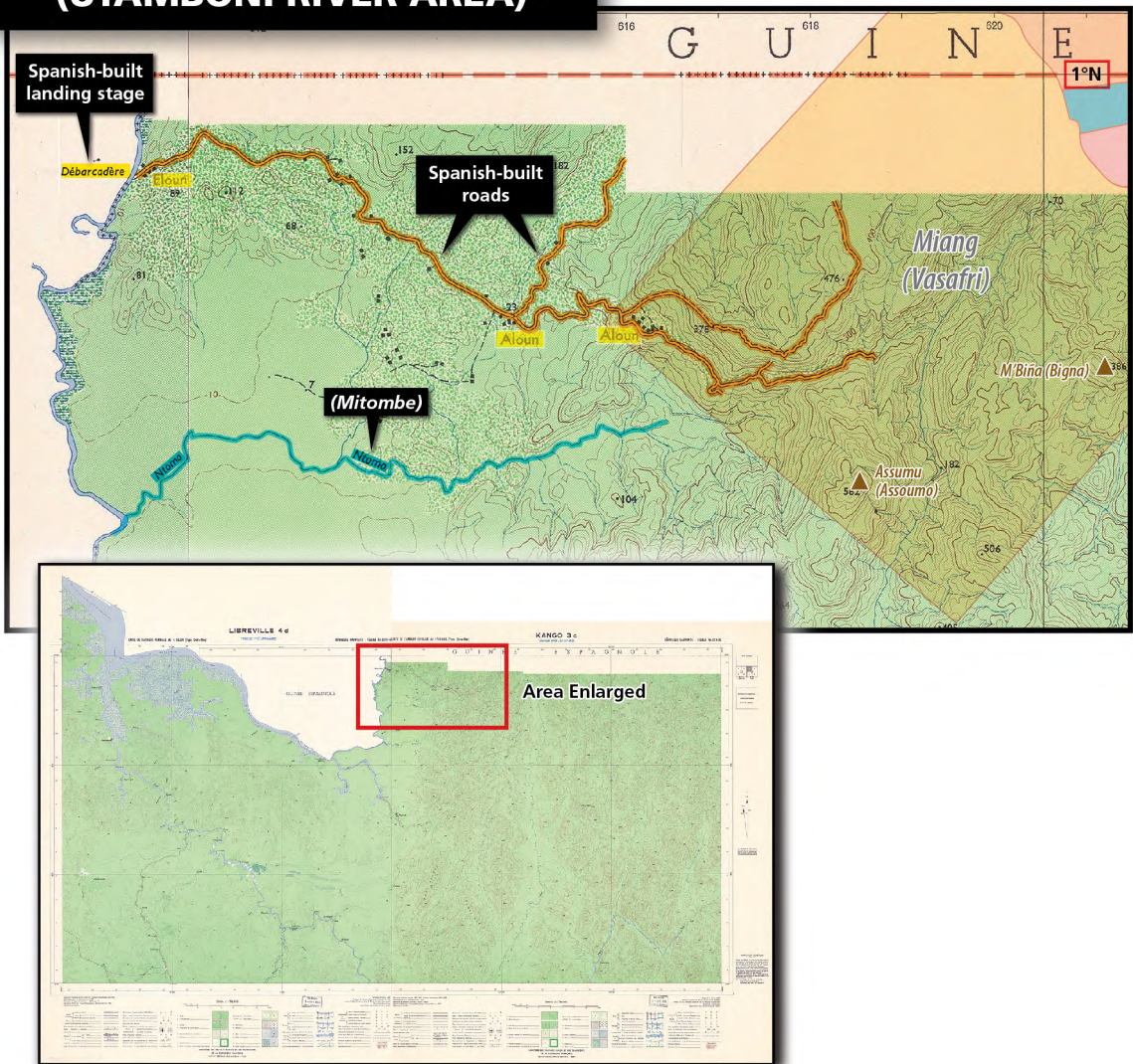


Figure R5.7

SPANISH FORESTRY INFRASTRUCTURE 1960-1968 (UTAMBONI RIVER AREA)



SOURCE: France, National Geographic Institute – Paris, *Carte de L'Afrique Centrale, Kango 3c and Libreville 4d* (1961). Map excerpt, annotations added.

Figure R5.8

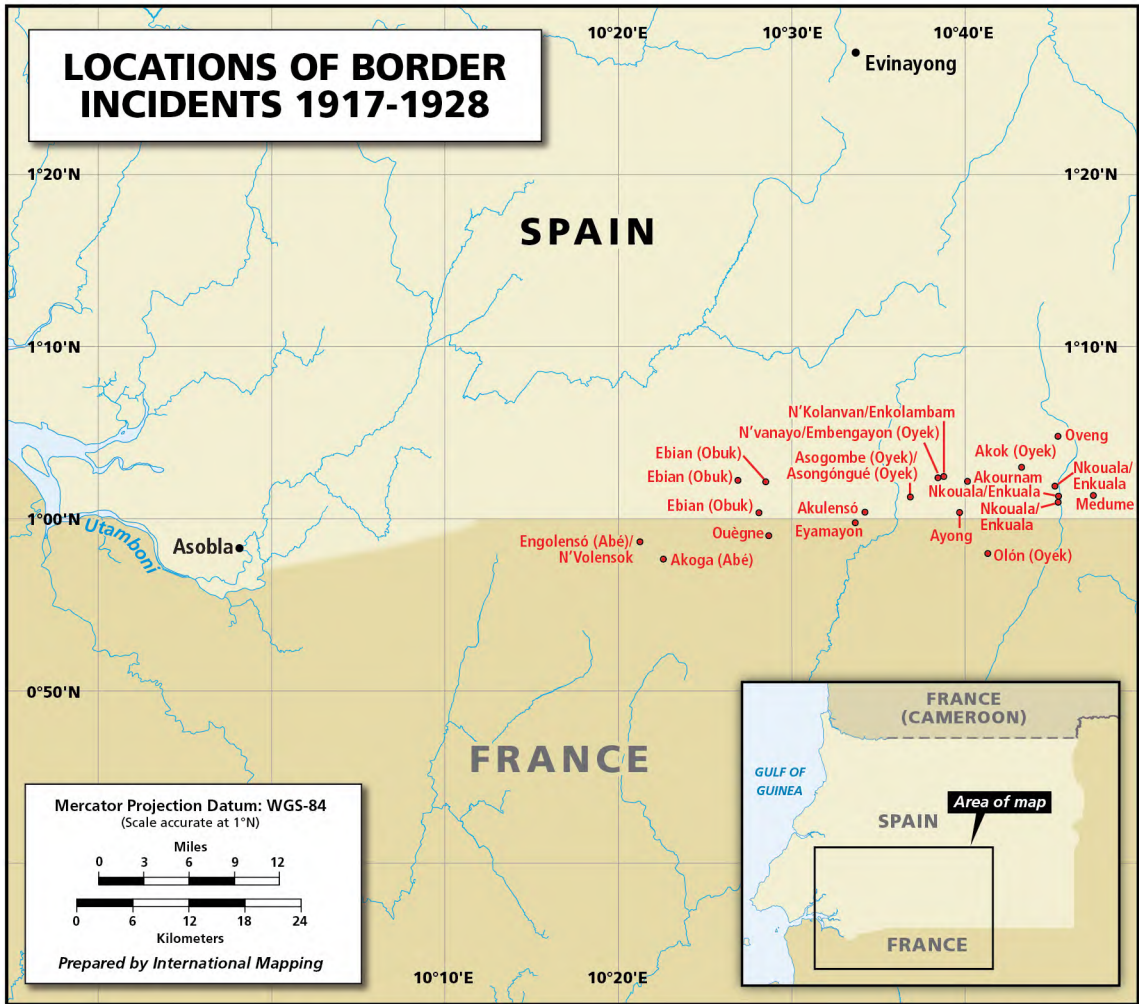


Figure R5.9

(ii) “N’Kolanvan and N’Volensok” (1919);³⁴⁶ (iii) “multiple incidents” (1920 and 1927);³⁴⁷ (iv) Nkouala, Akournam (in which the Spanish had built a military post), Oveng, Ayong, Adjafane and Ouegne (1927);³⁴⁸ and (v) “disputed villages” generally (1928).³⁴⁹ Internal Spanish correspondence from 1928 refers to incidents in the villages of Enkuala, Ayafen (Efak), Medume, Enkolambam, Akok (Oyek), Embengayon (Oyek), Asogombe (Oyek), Olón (Oyek), Akulensó, Eyamayon, Asongóngué (Oyek), Ebian (Obuk), Akoga (Abé) and Engolensó (Abé).³⁵⁰ These villages are *not* in the Utamboni River Area; rather, they are further east, as shown in **Figure R5.9**, which depicts the locations of these contested villages.³⁵¹ There is good reason for this consistent pattern: unlike the Utamboni River Area, the eastern part of the southern boundary had not been modified by the Commissions or the subsequent conduct of the colonial powers.

5.35 There is no merit to Gabon’s argument that in 1937 France “vigorously rejected” the modification of the Southwest boundary.³⁵² The source Gabon cites is a letter from the Minister of the French Colonies to the Governor-General of French Equatorial Africa: it describes the text of the 1900 Convention, as modified by the 1901 Commission’s

³⁴⁶ *Letter from Spanish Governor General of Spanish Guinea to His Excellency the French Governor General of French Equatorial Africa* (1 May 1919), p. 2. MEG, Vol. IV, Annex 67. The 1914 Commission said of N’Kolanvan: “With regard to the village of N’Kolamban, it is so close to the 1° parallel that chronometers must be verified before specifying the status”. *Decree Signed by the German Empire and the Kingdom of Spain for the Delimitation Between Spanish Guinea and the Protectorate of Cameroon* (18 August 1914). MEG, Vol. V, Annex 115.

³⁴⁷ CMG, Vol. I, para. 2.13 (“multiple incidents”).

³⁴⁸ CMG, Vol. I, para. 2.12; *Letter No. 212 from the French Lieutenant Governor of Gabon to the Governor-General of Spanish Territories in the Gulf of Guinea* (16 August 1927), p. 2. MEG, Vol. IV, Annex 76.

³⁴⁹ CMG, Vol. I, para. 2.14 (“villages contestés”).

³⁵⁰ MEG, Vol. IV, Annex 76.

³⁵¹ The other incidents alleged by Gabon cannot be depicted on a map, because their locations are unknown.

³⁵² CMG, Vol. I, para. 2.16 (“vigoureusement rejetée”).

proposal.³⁵³ This internal French communication was not a protest of Spain's administration of the Utamboni River Area, nor did it contradict France's approval and acceptance of Spain's administration of this area, consistent with the 1901 Commission's proposal, as discussed above.³⁵⁴

5.36 In sum, Gabon has not provided any evidence that France ever contested Spain's title to the Utamboni River Area, which was derived from the colonial powers' acceptance of the boundary modifications in that area proposed by the 1901 Commission.

D. THE POST-INDEPENDENCE PERIOD

5.37 After Gabon's independence from France in 1960, Spain and later Equatorial Guinea continued to administer the territories in the Utamboni River Area, south of the 1° North parallel, without protest from Gabon. Like France before it, Gabon undertook no sovereign acts in this area. On the contrary, and as discussed below, Gabon affirmatively recognized Spain's title to the area (1) through a 1966 Agreement and (2) by accepting *infra legem effectivités* by Spain and then Equatorial Guinea.

1. The Period from Gabon's Independence in 1960 to Equatorial Guinea's Independence in 1968

(a) The 1966 Agreement between Spain and Gabon

5.38 On 11 June 1966, Gabon and Spain signed the Agreement Between the Spanish State and The Gabonese Republic Concerning Circulation and Border Exchange Between Rio Muni and Gabon ("the 1966 Agreement"). As regards the territory of the two States, this was understood to constitute "an accurate expression of the understanding of

³⁵³ CMG, Vol. I, paras. 2.16, 7.33.

³⁵⁴ Gabon notes that Equatorial Guinea's sketch of the 1901 Commission's proposal in the Southwest differs from its map of the Parties' modifications in the Southwest. CMG, Vol. I, para. 7.35. As discussed in Section II.A., that is due to further uncontested administrative actions and agreements during and after the colonial period, which gave rise to additional adjustments to the Southwest boundary.

the parties at the time of signature”.³⁵⁵ Gabon asserts that the negotiation of that Agreement was “in no way intended or designed to define or clarify the course of the land boundary”.³⁵⁶ This is correct, but the 1966 Agreement did not “define or specify” the course of the boundary in the Utamboni River Area because there was no need to do so. France and Spain had already defined the boundary in that area prior to Gabon’s independence. In the 1966 Agreement, Spain and Gabon simply recognized the existing boundary. The Agreement is thus evidence that the course of the boundary in the southwest, and Spain’s legal title to territory on its side of that boundary, was not in dispute at the time of Gabon’s independence.

5.39 Gabon initiated negotiation of the 1966 Agreement “to define border relations between the two countries”, “[t]o establish a list of villages on both sides of the border that would be included in the said border zone” and “[t]o identify authorized crossing points” along the border.³⁵⁷ The 1966 Agreement “represents a recognition of boundaries” delimited by Spain and France,³⁵⁸ as it defines a 10 km-wide “border zone” on either side of the land boundary for which each party provided a list of villages on its side of the boundary.³⁵⁹

³⁵⁵ *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)*, Judgment, I.C.J. Reports 2001, p. 40, para. 89.

³⁵⁶ CMG, Vol. I, para. 2.56 (“n’avaient aucunement pour but et objet de définir ou de préciser le cours de la frontière terrestre”).

³⁵⁷ *Note Verbale from Embassy of Gabon in Spain to Ministry of Foreign Affairs of Spain* (10 December 1963) (“tendant à définir les relations frontalières entre les deux pays”; “d’arrêter la liste des villages qui, de part et d’autre de la frontière seraient à inclure dans la zone dite frontalière”; “de déterminer les points de passages autorisés”). MEG, Vol. IV, Annex 97.

³⁵⁸ MEG, Vol. I, para. 3.103; The Spanish State, *Letter No. 109 from the Embassy of the Kingdom of Spain to the Republic of Gabon to the Spanish Ministry of Foreign Affairs* (30 May 1964), p. 1. MEG, Vol. IV, Annex 98.

³⁵⁹ MEG, Vol. I, para. 3.104.

5.40 The village lists exchanged by Gabon and Spain pursuant to the Agreement³⁶⁰ confirm that Gabon recognized Spain's sovereignty in the Utamboni River Area, south of the 1° North parallel, consistent with the 1901 Commission's proposal, its acceptance by the two colonial powers, and the findings of 1914 Commission.

5.41 As depicted in Figure 3.26 of the Memorial, Spain presented Gabon with a list of 20 villages south of the 1° North parallel that were under its administration in the Utamboni River Area and adjacent areas.³⁶¹ Gabon did not object to Spain's inclusion of any of these villages in its list, or protest Spain's long-standing and notorious administration of them.

5.42 Gabon's list consisted of 22 villages claimed to be under its administration near the southwest boundary. Twenty of these villages were located outside the Utamboni River Area. Only two were within it, and Equatorial Guinea has been unable to find any evidence that Gabon, or France, ever carried out any acts of occupation or administration at either place.³⁶² To the contrary, these two villages—Eloun and Aloun—had been under Spanish administration and control continuously from 1901.³⁶³

5.43 The evidence is thus clear: Gabon recognized Spain's legal title to the Utamboni River Area, specifically to the territory between the River and the 1° North parallel, consistent with the boundary proposed by the 1901 Commission, accepted by

³⁶⁰ These lists were not “sont que des propositions unilatérales”, as asserted by Gabon. CMG para. 2.56 (“merely unilateral proposals”). These submissions were required by the terms of the 1966 Agreement, and each party accepted the other's submissions, as well as the list of crossings which was jointly negotiated.

³⁶¹ MEG, Vol. I, para. 3.104; *ibid.*, Figure 3.26.

³⁶² MEG, Vol. I, para. 3.104.

³⁶³ These two villages are better known as Elon and Midyobo (Esemvus), both of which were closely associated with the Spain-authorized Vasco Africana Miang forestry concession, which was still a working Spanish concession at the time Gabon mistakenly included those towns in its list. *See* Figure R5.6.

Spain and France, and recognized in their continuous practice through the independence of Gabon in 1960.

(b) Continuous and Unchallenged *Infra Legem Effectivités*

5.44 After Gabon's independence, Spain continued openly, and without objection, to administer the territories in the Utamboni River Area. These continued and unchallenged acts of administration confirm the legal title derived from the 1900 Convention, as modified by Spain and France in conformity with the work of the 1901 Commission, and also constitute a separate and independent source of legal title to this area for Equatorial Guinea.

5.45 Forestry concessions granted by Spain in the first half of the 20th century continued after Gabon's independence, showing consistent Spanish administration of the area. The "Miang" Concession held by Vasco Africana was extended in 1961 for a period of five years, through 1966.³⁶⁴ Vasco Africa was also awarded the "Echam" Concession in 1961 for a period of twenty years, lasting until 1981.³⁶⁵ The "Alejandro" Concession was issued to Vasco Africana in 1965,³⁶⁶ for a one-year period. As part of the issuance of this concession, parcels of land were reserved for local villages, in proportion to their population as reflected in a special census conducted for that purpose in 1964, in order to

³⁶⁴ Spanish Equatorial Provinces of Fernando Póo and Rio Muni, Forestry Section, *Forestry Concession of Miang River (District of Kogo)* (28 January 1961), pp. 5, 22 (awarded to Sbarbi Martin in 1929 for a period of 20 years; extended multiple times; last extension granted to Vasco Africana in 1961 for a period of 5 years). REG, Vol. III, Annex 19.

³⁶⁵ The Spanish State, *Decree 1,505/1961* (20 July 1961), p. 9 (1961 Decree awarding Echam concession to Vasco Africana for 20 years). REG, Vol. IV, Annex 24.

³⁶⁶ Equatorial Guinea, Forestry Service, *Entry Register No. 4040* (16 September 1965), p. 21 (1965 decision to award a 1,000 hectare concession near Anguma and Echam concession to Vasco Africana for a maximum period of 1 year). REG, Vol. III, Annex 22; *Letter from Antonio Zamora Ariemendi of Vasco Africana to the Forestry Service* (4 August 1965). REG, Vol. IV, Annex 27.

allow them to continue to farm those areas.³⁶⁷ Five villages were included in that special 1964 census, and, as a result, five farming reserves were created alongside the “Alejandro” concession: Mbenam (Yesuc), Ngonekie (Osumu), Acanabor (Esemvus), Acanabor (Abein), and Anguma (Osumu). These concession areas and the reserved farming land are depicted above in **Figure R5.7**. The continued building of concession-related infrastructure, including roads and a landing stage, is depicted above in **Figure R5.8**.

5.46 In 1964, Spain established a reserve of land for bitumen extraction covering areas south of 1° North in the Utamboni River Area, including the village of Anguma.³⁶⁸ And in 1965, Spain conducted a census which included the following towns south of 1° North, as depicted in **Figure R5.10**: Michobo-Esemvus, Michobo-Ndong, Michobo-Osumu, Mebonde I, Elón, and Anguma.³⁶⁹

5.47 There is no evidence that Gabon ever protested any of these Spanish concessions or Spain’s census activities in these parts of the Utamboni River Area. .

2. The Period after Equatorial Guinea’s Independence in 1968

5.48 After its independence in 1968, Equatorial Guinea continued to administer the Utamboni River Area consistent with the legal title it inherited from Spain. The following villages, shown in **Figure R5.11**, are actively administered and controlled by Equatorial Guinea, as they have been since the early 1900s by Spain before it.

- The town of Asobla, as seen in **Figure R5.12**, remains an active Equatoguinean town with various government administered services. Today, Asobla continues

³⁶⁷ Equatorial Guinea, Forestry Service, *Entry Register No. 4040* (16 September 1965), pp. 13-15, 18-19, 23. REG, Vol. III, Annex 22; *Letter from Antonio Zamora Ariemendi of Vasco Africana to the Forestry Service* (4 August 1965). REG, Vol. IV, Annex 27.

³⁶⁸ MEG Vol. I, para. 3.105 and Figure 3.27.

³⁶⁹ Government of Equatorial Guinea, Regional Statistics Department, *SUMMARY DEMOGRAPHIC OF THE DEMARCATION (YEARS 1932 TO 1965) AND CATALOGUE OF UNITS AND SETTLEMENTS FOR 1965* (1965), pp. 37, 55, 69, 71. REG, Vol. IV, Annex 28.

**TOWNS SURVEYED IN
1965 SPANISH CENSUS
(UTAMBONI RIVER AREA)**



Figure R5.10

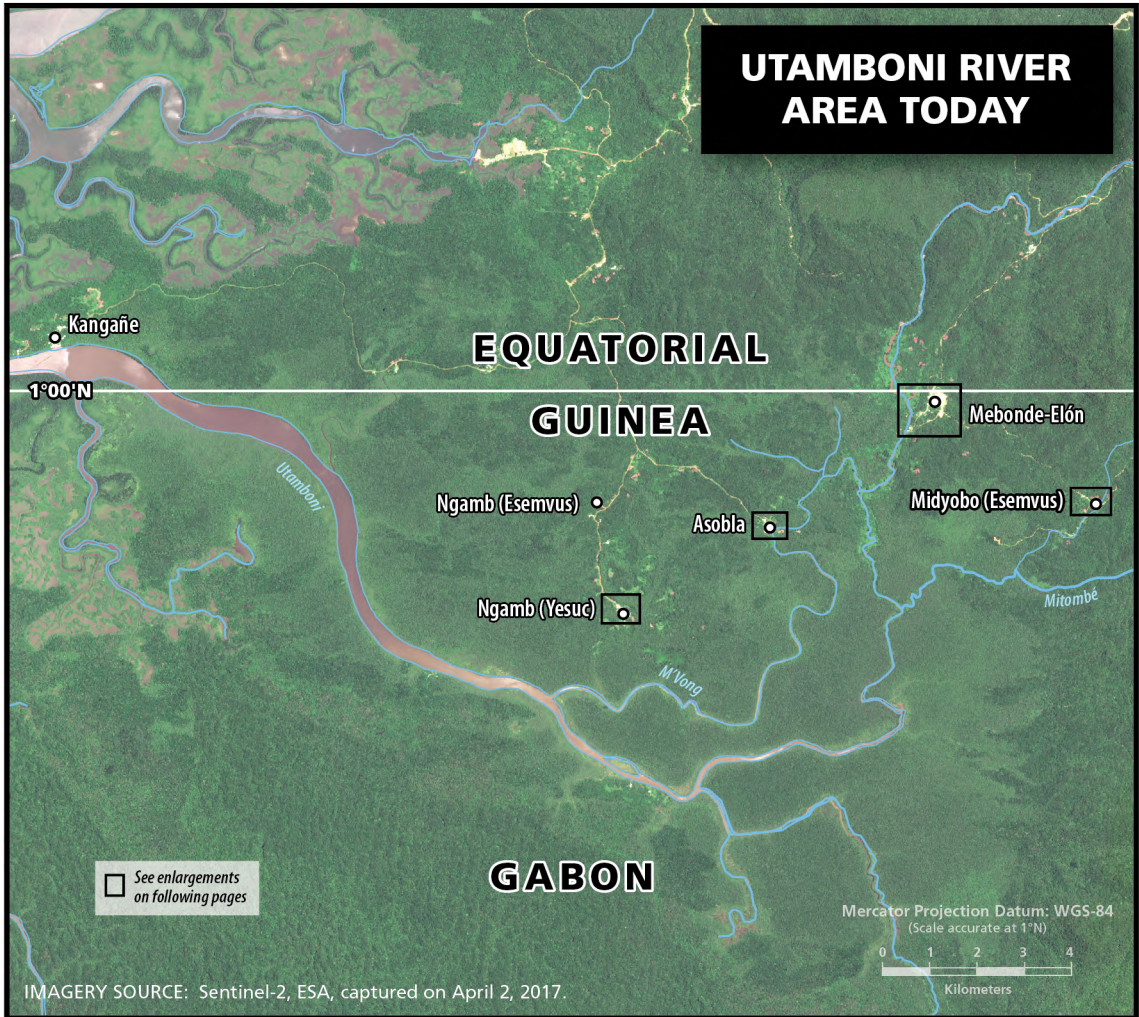


Figure R5.11



Figure R5.12



Figure R5.13

to host the government school opened in the 1920s, the continuing operation of which is cited throughout the record.³⁷⁰

- The riverside village of Elon, now part of the Mibonde-Elon conglomeration, still hosts the Vasco Africana landing and crane used to move timber that had arrived overland from the Miang forestry concession from the shore on to barges to be floated to Cogo, as seen in **Figure R5.13**. A small group of homes sits near the crane and landing.³⁷¹
- Mebonde, the larger of the two settlements, was the home of the Vasco Africana employees. Evidence of their presence include an old school house, several colonial era residences and a water pump.³⁷² Despite the departure of Vasco Africana, Mebonde remains a substantial village with water infrastructure, a large new school building, and a community of new homes under construction.³⁷³
- Midyobo Esemvus, shown in **Figure R5.13**, is connected to Mibonde and Elon via the old Vasco Africana road which crosses several small bridges and, today, provides a footpath between the two villages. Midyobo Esemvus has a school, health clinic, military post, church and cemetery in additions to homes for the

³⁷⁰ Republic of Equatorial Guinea, *Declaration of H.E. Domingo Mba Esono, Vice-President of Commerce and Promotion of Small and Middle Sized Enterprises, and President of the Sub-technical Division of the Special Borders Commission* (25 September 2022), para. 8 and Annex P.U26. REG, Vol. III, Annex 5; Office of the President of the Government, Commissariat of the Economic Development Plan, *Economic Development Plan for Equatorial Guinea, Years 1964 to 1967* (October 1963), p. 185. REG, Vol. IV, Annex 25. See also Republic of Equatorial Guinea, *Minutes of Village Council Elections in the District of Kogo, Village Council of Midjobo Esemvus, Ngonekieñ, Mebonde-Elón Ngambe and Asobla* (Years 1996, 1997 and 1998). REG, Vol. V, Annex 55.

³⁷¹ Republic of Equatorial Guinea, Declaration of H.E. Domingo Mba Esono, Vice-President of Commerce and Promotion of Small and Middle Sized Enterprises, and President of the Sub-technical Division of the Special Borders Commission (25 September 2022), para. 8 and Annexes P.U10 (military post), P.U11 (crane), P.U12 (landing), and P.U13 (house). REG, Vol. III, Annex 5. See also Republic of Equatorial Guinea, *Minutes of Village Council Elections in the District of Kogo, Village Council of Midjobo Esemvus, Ngonekieñ, Mebonde-Elón Ngambe and Asobla* (Years 1996, 1997 and 1998). REG, Vol. V, Annex 55.

³⁷² Republic of Equatorial Guinea, Declaration of H.E. Domingo Mba Esono, Vice-President of Commerce and Promotion of Small and Middle Sized Enterprises, and President of the Sub-technical Division of the Special Borders Commission (25 September 2022), para. 8 and Annexes P.U2 & P.U3 (colonial-era school), P.U4 (colonial-era house), and P.U8 & P.U9 (colonial-era water pump). REG, Vol. III, Annex 5.

³⁷³ *Ibid.* at para. 8 and Annexes P.U1 (new school), P.U5 (new houses), and P.U6 & P.U7 (new water system). See also Republic of Equatorial Guinea, *Minutes of Village Council Elections in the District of Kogo, Village Council of Midjobo Esemvus, Ngonekieñ, Mebonde-Elón Ngambe and Asobla* (Years 1996, 1997 and 1998). REG, Vol. V, Annex 55.

approximately 200 inhabitants.³⁷⁴ Like most villages in the Utamboni River Area, Midyobo Esemvus was the subject of past household censuses as evidenced by stickers on the doors of homes.³⁷⁵

5.49 Gabon argues that the document it presented in 2003 re-established the 1° North parallel, as set out in Article 4 of the 1900 Convention, as the boundary between the Parties in the southwest. Equatorial Guinea has already explained in Chapter 3 of this Reply and Chapter 7 of its Memorial why this document has no force of law between the Parties. There has been no attempt to implement it on the ground. Equatorial Guinea's administration of the Utamboni River Area has continued without interruption since independence in 1968, exactly as if—as Equatorial Guinea contends—no final or binding agreement to the contrary was reached at Bata in 1974.³⁷⁶ There has thus been more than a century of consistent Spanish and Equatoguinean administration in this area under the legal title of the 1900 Convention, as modified by Spain and France pursuant to the proposal of the 1901 Commission. This is also reflected in their consistent practice, and subsequently by the consistent practice of Equatorial Guinea and Gabon.

5.50 In summary, the boundary as modified by the 1901 Commission in the Utamboni River Area was approved by the continuous practice of Spain, France, Germany, and Gabon. Equatorial Guinea succeeded to this territory and has continued to administer and control the area north of the 1901 Commission's proposed line without protest from

³⁷⁴ Republic of Equatorial Guinea, Declaration of H.E. Domingo Mba Esono, Vice-President of Commerce and Promotion of Small and Middle Sized Enterprises, and President of the Sub-technical Division of the Special Borders Commission (25 September 2022), para. 8 and Annexes P.U14 & P.U15 (school), P.U16 (health clinic), P.U17 (church), P.U18 & P.U19 (military post), P.U20 (cemetery), and P.U25 (military barracks). REG, Vol. III, Annex 5.

³⁷⁵ *Ibid.* at para. 8 and Annexes P.U21 & P.U22 (evidence of census) and P.U24 & P.U25 (evidence of election campaign). REG, Vol. III, Annex 5. Equatorial Guinea has continued to conduct regular census activity in the Utamboni River Area since its independence from Spain. *See also* Republic of Equatorial Guinea, *Minutes of Village Council Elections in the District of Kogo, Village Council of Midjobo Esemvus, Ngonekieñ, Mebonde-Elón Ngambe and Asobla* (Years 1996, 1997 and 1998). REG, Vol. V, Annex 55.

³⁷⁶ *See* Figure R5.11.

Gabon to this day. These facts confirm and form part of Equatorial Guinea's legal title in the Area.

III. THE LAND BOUNDARY IN THE KIE RIVER AREA

5.51 In the Kie River Area,³⁷⁷ Spain and France also agreed to a modification of the boundary set out in Article 4 of the 1900 Convention, pursuant to the procedures of Annex 1. In this area in the northeast of Equatorial Guinea's continental territory, the modification of the original boundary was achieved by the 1919 Governors' Agreement, negotiated and executed by the respective colonial governors. Since 1919, unchallenged administrative actions by Spain and Equatorial Guinea, as its successor, confirm the modification of the land boundary made pursuant to the 1919 Agreement, and constitute a separate source of legal title for Equatorial Guinea. The *infra legem effectivités* of Spain and Equatorial Guinea in the Kie River Area, and the acquiescence of France and Gabon in those activities, are extensive and well-documented. In addition, agreements between Gabon and both Spain and Equatorial Guinea confirm that Gabon has recognized the boundary as adjusted by the 1919 Governors' Agreement as the lawful and permanent boundary in the northeast, confirming Equatorial Guinea's inheritance of Spain's legal title by succession in 1968.

A. 1919 GOVERNORS' AGREEMENT

5.52 The Parties agree that the 1919 Governors' Agreement between Spain and France, concluded by their respective Governors-General, designated the Kie River as the provisional land boundary in the northeast.³⁷⁸ The Parties agree that the 1919 Governors'

³⁷⁷ See MEG, Vol. I, para. 2.15 ("The Kie River Area is centred on the north-flowing Kie River in the north-eastern region of Rio Muni/north-western region of Gabon and is depicted at Figure [R5.1]. The Kie, a tributary of the Ntem or Campo River in Cameroon, rises southeast of the city of Mongomo. The Kie flows north between Equatorial Guinea and Gabon before crossing the undefined boundary between Equatorial Guinea and Cameroon. North of this boundary, the Kie forms the boundary between Cameroon and Gabon pursuant to the 1908 French-German Treaty, which adopted natural features in place of the rectilinear boundaries described in the 1885 French-German Protocol. From its source to the Cameroon boundary, the Kie River crosses the meridian 9 degrees East of Paris at least four times.").

³⁷⁸ MEG, Vol. I, para. 3.69; CMG, Vol. I, para. 2.18-2.19.

Agreement only applied to areas north of the source of the Kie River and did not apply to areas south of its source.³⁷⁹ The Parties also agree, in the sense that Gabon does not dispute, that the 1919 Governors' Agreement has never been terminated.³⁸⁰

5.53 The Spanish and French officials involved in the negotiation of the 1919 Governors' Agreement were, by the authority entrusted to them by their respective governments, "Delegates ... subsequently responsible for delimiting ... some of the boundaries" between the respective States, as set out in Annex 1 of the 1900 Convention. Gabon now argues that the Governors-General were not specially "designated".³⁸¹ However, as noted above, Annex 1 does not require that "Delegates" be specially designated. It requires only that they be "responsible" for delimiting boundaries, which, of course, would depend on the scope of their authority.

5.54 Gabon also argues that the Governors-General did not have "the power to substitute natural lines for the artificial lines established as a boundary".³⁸² Gabon's assertion is without merit. Annex 1 empowers Delegates to "modify said lines of demarcation" and to do so "to rectify the position of ... roads, rivers, cities or villages". In this manner, contrary to Gabon's argument, Annex 1 actually *invites* the Delegates to "substitute natural lines for the artificial lines established as a boundary". Accordingly, in modifying the boundary so that it followed the course of the Kie River, a natural boundary, the Governors-General acted in conformity with Annex 1.

5.55 Gabon's own document—a letter from France's Minister of Colonies to the Minister of Foreign Affairs in November 1919—confirms that the French Government not only made the Governor General "responsible" for delimiting the boundary in the Kie River

³⁷⁹ *Ibid.*

³⁸⁰ MEG, Vol. I, para. 3.84.

³⁸¹ CMG, Vol. I, para. 7.40 ("désignés").

³⁸² CMG, Vol. I, para. 7.41 ("le pouvoir de substituer des lignes naturelles aux lignes artificielles établies comme frontière").

Area, but specifically approved the delimitation in the 1919 Governors' Agreement. The Minister of Colonies:

“... authorized the Governor General of French Equatorial Africa on November 21, 1918, to accept a provisional regulation, proposed by the Iberian authorities, which fixes as the line of demarcation between the two possessions, from 2° 10' 10" north latitude, the course of the Kie River up to its source”.³⁸³

Thus, the Governor General was not only responsible for the delimitation, but the delimitation was approved by the French Government, through the Minister of Colonies, in accordance with Annex 1 of the 1900 Convention.

5.56 Gabon argues “that the French authorities at the time did not have reliable geographic information” regarding the location of the Kie River,³⁸⁴ implying that this uncertainty would preclude their acceptance of the Kie River as the boundary.³⁸⁵ But Gabon fails to mention a subsequent five-week Spanish-French joint expedition along the eastern border of Spanish Guinea, including the Kie River, conducted from late August to early October 1920; this was headed by Spanish Governor-General Barrera and French

³⁸³ CMG, Vol. IV, Annex 72, p. 219 (“... j’ai autorisé le 21 Novembre 1918 le Gouverneur Général de l’Afrique équatoriale française à accepter un règlement provisoire, proposé par les autorités ibériques qui fixe comme ligne de démarcation entre les deux possessions à partir du 2° 10' 10" de latitude nord le cours de la Kié jusqu’à la source de cette rivière”). *See also* The French Republic, Note from the French Equatorial Africa Coordination Section regarding the delimitation of the boundary between Gabon and Spanish Guinea, 15 September 1952, CMG, Vol. IV, Annex 92, p. 2 (“in 1918 the Ministry of Foreign Affairs agreed that the eastern boundary of Spanish Guinea, to the north of the sources of the Woleu, would be temporarily fixed on the Kyé River”).

³⁸⁴ CMG para 2.26 (“que les autorités françaises ne disposaient pas à l’époque d’informations géographiques fiables”).

³⁸⁵ *See* CMG paras. 2.23-2.24.

Captain Raffalli, of the Indigenous Battalion of Gabon and Chief of the Wolleu-N'Tem District.³⁸⁶

5.57 Barrera and Raffalli spent twelve days exploring both banks of the Kie River between Akonandji and Mongomo, and another week thereafter exploring the several possible sources of the Kie River, identifying the source and deciding how best to connect the source to tributaries flowing south to the Benito [Woleu] River. Among other activities, members of the expedition measured the astronomic coordinates of locations along the eastern boundary, reviewed and refined the existing maps of the area by German cartographer Moisel and French Captain Roussel, and identified villages that would fall to one or the other colonial powers on the basis of the proposed segment connecting the source of the north-flowing Kie River to south-flowing tributaries of the Benito. By the end of the expedition, it could not be contended that France lacked reliable geographic information about the location of the Kie River.

5.58 Gabon argues that, even if Spain and France agreed in 1919 that the boundary in the northeast should follow the Kie River, the 1919 Agreement does not provide for the boundary to run from the source of the Kie River, in the south, back to the 9° East of Paris meridian, as depicted in a map in the Memorial.³⁸⁷ However, that depiction of the boundary south of the source of the Kie River is based on subsequent *infra legem effectivités* by Spain and Equatorial Guinea, as well as from the Barrera-Raffalli expedition.³⁸⁸

³⁸⁶ See *Aide-Mémoire from the Spanish Governor-General of Spanish Territories of the Gulf of Guinea concerning the Study of a Natural Border in the East of Spanish Guinea* (7 October 1920). REG, Vol. III, Annex 10. See also CMG, Vol. IV, Annex 92, p. 2.

³⁸⁷ CMG, Vol. I, para. 7.45; MEG, Vol. I, Figures 3.9, 3.14.

³⁸⁸ *Aide-Mémoire from the Spanish Governor-General of Spanish Territories of the Gulf of Guinea concerning the Study of a Natural Border in the East of Spanish Guinea* (7 October 1920). REG, Vol. III, Annex 10.

5.59 Gabon itself provides clear evidence that France understood the 1919 Governors' Agreement to have modified the land boundary in the northeast to follow the Kie River. In a confidential note from France's Inspector General of the Overseas Geographic Services, dated 8 July 1953, the Inspector General stated:

“The Spaniards might point out that, having accepted the KYE as a practical boundary in 1919, we cannot consider their occupation of the territory of the western bank and the construction of a road as an encroachment. This is true, but it does not prevent the area thus acquired by Spain from being taken into account in the final settlement.”³⁸⁹

5.60 What this document tellingly reveals is that, 34 years after the Governors' Agreement, and just seven years prior to Gabon's independence, France's position on the boundary in the Kie River Area was that:

- (i) it had accepted the River as the “practical boundary” in 1919;
- (ii) the territory west of the Kie River that had been assigned to France by Article 4 of the 1900 Convention had been “acquired by Spain” in 1919; and
- (iii) France “cannot consider [Spain's] occupation of the territory of the western bank and the construction of a road as an encroachment”.

5.61 There was never any suggestion that Spain's acquisition of this territory was “provisional”. The only caveat noted by France was that the area acquired by Spain could be “taken into account in the final settlement” of the overall delimitation of the land boundary. But this caveat did not diminish the admission that Spain had come to possess

³⁸⁹ *Note No. 545 from the National Geographic Institute for the Political Affairs Directorate (8 July 1953). CMG, Vol. IV, Annex 98 (“Les Espagnols pourraient faire remarquer qu'ayant accepté en 1919 la KYE comme frontière pratique, nous ne pouvons considérer l'occupation par eux du territoire de la rive Ouest et la construction d'une route, comme un empiètement. C'est exact mais cela n'empêche pas la surface acquise ainsi par l'Espagne d'entrer en ligne de compte dans le règlement définitif”).*

the territory by virtue of the 1919 Governors' Agreement and its subsequent *infra legem* activities west of the river.

B. THE PRE-INDEPENDENCE PERIOD

5.62 Gabon does not contest that under the 1919 Governors' Agreement, Spain engaged in unchallenged administrative acts that demonstrate its title to the territory located west of the Kie River, nor does Gabon provide any evidence that France protested these acts or a single indication of French sovereign activities in this area. As detailed in the Memorial, these acts included:

- In 1922, establishing a military post in Ebebiyin, without French protest (unlike the case with the post in Akonanguï, to which France did object for it being too far north in French Cameroon);³⁹⁰
- from 1925 to 1931, building a road from Ebebiyin to Mongomo along the west bank of the Kie River, and maintaining it thereafter, including with related public works, in order to connect several Spanish-administered villages, as depicted in Figures 3.15 and 3.17 of the Memorial;³⁹¹
- in 1926, establishing new military posts in Alen and Mongomo, as shown in Figure 3.16 of the Memorial;³⁹²
- establishing and administering schools in Alen, Mbiralen and Mibang;³⁹³ (See **Figure R5.14**)
- building a bridge over the Kie River in the vicinity of Ebebiyin, as shown in **Figure R5.15**;³⁹⁴

³⁹⁰ MEG, Vol. I, para. 3.73.

³⁹¹ MEG, Vol. I, paras. 3.74, 3.76; *ibid.*, Figures 3.15, 3.17.

³⁹² MEG, Vol. I, para. 3.75; *ibid.*, Figure 3.16.

³⁹³ Office of the President of the Government, Commissariat of the Economic Development Plan, *Economic Development Plan for Equatorial Guinea, Years 1964 to 1967* (October 1963), p. 155. REG, Vol. IV, Annex 25.

³⁹⁴ MEG, Vol. I, paras. 3.74, 3.76; *ibid.*, Figures 3.15, 3.17. The Spanish State, Territories of the Gulf of Guinea, Ebebiyin Land Administration, *Ebebiyin Land Demarcation* (27 November 19[3]8) (noting the building of a floating bridge over the River Kie on the road to French Gabon). REG, Vol. III, Annex 13; The

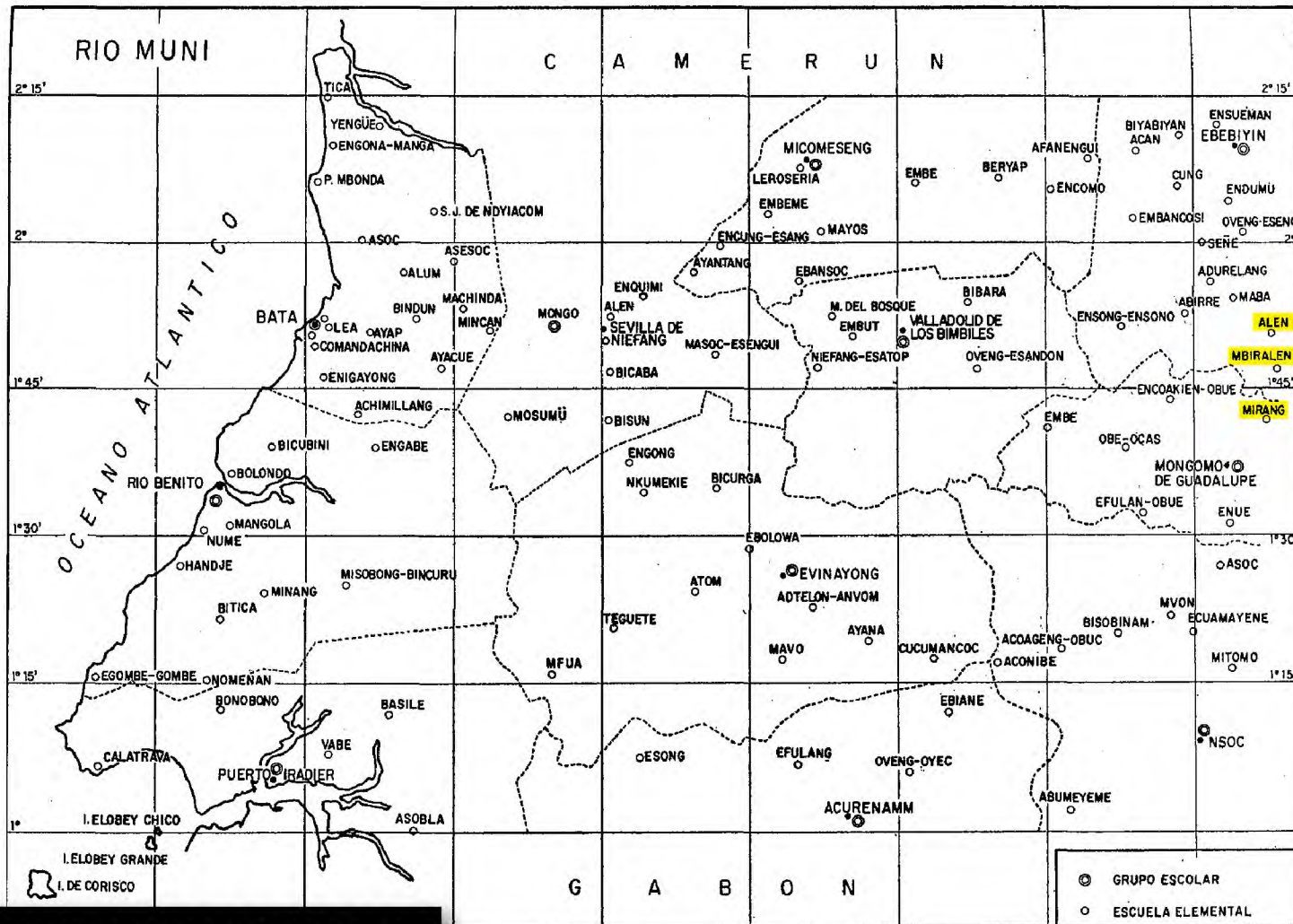


Figure R5.14

SOURCE: The Spanish State, Office of the President, Commissariat of the Economic Development Plan, *Economic Development Plan for Equatorial Guinea, Years 1964 to 1967* (October 1963), p. 155. Annotations added.



SOURCE: Geographic Service of the Spanish Army, Topographic and Forestry Map of Guinea, *Ebebiyin* sheet (1st ed. June 1949). Map excerpt, annotations added.

Figure R5.15



Figure R5.16

- constructing, maintaining and administering facilities and institutions in Ebebiyin, including schools, a colonial guard encampment, a hospital, a post office, a radio-telegraph station, indigenous markets and a leprosy treatment centre, which is visible on **Figure 5.15**;³⁹⁵
- conducting a census in 1932, which included the Ebebiyin district and the following towns east of the 9° East of Paris meridian: Achajo, Alen, Anongon, Biben, Edun, Ekok, Etete, Malen, Masama, Mban, Mbelalen, Mboma, Mebang, Ngomite, Ekoembe, Ntuk, Oveng and San Carlos, as shown in **Figure R5.16**;³⁹⁶
- conducting a census in 1942, which included the Ebebiyin District of Rio Muni and several towns east of the meridian 9° East of Paris, including: Achap (Angok), Alen (Angok), Anongono, Ayabilon, Bibe, Edum, Ekok, Ete-Ete, Malen (Nkoye), Masama (Esaben), Mban, Mbang (Onvang), Mbayop (Esatuk), Mbiralem, Mboman, Mibang, Molo, Nfula, Ngomete, Nkoete, Nkombe, Ntu, Oveng (Esaben) and San Carlos, as depicted in Figure 3.18 of the Memorial;³⁹⁷
- conducting a census in 1950, which included the Ebebiyin and Mongomo Districts and the following towns east of the meridian 9° East of Paris: Adyap (Angok), Alen (Angok), Anungon, Ayabilon, Bibeñ, Etete, Masama (Esabaiñ), Mbiralem, Mbomang, Melo, Nfua, Ngomete, Nkoekie, Ntu, Edum, Ekok, Mokom, Malen, Mbam, Mbayop, Mibang (Esaguong), Nvan (Omvang), Oveng and San Carlos, as shown in Figure 3.19 of the Memorial;³⁹⁸ and

Spanish State, Territories of the Gulf of Guinea, N'sork Land Administration, *Letter from Military Administrator* (18 November 1938) (describing maintenance and construction along the N'sork-Asok-Mongomo road). REG, Vol. III, Annex 12.

³⁹⁵ MEG, Vol. I, paras. 3.77-3.78.

³⁹⁶ Spanish Territories of the Gulf of Guinea, Statistical Office of the General Government, *Statistical Summaries: Province of Rio Muni 1932* (1932) (within *The Spanish State, Ministry of Labor, Health and Social Security, Population and Nomenclature of the Spanish Possessions of the Gulf of Guinea* (1936)), pp. 24, 26, 28, 30, 32. REG, Vol. III, Annex 11.

³⁹⁷ MEG, Vol. I, para. 3.79; *ibid.* Figure 3.18.

³⁹⁸ MEG, Vol. I, para. 3.80; *ibid.* Figure 3.19.

- granting land concessions in or near Ebebiyin, promoting settlements along the Kie River road and undertaking infrastructure projects in these areas.³⁹⁹

5.63 Equatorial Guinea provided evidence in its Memorial that France was aware of these *infra legem effectivités*, and the fact that it never protested or objected to them.⁴⁰⁰ Gabon added to this evidence by annexing to its Counter-Memorial French documents from 1953-1954 which confirm that France was aware of and did not oppose Spain's open and ongoing administration of these areas.⁴⁰¹ Gabon characterizes these documents as indicating that "French diplomatic authorities were therefore well aware that these differences could only be resolved through negotiations with Spain".⁴⁰² In fact, the documents do not reflect any "differences" between France and Spain; they show, instead, that France viewed Spain's conduct in these areas as legitimate acts of sovereign administration under the modification to the 1900 Convention boundary line effected by the 1919 Governors' Agreement.⁴⁰³ Gabon's inability to produce any evidence of sovereign acts by France in the territories west of the Kie River confirms this reality.⁴⁰⁴

³⁹⁹ MEG, Vol. I, para. 3.82.

⁴⁰⁰ MEG, Vol. I, para. 3.81.

⁴⁰¹ See CMG, Vol. I, paras. 2.28-2.30.

⁴⁰² CMG, Vol. I, para. 2.30 ("autorités diplomatiques françaises avaient donc bien conscience que ces divergences ne pourraient être réglées que par des négociations avec l'Espagne").

⁴⁰³ CMG, Vol. IV, Annex 94 ("The borderers tacitly adopted a modus vivendi based on the habits adopted by the Spaniards and broadly in keeping with the Convention of June 27, 1900, interpreted by the Moisel map. ... One must recognize that the Spanish were frank; they did not publicize their maps, but they did not fudge their drafting. In short, the delimitation map that we have been waiting for 50 years, is here, more or less.") ("Les frontaliers ont adopté tacitement un modus vivendi fondé sur les habitudes prises par les Espagnols et en gros conformes à la convention du 27 juin 1900 interprétée par la carte Moisel.... Il faut reconnaître que les Espagnols ont été francs ; ils n'ont pas fait de publicité à leurs cartes, mais ils n'en ont pas truqué la rédaction. En somme, la carte de délimitation qu'on attend depuis plus de 50 ans, la voici à peu de choses près.").

⁴⁰⁴ Gabon suggests that France never changed its position on the delimitation of this boundary. CMG, Vol. I, para. 2.25. But after the 1919 Governors' Agreement, and as clearly shown in the confidential note dated 8 July 1953 from France's Inspector General of the Overseas Geographic Services, France viewed Spain as in rightful sovereign possession of the territories west of the Kie River in the Northeast. Note No. 545 from

5.64 Gabon argues that Spain’s legislative texts cite a “straight line” for the eastern border, not the Kie River.⁴⁰⁵ But the 1935 Spanish decree cited by Gabon does not refer to a “straight line” along the 9° East of Paris meridian; instead, the border in the east is taken from the intersection of the Kie River (“el Quie”) with the border with Cameroon, and from there a “straight line” is taken down to where that line crosses the Benito River.⁴⁰⁶ Far from assisting Gabon, the Spanish decree showed that the Kie River was understood as the border in the Northeast, not the 9° East of Paris meridian.

C. POST-INDEPENDENCE PERIOD

5.65 The acts of Equatorial Guinea and Gabon in the post-independence period confirm that Spain and France had modified the boundary to follow the Kie River. Moreover, by operation of the principle of *uti possidetis juris*, the boundary established by the 1919 Governors’ Agreement became a permanent international frontier at the moment of Gabon’s independence in 1960 and Equatorial Guinea’s independence in 1968.

5.66 The principle of *uti possidetis juris* gives legal permanence to boundaries existing at the moment of independence.⁴⁰⁷ It not only enshrines boundaries established by treaty, but also other-than-permanent international boundaries established in legal instruments of all kinds (such as administrative limits of the former colonial power) and *de facto* boundary agreements which were in place at the time of independence but not yet brought to fruition. Such *de facto* boundary agreements are relevant to the Court’s assessment of the legal titles inherited by the newly independent States because they are

the National Geographic Institute for the Political Affairs Directorate, July 8, 1953. CMG, Vol. IV, Annex 98.

⁴⁰⁵ CMG, Vol. I, para. 2.26 (“ligne droite”).

⁴⁰⁶ Decree on Organic Status (13 April 1935). CMG, Vol. IV, Annex 85.

⁴⁰⁷ MEG, Vol. I, paras. 6.2-6.8.

part of “the ‘photograph of the territory’ at the critical date”.⁴⁰⁸ As the Court noted in the *Burkina Faso v. Mali* Judgement, “if a boundary of at least such value existed ... It would then be this *de facto* boundary that defined the heritage bequeathed in 1960 by colonization”.⁴⁰⁹ The purpose of the principle is to make permanent the limits existing between colonial entities for the States that emerge from decolonization to create stability in their boundaries and avoid the type of dispute that Gabon created when it invaded Equatorial Guinea territory in 1974. *Uti possidetis juris* thus gave permanence to the boundary established in the 1919 Agreement and the report of the 1901 Commission, in the same way that it gave permanence to the administrative limits of Spain in the Americas and France in Africa.

1. The Period from Gabon’s Independence in 1960 to Equatorial Guinea’s Independence in 1968

5.67 As discussed in Equatorial Guinea’s Memorial,⁴¹⁰ following Gabon’s independence, Spain and later Equatorial Guinea continued to administer the territories west of the Kie River without protest from Gabon. Indeed, agreements and continued *infra legem effectivités* during this period confirm that Gabon, like France before it, accepted and recognized the legal titles of Spain and then Equatorial Guinea, in respect of those areas west of the Kie River that the Governors’ Agreement had attributed to Spain. Gabon has not produced any evidence in the Counter-Memorial of protest against the exercise of sovereign acts of administration in the territories west of the Kie River by Spain or Equatorial Guinea.

⁴⁰⁸ *Frontier Dispute (Burkina Faso v. Republic of Mali)*, Judgment, I.C.J. reports 1986, pp. 568, 597, para. 30.

⁴⁰⁹ *Ibid.* at para. 81. The Court further noted that “it matters little that the Governor-General of French West Africa was unable to bring to fruition his plan ‘to fix the boundary in question by means of a text’. What is important in these proceedings is to ascertain where that boundary lay, taking account of all available indications...”. *Ibid.*

⁴¹⁰ MEG, Vol. I, paras. 3.107-3.111.



Figure R5.17

5.68 Spain referred to the Kie River as a boundary with Gabon in its 1961 report to the UN Committee on Information from Non-Self-Governing Territories,⁴¹¹ to which Gabon did not object. In 1965, Spain conducted a census, which included the Ebebiyin and Mongomo Districts and thirty (30) towns east of the meridian 9° East of Paris, as shown on **Figure R5.17**.⁴¹²

5.69 The 1966 Agreement and the village lists exchanged by Gabon and Spain pursuant to Article 1 confirm that Gabon recognized Spain's legal title to the territories west of the Kie River. There is a perfect symmetry between the village lists submitted by Gabon and Spain for the Kie River Area, as shown in Figure 3.28 of the Memorial. Of the villages Equatorial Guinea was able to locate, all of Spain's 79 villages in the area are located west of the Kie River, and all of Gabon's 40 villages are situated east of the Kie River.⁴¹³ There were no objections to any of the listed villages by either party. In Gabon's list of border crossings, which was agreed to by the parties, Gabon specifically recognized that Ebebiyin, Ngong, Alen, Anunguon, Ngomete, Mibang and Mongomo—all west of the Kie River—were in Spanish territory.⁴¹⁴

5.70 Gabon asserts that “all of the documents placed on file by Equatorial Guinea are merely unilateral proposals made during the negotiations”.⁴¹⁵ Gabon is mistaken. The documents annexed to the Memorial include the final version of the 1966 Agreement that

⁴¹¹ UN General Assembly, Report of the Committee on Information from Non-Governing Territories, Official Records: Sixteenth Session Supplement No. 15 (A/4785), New York (1 September 1961) (excerpt). MEG, Vol. III, Annex 18.

⁴¹² Government of Equatorial Guinea, Regional Statistics Department, SUMMARY DEMOGRAPHIC OF THE DEMARCATION (YEARS 1932 TO 1965) AND CATALOGUE OF UNITS AND SETTLEMENTS FOR 1965 (1965). REG, Vol. IV, Annex 28.

⁴¹³ MEG, Vol. I, para. 3.108; *ibid.*, Figure 3.28.

⁴¹⁴ MEG, Vol. I, para. 3.108; The Spanish State, *Letter No. 223 from the Ambassador of Spain in Rio Muni to the Spanish Ministry of Foreign Affairs* (6 May 1965) (attaching letter from Gabon's Vice President annexing Gabon's list of towns in border zone). MEG, Vol. IV, Annex 99.

⁴¹⁵ CMG, Vol. I, para. 2.56 (“l'ensemble des documents versés au dossier par la Guinée Équatoriale ne sont que des propositions unilatérales faites lors des négociations”).

was signed by Gabon and Spain and submitted to Spain's parliament for ratification.⁴¹⁶ It also includes the village lists Gabon submitted to Spain pursuant to Article 1 of the Agreement,⁴¹⁷ which was explicitly accepted by Spain.⁴¹⁸ The documentary record is clear and unequivocal: Gabon fully and consistently recognized Spain's legal title to the territory west of the Kie River.

2. The Period after Equatorial Guinea's Independence in 1968

(a) Construction of Border Bridges in the Northeast

5.71 Equatorial Guinea showed in its Memorial that the construction of two border bridges over the Kie River, inaugurated by the Parties' Heads of State in 2011, further confirmed Equatorial Guinea's legal title to the territory west of the Kie River.⁴¹⁹ Significantly, Gabon does not contest this evidence. Indeed, it has annexed to its Counter-Memorial the treaty between the Parties that led to the construction of these bridges: a 2007 Agreement between Gabon and Equatorial Guinea on the Construction of a Border Bridge and a Section of Asphalt Road with Works between the Two Countries.⁴²⁰

⁴¹⁶ The Spanish State Parliament, Agreement Between the Spanish State and The Gabonese Republic Concerning Circulation and Border Exchange Between Rio Muni and Gabon, Official Gazette No. 931 (4 October 1966), Article 1. MEG, Vol. III, Annex 7; Convention between The Spanish State and The Gabonese Republic Concerning Cross-Border Exchanges and Movement Between Rio Muni and Gabon, Appendix 2 Concerning the Towns or Urban Areas to be Included in the 10 KM Zone Referred to in the Convention (1966) (Spain's list of towns in border zone). MEG, Vol. III, Annex 8.

⁴¹⁷ The Spanish State, *Letter No. 223 from the Ambassador of Spain in Rio Muni to the Spanish Ministry of Foreign Affairs* (6 May 1965) (attaching letter from Gabon's Vice President annexing Gabon's list of towns in border zone). MEG, Vol. IV, Annex 99.

⁴¹⁸ The Spanish State, *Letter No. 383 from the Presidency of the Government to the Spanish Ministry of Foreign Affairs* (20 October 1965) (agreeing to Gabon's list of border crossings and towns). MEG, Vol. IV, Annex 100.

⁴¹⁹ MEG, Vol. I, paras. 3.109-3.111.

⁴²⁰ Agreement between Gabon and Equatorial Guinea on the Construction of a Border Bridge and a Section of Asphalted Road with Works between the Two Countries (3 August 2007). CMG, Vol. V, Annex 176.



Figure R5.18



Figure R5.19

5.72 The 2007 Agreement confirmed Gabon’s recognition of the Kie River as the boundary in the northeast, and Equatorial Guinea’s sovereignty over Ebebiyin, Mongomo and the other areas west of the Kie River. Article 2 specified that Ebebiyin and Mongomo were cities “in Equatorial Guinea”. Indeed, during the inauguration of these border bridges, Gabonese President Ali Bongo Ondimba explicitly recognized this:

“More precisely, it is the result of the agreement signed between our two countries in 2007 and which includes two points, on the one hand the construction of *a border bridge located on the Kie River between the village of Medzeng in Gabonese territory and the town of Mongomo in Equatorial Guinea territory* and on the other hand the construction of a 3.5 km stretch of road to the north of the Gabonese locality of Meyo Kie and *the Equatorial Guinean locality of Ebebiyin*, with a bridge on the Kie River and another on the Mveze River.”⁴²¹

5.73 During this inaugural event on the Equatorial Guinea side of the bridge in Ebebiyin, President Obiang of Equatorial Guinea welcomed President Bongo to Equatorial Guinea, and President Bongo thanked President Obiang for hosting him in Equatorial Guinea.⁴²² Figures 3.30 and 3.31 of the Memorial show satellite images of the Equatoguinean cities of Ebebiyin and Mongomo, along with depictions of the bridges over the Kie River. Ebebiyin extends across the 9° East of Paris meridian to the Kie River, and the bridge is located at the far eastern edge of the city on the Kie River, well east of the 9° East of Paris meridian.⁴²³ A closer view of the Ebebiyin - Myo-Kie border bridge is shown in **Figure R5.18** and in video **Annex V1**. The other bridge, in Mongomo, is west of the 9°

⁴²¹ Republic of Equatorial Guinea, Presidential Press, Video “Inauguration of the Ebebiyin and Mongomo Bridges” (4 August 2011), at 23:28. REG, Vol. V, Annex 66, Republic of Equatorial Guinea, Presidential Press, Video “Inauguration of the Ebebiyin and Mongomo Bridges” (4 August 2011) (Annex V3), transcript provided by the Republic of Equatorial Guinea p. 4. REG, Vol. II, Annex V3 (emphasis added).

⁴²² Republic of Equatorial Guinea, Presidential Press, Video “Inauguration of the Ebebiyin and Mongomo Bridges” (4 August 2011), at 7:40 and 20:32. REG, Vol. V, Annex 66, Republic of Equatorial Guinea, Presidential Press, Video “Inauguration of the Ebebiyin and Mongomo Bridges” (4 August 2011) (Annex V3), transcript provided by the Republic of Equatorial Guinea, pp. 2-3. REG, Vol. II, Annex V3.

⁴²³ MEG, Vol. I, Figure 3.30.

East of Paris meridian, which makes clear that the Parties recognized that the Kie River was the boundary, as it wound back and forth across the 9° East of Paris meridian.⁴²⁴ A closer view of the Mongomo - Assok-Medzeng border bridge is shown in **Figure R5.19** and in video **Annex V2**. Border posts—including customs, immigration, and health stations—are located on both the Equatoguinean and Gabonese sides of these bridges, as seen in video footage of the bridges annexed to this Reply.⁴²⁵

5.74 In short, the 2007 Agreement and the bridges constructed pursuant to it confirmed that, in accordance with the modifications made to the 1900 Convention in line with the 1919 Governor’s Agreement, Equatorial Guinea and Gabon have recognized that the Kie River was the established international boundary in the Kie River Area (from its source southeast of Mongomo to the border with Cameroon northeast of Ebebiyin), and that each Party therefore holds valid legal title to the territory on its side of the river. That continues to be the case today.

(b) Continuous and Unchallenged *Infra Legem Effectivités*

5.75 Since its independence in 1968, Equatorial Guinea has administered the territory west of the Kie River. Its continued, unchallenged *infra legem effectivités* confirm Equatorial Guinea’s legal title to this territory.

5.76 Gabon draws the Court’s attention to “several incidents” that allegedly occurred near Ebebiyin between March and June 1974.⁴²⁶ These incidents—described at the time by France’s Defense Attaché in its Embassy in Gabon as “insignificant, and in any

⁴²⁴ MEG, Vol. I, Figure 3.31.

⁴²⁵ See **Annex V1** and **Annex V2**; see also Gabonews Info, Video “GABON / ASSOK MEDZENG : Le contraste Gabon - Guinée Équatoriale” (14 May 2020). REG, Vol. V, Annex 67, available at <https://www.youtube.com/watch?v=RIPfvRxQ5z0> (last accessed 27 September 2022) (showing Gabonese border post on its side of the Mongomo-Medzeng (Assok) bridge, and interviewing a Gabonese border guard who confirms the continuity of the Kie River as the border in this area under France pre-1960 and Gabon post-independence).

⁴²⁶ CMG, Vol. I, para. 2.57 (“plusieurs incidents”).

case, out of all proportion to the reactions it has provoked on the Gabonese side”⁴²⁷—did not demonstrate a deviation from the boundary in operation since the 1919 Governor’s Agreement. Rather, as reported by the US embassy, “Gabon[] marched into traditional [Equatorial Guinea] territory”, and occupied “EG territory ... where the Kye bends to the west”,⁴²⁸ just as it did by illegally invading and occupying Mbañe in 1972.

5.77 The facts related to these incidents are not entirely clear. France’s Defense Attaché reported in a confidential information bulletin that much of the information regarding the incidents are “pure and simple fabrication”:

“All of the information subsequently provided regarding the build-up of Equatorial Guinean forces, the occupation of the land between the border and the Río Kie, the construction of a military post to the east of Ebebiyin are pure and simple fabrications. All of this information came either from the Gendarmerie or from the Gabonese administration.”⁴²⁹

5.78 The Defense Attaché reported that the “only indisputable and noteworthy incident is the installation by the Equatorial Guineans of a border post on the west bank of the Rio Kie and its removal by the Chief of Meyo-Kye’s Gendarmerie brigade”.⁴³⁰

⁴²⁷ CMG, Vol. V, Annex 140, p. 1 (“insignifiant et, en tous cas, sans commune mesure avec les réactions qu’il a suscitées du côté gabonais”).

⁴²⁸ Contemporaneous reporting indicates that Gabon sought to secure a direct overland route between Gabon and Cameroon along the Spanish-built Meyo-Kie-to-Ebebiyin road that did not require transit through Equatorial Guinea’s territory. *Message Text from the US Department of State EO Systematic concerning Equatorial Guinea-Gabon Land Border Problem* (20 June 2005) (releasing U.S. Department of State, *Cable from U.S. Embassy Yaounde to U.S. Secretary of State* (15 August 1974)), p.2 REG, Vol. IV, Annex 52 (“[Spanish Ambassador] ascribed motive as being Gabonese desire to control road between Cameroon and Gabon small stretch of which would otherwise pass [] through EG.”).

⁴²⁹ CMG, Vol. V, Annex 140, p. 1 (“Tous les renseignements fournis par la suite sur le renforcement du dispositif Equato-Guinéen, l’occupation du terrain entre la frontière et la KYE, la construction d’un poste militaire à l’Est d’EBEBYIN relèvent de l’affabulation pure et simple. Tous ces renseignements émanaient soit de la Gendarmerie, soit de l’administration gabonaises”).

⁴³⁰ CMG, Vol. V, Annex 140 p. 1 (“Le seul incident, indiscutable et digne d’être retenu, est la pose par les Equato-Guinéens d’un poteau frontière sur la rive Ouest de la rivière KYE et son enlèvement par le Chef de la brigade de Gendarmerie de MEYO-KYE.”).

According to this report, the “so-called post whose construction had triggered the incident[] was actually a drinking establishment”.⁴³¹

5.79 Regardless, it is clear that all of the alleged incidents⁴³² occurred on territory west of the Kie River—territory to which Spain held title pursuant to the 1919 Governors’ Agreement and which Spain and Equatorial Guinea occupied, controlled, and administered without objection or protest from France or, for fourteen years, Gabon, until these incidents took place in 1974.

5.80 Discussions between Equatorial Guinea and Gabon to resolve these incidents, which included a joint visit to the Ebebiyin region, confirmed, as reported by the Defense Attaché: (i) “local Equatorial Guinean authorities ... considered that the Kie River constituted the traditional border between the two countries”; (ii) “[t]here exists an excellent road between the Kie River and the international crossroads [between Equatorial Guinea and Cameroon]” with “three large villages inhabited by Equatorial Guineans” along it; and (iii) the military garrison at Ebebiyin, originally built by the Spanish in 1922, was still there and was operated by Equatorial Guinea, with a “small company (between 50 and 100 troops according to estimates)”.⁴³³

5.81 As set out in Chapter 3 of this Reply and Chapters 5 and 7 of Equatorial Guinea’s Memorial, the Parties continued boundary delimitation negotiations in September 1974 and for nearly three decades thereafter, with no change to the status quo that has

⁴³¹ CMG, Vol. V, Annex 140, pp. 3-4 (“que le soi disant poste dont la construction avait déclenché l’affaire était en réalité un débit de boissons”).

⁴³² CMG, Vol. V, Annex 133.

⁴³³ CMG, Vol. V, Annex 140. (“les autorités Equato-Guinéennes locales ... considèrent que la rivière KYE constitue bien la frontière traditionnelle entre les deux pays”; “qu’il existait une excellente route entre la KYE et le carrefour international. Au bord de cette route, trois gros villages habités par des Equato-Guinéens”; “une petite compagnie (effectif compris entre 50 et 100 suivant les estimations”).



Figure R5.20

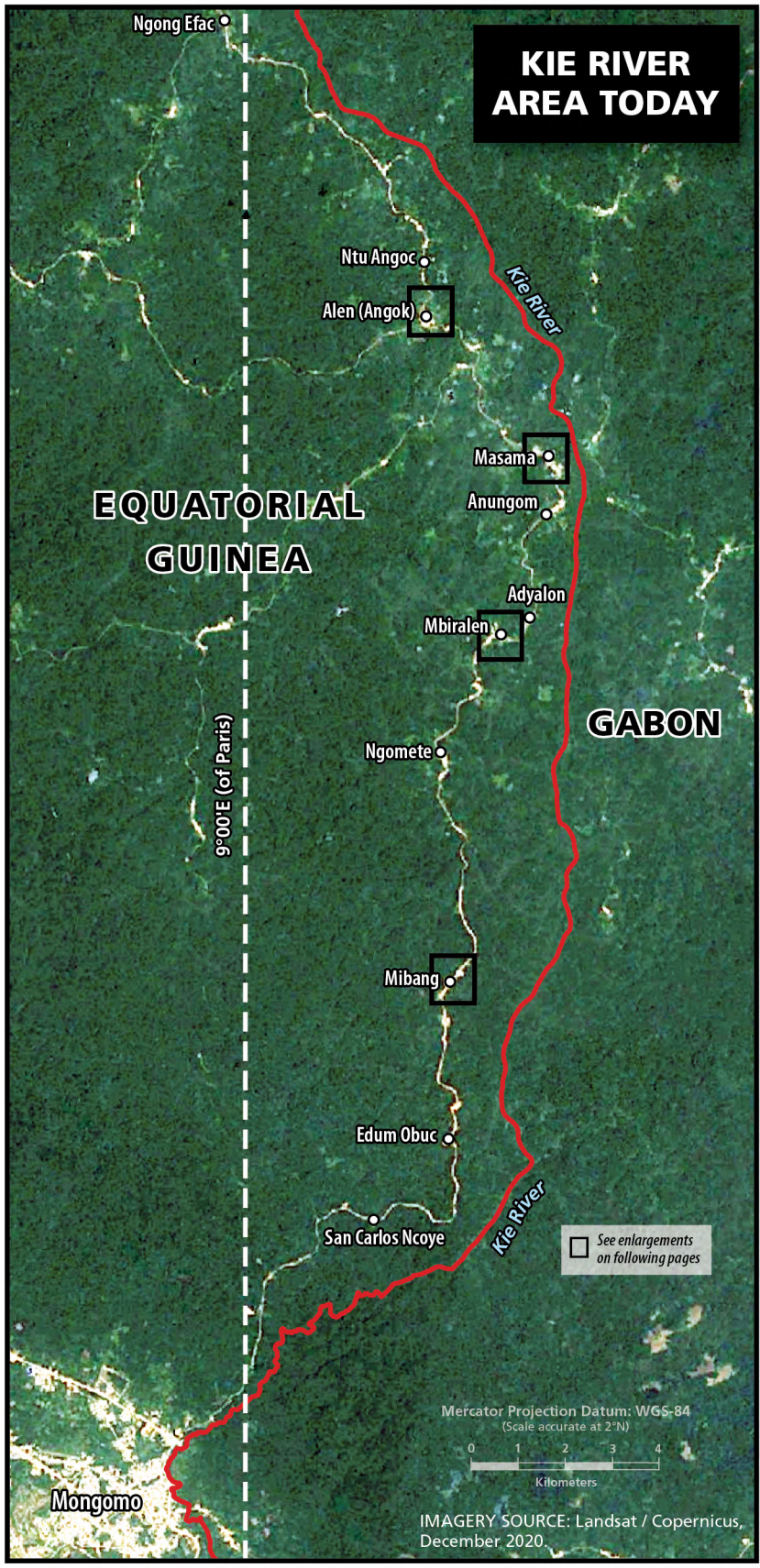


Figure R5.21

existed in the Kie River Area since the 1919 Governors' Agreement. Gabon's attempt to fabricate a territorial dispute on the northeastern boundary failed.

5.82 Gabon argues that the document it presented in 2003 provided "a new definition of the boundary" in the Northeast,⁴³⁴ but that is not the case. As discussed in Chapter 7 of the Memorial and Chapter 3 of this Reply, the document does not have the force of law between the Parties. Tellingly, the 2007 Border Bridges Agreement—which postdates the purported origins of the 2003 document by 34 years, and postdates its initial presentation to Equatorial Guinea by four years—makes no mention of the 2003 document or its contents, and, contrary to it, recognizes the border as following the Kie River, rather than the 9° East of Paris meridian.

5.83 Moreover, no less an authority than the President of Gabon, upon the inauguration of the two bridges, publicly and explicitly recognized that the Kie River formed the boundary between the two States, and that territory west of the river fell under Equatorial Guinea's sovereignty. This was not a groundbreaking announcement at the time. For 88 years, since 1919, France and Spain, and then Gabon and Equatorial Guinea, had recognized and accepted the Kie River as the boundary in this area, and each of them carried out sovereign acts of administration on its side of the river on that basis and without protest by the other party.

5.84 Today, the eastern half of Equatorial Guinea's city of Ebebiyin is east of the 9° East of Paris meridian. This half of the city is home to colonial era buildings, and it includes also the original Spanish road out of Ebebiyin to the south, substantial housing and industrial facilities, half of the city's ring road, a cell tower belonging to Guinea Ecuatorial de Telecomunicaciones, Sociedad Anonima (GETESA), and all of the Equatoguinean governmental infrastructure associated with an international border

⁴³⁴ CMG, Vol. I, para. 7.47 ("une nouvelle définition de la frontière").

crossing.⁴³⁵ These locations are illustrated at **Figure R5.20**. Since its inception in the early 1920s to the present, Ebebiyin has grown in a manner that fully respects the boundary line agreed to in the 1919 Governors' Agreement, namely the Kie River.

5.85 The same is true of all of Equatorial Guinea's villages located east of 9° East along the road from Ebebiyin to Mongomo, from north to south. The bridge over the Abos River constructed by Spain still provides the main access point from the north to the Kie River road.⁴³⁶ That road passes through at least twenty villages, starting in the north with Ngon (Abos) and ending in the south with San Carlos (Ncoye)

5.86 Several of these villages, which are actively administered and controlled by Equatorial Guinea, are shown in **Figure R5.21**.

- Alen, an important market town since colonial times, in addition to hosting the now-abandoned military post established by Spain in 1926, is home to a large school (colegio nacional), health clinic and newly-built hospital, as seen in **Figure R5.22**.⁴³⁷
- Several more villages are located along the road south of Alen to Masama, including Miboman. Masama, shown in **Figure R5.22**, hosts a military encampment. Of particular note is the GETESA cell tower built on the highest point in the town and easily visible from nearby Gabon, just across the Kie

⁴³⁵ See Republic of Equatorial Guinea, Declaration of H.E. Domingo Mba Esono, Vice-President of Commerce and Promotion of Small and Middle Sized Enterprises, and President of the Sub-technical Division of the Special Borders Commission (25 September 2022), para. 8 and Annexes P.E1 (EG immigration post), P.E2 (EG customs post), P.E3 (EG health post), P.E4 (Gabon border control), P.E5 (Kie River sign post), P.E6 (GETESA cell tower), P.E7 (ring road), P.E8 & P.E9 (Ebebiyin border bridge), P.E10 (cemetery), P.E11 & P.E12 (colonial Guardia post), P.E13 (Spanish colonial cemetery), P.E14 (Spanish colonial tribunal), P.E15 (Spanish colonial prison), P.E16 (Spanish colonial administrative building), P.E17-P.E18 (Spanish colonial survey points), P.E20 (Spanish colonial hospital, now EG police post), and P.E21 & P.E22 (Spanish colonial market, now EG commercial centre) REG, Vol. III, Annex 5.

⁴³⁶ See MEG, Vol. I, Figure 3.17; Republic of Equatorial Guinea, *Declaration of H.E. Domingo Mba Esono* (25 September 2022), para. 8 and Annex P.K1.

⁴³⁷ Republic of Equatorial Guinea, *Declaration of H.E. Domingo Mba Esono* (25 September 2022), para. 8 and Annexes P.K2 & P.K3 (colonial Guardia post), P.K4 (school), P.K5 (hospital), P.K6 (health clinic), P.K7 (houses), P.K8 (church), P.K9 (market), and P.K10 (ID document). See also Republic of Equatorial Guinea, Ebebiyin District, *Alen Angok Town Council (Years 1997, 1998, 2005)* (minutes of village council activity in these Equatoguinean towns). REG, Vol. V, Annex 56.



Figure R5.22



Figure R5.23

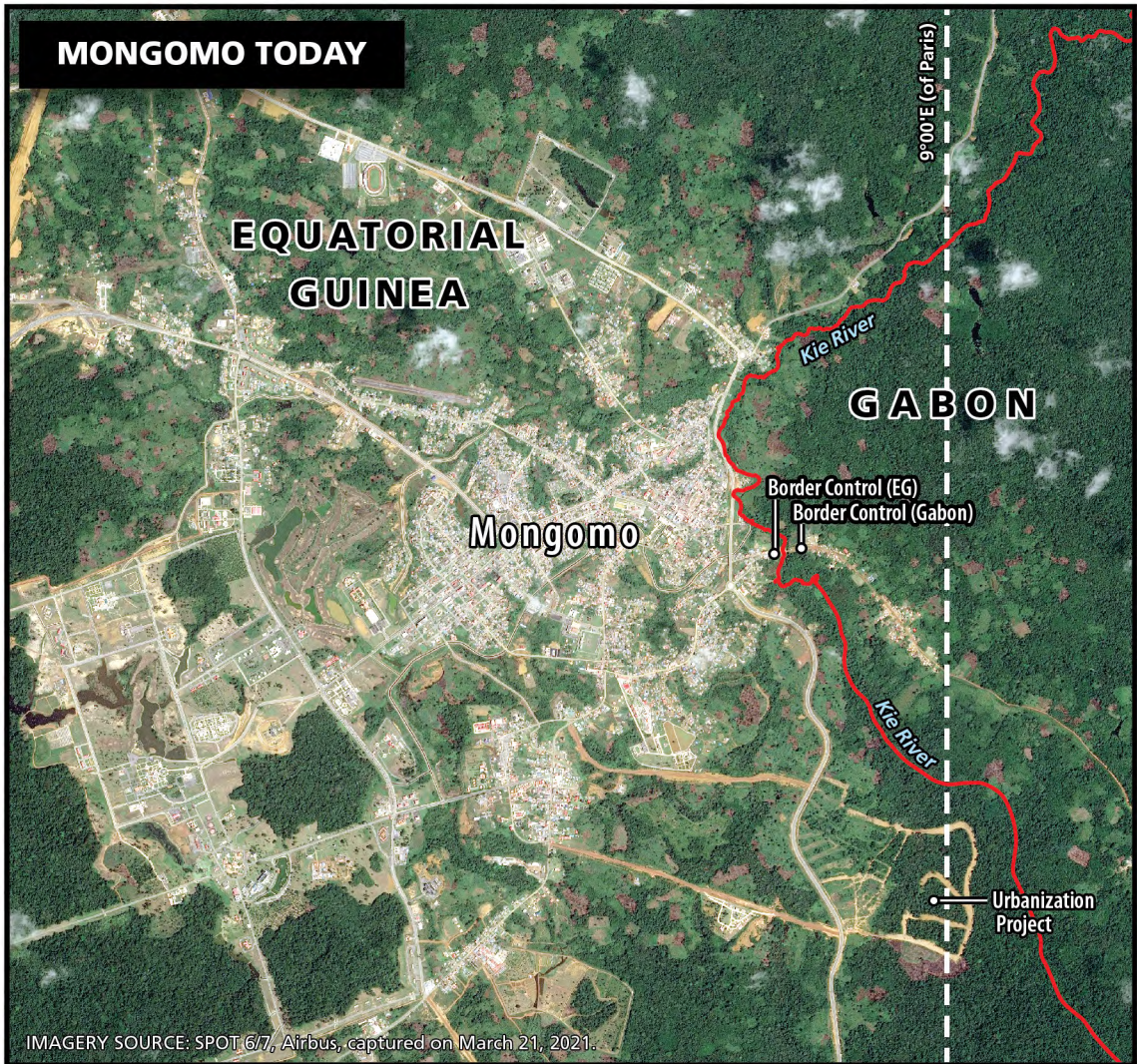


Figure R5.24

River to the east. Electricity is supplied from the center of Masama to illuminate posts at the river's edge where a small footbridge crosses the Kie River into Gabon.⁴³⁸

- South of Masama, the Kie River road passes through Anugom and Adjapelon before arriving in the village of Mbiralen, shown in **Figure R5.23**. Home of a colonial era school,⁴³⁹ other infrastructure includes a central well and Spanish Army Geographic Service astronomic control point from the late 1940s. The Mbiralen cemetery, in addition to Mbiralen's presence on every list of Spanish villages from 1920 to 1965, is further evidence of its long-standing and continuous presence in the region.⁴⁴⁰
- After passing through Ngomete, the next large town on the Kie River road is Mibang, also shown in **Figure R5.23**. Mibang is home to the third colonial-era school in this region (along with Alen and Mbiralen), and now hosts a second, newer school building. Mibang hosts a substantial military post, an old Catholic church, and several roadside cemeteries.⁴⁴¹
- South of Mibang, Equatorial Guinea has carried out significant road improvement projects along the Kie River road. Culvert reconstruction, grading, and widening of the narrower dirt road had reached Mibang by March 2022, and pavement and roadside water control structures had reached just north of the next town, Edum, which hosts a school house in addition to homes and a new church.⁴⁴²

⁴³⁸ Republic of Equatorial Guinea, *Declaration of H.E. Domingo Mba Esono* (25 September 2022), para. 8 and Annexes P.K11 (footbridge), P.K12 (GETESA cell tower), P.K13 (riverside lighting), and P.K14 (military camp).

⁴³⁹ Office of the President of the Government, Commissariat of the Economic Development Plan, *Economic Development Plan for Equatorial Guinea, Years 1964 to 1967* (October 1963), p. 155. REG, Vol. IV, Annex 25.

⁴⁴⁰ Republic of Equatorial Guinea, *Declaration of H.E. Domingo Mba Esono* (25 September 2022), para. 8 and Annexes P.K16 (town well), P.K17 (cemetery), P.K18 (church), P.K19 (houses), P.K20 (evidence of census, 2015), P.K21 (evidence of household survey, 2020), and P.K22 (evidence of election campaign, 2017).

⁴⁴¹ *Ibid.* at para. 8 and Annexes P.K23 (houses), P.K24 (school), P.K25 (old cemetery), P.K26 (new cemetery), P.K27 & P.K28 (Catholic church), P.K29 (evidence of household survey, 2020), and P.K30 & P.K31 (road improvement).

⁴⁴² *Ibid.* at para. 8 and Annexes P.K32 (houses), P.K33 (school), P.K34 (church), P.K35 & P.K36 (evidence of 2015 census and of 2020 household survey), and P.K37 (paved road and guttering).

- South of Edum, in San Carlos Ncoye like all of the other villages along the Kie River road, Equatorial Guinea's administration is evident in the census stickers on all of the household doors.⁴⁴³
- Finally, east of Acoacan and southeast of Mongomo, as seen in **Figure R5.24**, an urbanization project is underway in areas east of 9° East and west of the Kie River border with basic infrastructure being installed in order to support a new housing development.⁴⁴⁴

5.87 In sum, Equatorial Guinea's continued and unchallenged *infra legem effectivités* in the Kie River Area, in conformity with the 1919 Governors' Agreement, confirm its legal title to the territory west of the Kie River, which has served as the boundary in this region and has shaped the lives of the people there for over a century.

⁴⁴³ *Ibid.* at para. 8 and Annexes P.K38 (evidence of 2015 census) and P.K39 (church). Equatorial Guinea has continued to conduct regular census activity in the Kie River Area since its independence from Spain.

⁴⁴⁴ *Ibid.* at para. 8 and Annexes P.MO10 & P.MO11 (urbanization).

CHAPTER 6

THE LEGAL TITLES IN THE SEA ADJACENT TO THE PARTIES' COASTS

6.1 In its Memorial, Equatorial Guinea established that the legal titles, treaties and international conventions that have the force of law between the Parties in respect of the maritime areas adjacent to their coasts are those pertaining to their coastal land territory, including islands, as described in Chapters 3 and 4 of this Reply, as well as the 1982 United Nations Convention on the Law of the Sea.

6.2 Chapter 9 of Gabon's Counter-Memorial argues that the only legal title, treaty or international convention that has the force of law in so far as they concern the delimitation of the common maritime boundary between Equatorial Guinea and Gabon is the document presented in 2003.⁴⁴⁵

6.3 This argument rests on two propositions: (i) the reference to "legal titles, treaties and international conventions" in the Special Agreement is limited to "preuves documentaires"; and (ii) the Document presented in 2003 is a legal title with the force of law between the Parties. As shown in Chapters 2 and 3, respectively, both premises are wrong.

6.4 As to the first proposition, Equatorial Guinea demonstrated in Chapter 2 of this Reply that the Court's task is to determine whether the titles, treaties or conventions invoked by the Parties are applicable to determine sovereignty and delimit their boundaries, and that the Court's jurisdiction is not limited to "preuves documentaires" but extends to identifying *all* applicable "legal titles, treaties and international conventions".⁴⁴⁶

⁴⁴⁵ CMG, Vol. I, paras. 9.3-9.8.

⁴⁴⁶ *See, supra*, para. 2.32.

6.5 As to the second proposition, Equatorial Guinea showed in Chapter 3 of this Reply that the document presented in 2003 is not a legal title, treaty, or convention with the force of law between the Parties. Contrary to Gabon’s allegation,⁴⁴⁷ it does not even purport to delimit a maritime boundary, in whole or in part, between the Parties. In fact, the Parties have never treated that document presented in 2003 as establishing and governing their maritime boundary. Not once have they invoked this Document when it could have been invoked. They did not refer to it during their attempts to enter into provisional arrangements of a practical nature to exploit natural resources; they did not mention it to justify or object to each other’s maritime claims; and they never relied on it in granting their oil and gas concessions in their claimed maritime zones.⁴⁴⁸

6.6 Indeed, Gabon itself admitted by its own conduct that the document does not entitle it to the maritime area extending to a parallel line slightly to the north of the 1° N parallel (extending from the point of intersection of where the thalweg of the Muni River intersects with a straight line drawn from Cocobeach Point to Dièké Point) that it now claims. This is clear from Gabon’s practice and conduct detailed in Chapter 3 of this Reply and its 2001 maritime boundary agreement with São Tomé and Príncipe. As illustrated in **Figure R6.1** (in Volume II only), this agreement sets the northern terminus point of the two States’ maritime boundary at 0° 44’ 03” N 8° 14’ 00” E.⁴⁴⁹ Had Gabon considered itself to have sovereign rights and jurisdiction in the maritime area north of that point—which would be the case if it considered the document presented in 2003 to have delimited its maritime boundary with Equatorial Guinea—its agreement with São

⁴⁴⁷ CMG, Vol. I, para. 9.3.

⁴⁴⁸ *See, supra*, para. 3.71.

⁴⁴⁹ *Agreement on the Delimitation of the Maritime Border between the Gabonese Republic and the Democratic Republic of Sao Tome and Principe* (26 April 2001), art. 3. REG, Vol. III, Annex 3. It is noteworthy that Equatorial Guinea’s maritime boundary with São Tomé and Príncipe, which was concluded in 1999, extends south of the northern point of the Gabon-São Tomé and Príncipe boundary. *See also, Treaty Regarding the Delimitation of the Maritime Boundary between the Republic of Equatorial Guinea and the Democratic Republic of Sao Tome and Principe* (26 June 1999), Art. 2. REG, Vol. III, Annex 2. This confirms that, in 1999, Equatorial Guinea did not treat the Document presented in 2003, nor had either party insisted on its application in its bilateral relations with São Tomé and Príncipe.

Tomé and Príncipe would have extended their boundary beyond that point to the 1° N parallel. Instead, their maritime boundary ends claimed line parallel to the 1° N parallel. Instead, their maritime boundary ends south of the 1° N parallel.

6.7 Because the document presented in 2003 does not have the force of law between the Parties in relation to delimitating their maritime boundary, Equatorial Guinea submits that the “legal titles, treaties and international conventions” that have the force of law concerning the maritime areas adjacent to the Parties’ coasts include:

- i. *the 1900 Convention,*
- ii. *the U.N. Convention on the Law of the Sea (“UNCLOS”), and*
- iii. *legal titles to maritime areas adjacent to Equatorial Guinea’s land territory derived under UNCLOS and customary international law.*

6.8 Gabon does not dispute that the 1900 Convention⁴⁵⁰ has the force of law between the Parties. Although Gabon argues that the 1900 Convention is “silent with regard to the maritime boundary”, it concedes that this convention “only refers to two elements relevant to maritime spaces”, one of which is “the terminal point of the land boundary”.⁴⁵¹ It is well-established in the Court’s jurisprudence that a treaty that establishes the land boundary terminus is relevant for the delimitation of the Parties’ maritime boundary.⁴⁵² Consequently the 1900 Convention applies here in full force

⁴⁵⁰ *Special Convention on the Delimitation of Spanish and French Possessions in Western Africa on Coasts of the Sahara and the Gulf of Guinea*, between the Kingdom of Spain and The French Republic (signed. 27 June 1900, ratified 27 March 1901). MEG, Vol. III, Annex 4.

⁴⁵¹ CMG, Vol. I, para. 9.9 (“est muette s’agissant du tracé de la frontière maritime” ... “ne fait référence qu’à deux éléments pertinents pour les espaces maritimes”; “le point terminal de la frontière terrestre”).

⁴⁵² See e.g., *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, Judgment of 12 October 2021, I.C.J. Reports 2021, para. 98.

because it establishes the land boundary terminus for maritime delimitation between the Parties.

6.9 As to the delimitation of the maritime boundary, in its Counter-Memorial “Gabon readily admits that the Montego Bay Convention [UNCLOS] ... governs the principles applicable to maritime delimitation between two States whose coasts face each other or are adjacent”.⁴⁵³ However, Gabon wrongly seeks to render it inapplicable by arguing that it “establish[es] a vocation to a title” instead of—title itself.⁴⁵⁴ First, as the Special Agreement makes clear, the Court’s task is not limited to determining titles but also treaties and conventions concerning maritime delimitation. Because there is no agreement delimiting the Parties’ maritime boundary,⁴⁵⁵ UNCLOS is an international convention with the force of law that “concern[s]” the Parties’ maritime boundary delimitation.

6.10 Second, under both UNCLOS and customary international law, the Parties’ titles and entitlement to the territorial sea, exclusive economic zone, and continental shelf emanate from their titles to insular and continental land territory.⁴⁵⁶ These titles unquestionably “concern” the delimitation of their maritime boundary. As numerous international courts and tribunals have recognized, “the land dominates the sea”.⁴⁵⁷

⁴⁵³ CMG, Vol. I, para. 9.14 (“le Gabon admet volontiers que la Convention de Montego Bay [CNUDM] ... régit les principes applicables à la délimitation maritime entre deux États dont les côtes se font face ou sont adjacentes”).

⁴⁵⁴ CMG, Vol. I, para. 9.14 (“établi[t] une vocation à un titre”).

⁴⁵⁵ See, *supra*, para. 3.37.

⁴⁵⁶ See *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America)*, Judgment, I.C.J Reports 1984, p. 245, para. 103.

⁴⁵⁷ See e.g., *North Atlantic Coast Fisheries Case (Great Britain, United States)*, Arbitral Award of 7 September 1910, Reports of International Arbitral Awards (RIAA) XI, 167, 205; *Grisbadarna Case (Norway, Sweden)*, Arbitral Award of 23 October 1909, RIAA XI, 155, 159; and *North Sea Continental Shelf Cases (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands)*, Judgment of 20 February 1969, ICJ Reports 1969, 3, para. 96.

6.11 For all the reasons set out in its Memorial and Reply, Equatorial Guinea asks the Court to find that the legal titles, treaties and international agreements that concern the delimitation of the Parties' maritime boundary are:

- i. *the 1900 Convention insofar as it established the terminus of the land boundary in Corisco Bay and recognized Spain's sovereignty over Corisco Island, Elobey Grande and Elobey Chico;*
- ii. *the United Nations Convention on the Law of the Sea, signed on 10 December 1982 at Montego Bay; and*
- iii. *customary international law insofar as it recognizes that a coastal State's entitlement and legal title to adjacent maritime areas derive from its title to land territory.*

SUBMISSIONS

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

- I. The Special Agreement allows the Court to determine all legal titles, treaties and international conventions that concern the delimitation of the Parties' common maritime and land boundaries and sovereignty over the islands of Mbañe, Cocoteris and Conga.
- II. The document Gabon alleges to be the "Bata Convention" has no force of law or any legal consequences in the relations between the Gabonese Republic and the Republic of Equatorial Guinea.
- III. The legal titles, treaties and international conventions that have the force of law in the relations between the Gabonese Republic and the Republic of Equatorial Guinea with respect of the delimitation of their common land boundary are:
 1. by State succession, the special Convention on the delimitation of French and Spanish possessions in West Africa, on the coasts of the Sahara and the Gulf of Guinea, signed in Paris on 27 June 1900 (the "1900 Convention"), as applied by France and Spain until the independence of Gabon on 17 August 1960 and as continued to be applied by Gabon and Spain until the independence of Equatorial Guinea on 12 October 1968,
 2. the succession by the Republic of Equatorial Guinea to all titles to territory, including territorial limits, held by Spain based on modifications to the boundary described in Article 4 of the 1900 Convention in accordance with the terms of the 1900 Convention and international law, including the 1919 Agreement between the Governor of French Equatorial Africa and the

Governor of Spanish Guinea, prior to 12 October 1968, the date of the Republic of Equatorial Guinea's independence, and

3. the succession by the Gabonese Republic to all titles to territory, including territorial limits, held by France based on modifications to the boundary described in Article 4 of the 1900 Convention in accordance with the terms of the 1900 Convention and international law, including the 1919 Agreement between the Governor of French Equatorial Africa and the Governor of Spanish Guinea, prior to 17 August 1960, the date of the Gabonese Republic's independence;
- IV. The legal title that has the force of law in the relations between the Gabonese Republic and the Republic of Equatorial Guinea with respect to the sovereignty over the islands of Mbanié/Mbañe, Cocotiers/Cocoteros and Conga is the succession by the Republic of Equatorial Guinea to the title held by Spain on 12 October 1968 over Mbanié/Mbañe, Cocotiers/Cocoteros and Conga, which itself was founded on 1) the general cession of rights from Portugal in the 1778 Treaty of El Pardo, 2) Spain's 1843 Declaration of Spanish Sovereignty for Corisco Island, 3) Spain's 1846 Record of Annexation signed with King I. Oregek of Corisco Island, 4) Spain's 1846 Charter of Spanish Citizenship Given to the Inhabitants of Corisco, Elobey and their Dependencies, 5) Spain's 1858 Charter Reaffirming Spanish Possession of the Island of Corisco and 6) Spain's uncontested effective and public sovereign occupation of these islands from 1843 until Equatorial Guinea's independence in 1968.
- V. Considering paragraphs (III) and (IV) above, the legal titles, treaties and international conventions that have the force of law in the relations between the Gabonese Republic and the Republic of Equatorial Guinea with respect to the delimitation of their common maritime boundary are:

1. the 1900 Convention in so far as it established the terminus of the land boundary in Corisco Bay;
2. the United Nations Convention on the Law of the Sea signed on 10 December 1982 at Montego Bay, and
3. customary international law in so far as it establishes that a State's title and entitlement to adjacent maritime areas derives from its title to land territory.

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

Respectfully submitted,

H.E. Mr. Carmelo NVONO-NCÁ

Extraordinary and Plenipotentiary Ambassador of the Republic of Equatorial Guinea to the Kingdom of Belgium, the Kingdom of the Netherlands, the Kingdom of Denmark and the Grand Duchy of Luxembourg

AGENT OF THE REPUBLIC OF EQUATORIAL GUINEA

5 OCTOBER 2022

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CERTIFICATION

I certify that the Annexes are true copies of the documents referred to and that the translations provided are authentic and accurate.

H.E. Mr. Carmelo NVONO-NCÁ

Extraordinary and Plenipotentiary Ambassador of the Republic of Equatorial Guinea to the Kingdom of Belgium, the Kingdom of the Netherlands, the Kingdom of Denmark and the Grand Duchy of Luxembourg

AGENT OF THE REPUBLIC OF EQUATORIAL GUINEA

5 OCTOBER 2022

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