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**International Court
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**Cour internationale
de Justice**

THE HAGUE

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YEAR 2024

Public sitting

held on Monday 30 September 2024, at 3 p.m., at the Peace Palace,

President Salam presiding,

*in the case concerning Land and Maritime Delimitation and Sovereignty over Islands
(Gabon/Equatorial Guinea)*

VERBATIM RECORD

ANNÉE 2024

Audience publique

tenue le lundi 30 septembre 2024, à 15 heures, au Palais de la Paix,

sous la présidence de M. Salam, président,

*en l'affaire de la Délimitation terrestre et maritime et souveraineté sur des îles
(Gabon/Guinée équatoriale)*

COMPTE RENDU

Present: President Salam
 Vice-President Sebutinde
 Judges Tomka
 Yusuf
 Xue
 Iwasawa
 Nolte
 Charlesworth
 Brant
 Gómez Robledo
 Cleveland
 Aurescu
Judges *ad hoc* Wolfrum
 Pinto

 Registrar Gautier

Présents : M. Salam, président
M^{me} Sebutinde, vice-présidente
MM. Tomka
Yusuf
M^{me} Xue
MM. Iwasawa
Nolte
M^{me} Charlesworth
MM. Brant
Gómez Robledo
M^{me} Cleveland
M. Aurescu, juges
M. Wolfrum
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The PRESIDENT: Please be seated. The sitting is open. The Court meets this afternoon for the continuation of Equatorial Guinea's first round of oral argument. I shall now give the floor to Professor Dapo Akande. You have the floor, Sir.

Mr AKANDE:

LEGAL TITLE TO CONTINENTAL TERRITORY AND THE 1900 CONVENTION

1. Good afternoon. Mr President, Members of the Court, it is my honour to appear before you this afternoon, and to do so on behalf of the Republic of Equatorial Guinea. I will open Equatorial Guinea's presentation on the legal titles that are relevant to the land boundary between the Parties.

2. In particular, I will address the titles relating to the mainland or continental territory of Equatorial Guinea. Over the course of my submissions and those that will follow, we will show that Equatorial Guinea's title is succession, and that Equatorial Guinea has title to the entirety of the territory to which Equatorial Guinea succeeded upon independence from Spain. As we will see, the spatial extent of Equatorial Guinea's title is delimited by the boundaries that divided the territory of Spain from Gabon at the moment of Equatorial Guinea's independence. Those boundaries are the ones established in the Convention concluded by Spain and France in 1900 to delimit their respective territories on the west coast of Africa, including in the area of the Gulf of Guinea, but, importantly, as subsequently modified by those two colonial powers *in accordance with* the terms of the same 1900 Convention.

3. Equatorial Guinea's presentation on its continental territory proceeds in four parts. The first part, that is my presentation, will focus on the interpretation of the 1900 Convention. I will address the course of the delimitation set out in the 1900 Convention. I will show that the Convention reflects the mutual recognition of Spain and France that, due to the limits of their knowledge of the interior of Africa at the time, significant portions of the boundary were to be delimited — at least for the time being — by straight lines rather than natural geographical features, the precise locations and contours of which were unknown at the time. I will then show that Spain and France also recognized that their geographical knowledge would deepen through missions on the ground conducted by commissioners designated by both States. As a result, the 1900 treaty includes a provision which permits modifications of the boundaries. To achieve this objective, the Convention committed Spain and

France to streamlined procedures for modifying the boundaries through the actions of such commissioners or local delegates. In closing my part, I will address the applicable law governing Equatorial Guinea and Gabon's succession to the territories of their respective colonial predecessors.

4. In the second and third parts of our presentations on the title to the land territory, Ms Pasipanodya and Mr Loewenstein, will show how Spain and France implemented the procedures set out in the 1900 Convention for modifying the boundaries in the Utamboni and Kie River areas — that is, in the portions of what are now Equatorial Guinea's southern and eastern boundaries with Gabon. They will demonstrate that France accepted those modifications prior to Gabon's independence in 1960, and that Gabon did so as well in the eight years between its independence and Equatorial Guinea's independence.

5. And then in the fourth and concluding part of our presentations on Equatorial Guinea's title to its continental territory, His Excellency the Attorney General will describe the post-independence *infra legem effectivités* in the Utamboni and Kie River areas. As he will show, those sovereign acts confirm that the boundaries were, in fact, modified during the colonial period with the effect that the Parties succeeded to the territories delimited by the modified boundaries upon independence.

I. Historical background leading to the 1900 Convention

6. Mr President, I begin with the events leading to the 1900 Convention. As Mr Reichler explained this morning, Spain's title to territory in what is now Equatorial Guinea dates to Portugal's 1778 cession of the islands of Fernando Póo and Annobón in the Treaty of El Pardo. In the same instrument, Portugal also ceded to Spain the right to engage in commerce in a large coastal area which he showed you on a map, between Cape Formozo, located at the mouth of the Niger River, and Cape López, located south of the Gabon River¹.

7. However, for more than a century, European knowledge of the interior's geography remained largely confined to the areas close to the coast and to the mouth of the River Muni². Thus, when Spain and France recommenced negotiations in 1900 to resolve their competing territorial

¹ MEG, 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.

² MEG, para. 3.37 and fig. 3.6.

claims — following the failure of earlier diplomatic efforts³ —, the great majority of the continental territory that was the subject of the negotiations remained unexplored and unknown to them.

II. The land boundary between the Parties established by the 1900 Convention

8. This paucity of geographical information is the context in which Spain and France concluded the 1900 Convention. That treaty established boundaries not just for the Parties' overlapping claims in the territories adjacent to the Gulf of Guinea, but in north-west Africa as well, where they also maintained overlapping claims in the Sahara⁴.

9. Article IV of the 1900 Convention established the boundary in the territory adjacent to the Gulf of Guinea. Reflecting the fact that the Parties understood the geography near the coast, they defined the first two segments of the boundary — approximately 30 km in length — by geographical features. Specifically, and as you can now see depicted on the map on your screens, Article IV provided that “[t]he boundary” in this area “shall begin at the point where the thalweg of the Muni River intersects a straight line traced from the Coco Beach point to the Dieke point”⁵. Then, from that point, the boundary shall “proceed along the thalweg of the Muni River and of the Utamboni”⁶. Article IV then stipulated that the boundary was to run along the Utamboni's thalweg until reaching the “first point at which the first degree north latitude crosses” that river⁷.

10. In other words, where the Parties possessed sufficient information about the area's geography, they delimited the boundary by means of natural features, namely the thalwegs of the Muni and Utamboni Rivers. But the Parties' understanding of the geography was less certain east of the Utamboni's intersection with the first degree north latitude. They were therefore constrained to continue east of that point by means of straight lines. Thus, as you can now see on your screens,

³ MEG, para. 3.18. Kingdom of Spain, *Negotiations with France to Sign a Border Treaty Between the Spanish and French Possessions on the West Coast of Africa, 1899-1900* No. 2 Report by the Political Section in Regard to the Foregoing Royal Order (22 Nov. 1899), pp. 14-15, Ambassador of France to the President of Council of Ministers, 24 Jan. 1900. MEG, Vol. IV, Annex 53; *Ibid.*, pp. 15-16, President of Council of Ministers to Ambassador of France, 29 Jan. 1900. The two States agreed for the negotiations to take place in Paris. *Ibid.*, p. 17, Ambassador of France to the President of Council of Ministers, 2 February 1900.

⁴ *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 Mar. 1901). MEG, Vol. III, Annex 4.

⁵ *Ibid.*, Art. 4. MEG, para. 3.36.

⁶ *Ibid.*

⁷ *Ibid.*

Article IV provided that, from that point, the boundary proceeded along the “parallel” formed by the line of first degree north latitude until it intersected the line of longitude 9 degrees east of Paris. From there, the boundary was “formed” by the meridian of 9 degrees east of Paris until it met the southern border of the German colony of Kamerun⁸.

III. The legal framework established in the 1900 Convention to modify the land boundary between the parties

11. While Article IV established the boundary following the course we have just reviewed, Spain and France nonetheless recognized that when further information was obtained about the interior’s geography, this would enable them to adjust the boundary by reference to natural features. They therefore included in the 1900 Convention provisions that both facilitated obtaining such information and empowered them to modify expeditiously the boundaries on the basis of that information.

12. Article VIII gives effect to this objective. Article VIII begins by noting that the “boundaries delimited by [the] Convention shall be recorded . . . on the attached maps”⁹. The map for the delimitation of the land territory adjacent to the Gulf of Guinea is found in Appendix III to the Convention. It is that map that you have been viewing on the screen¹⁰. As we said, you can see the boundary follows the thalweg of the Muni and Utamboni and that coincides with the depiction of natural geographical features. Where the geographic information is absent due to the parties’ lack of knowledge, the boundary follows straight lines: 1 degree north of latitude and the 9 degree meridian east of Paris. As you can see, those areas where we have the straight lines, represent much of the southern limits of the Spanish territory and the entirety of the eastern limits, and on the map they are literally cartes blanches.

13. Mr President, Members of the Court, Article VIII acknowledged this lacunae of information and provided a mechanism for redressing it. You have the provision in grey tab 17. The first paragraph of that provision, Article VIII, incorporates by reference the “reservations made in

⁸ *Ibid.*

⁹ *Ibid.*, Art. 8.

¹⁰ *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), Appendix III. MEG, Vol. III, Annex 4.

appendix no. 1 to the Convention”. In Appendix 1, the parties make the reservation that “[a]lthough the lines of demarcation traced on the maps” attached to the Convention “are generally assumed to be accurate”, the “lines” nevertheless “cannot be considered an absolutely correct representation until confirmed by new maps”¹¹.

14. And, in light of this dearth of accurate geographical information, the parties set out, in Appendix I, an agreed-upon process for modifying the boundary based on the accumulation of additional information¹². Specifically, the parties “agreed that the Commissioners or local Delegates of both Nations that are subsequently responsible for delimiting the boundaries on the ground of all or some of the boundaries, shall use as a basis the description of the boundaries as established in the Convention”¹³. The Appendix then goes on to provide that: “At the same time, [they, that is the Commissioners or Delegates] 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”.¹⁴ The Appendix then concludes by providing that “[t]he changes or corrections proposed by mutual agreement by said Commissioners or Delegates shall be submitted to the respective Governments for approval”¹⁵.

15. Mr President, Members of the Court, six points emerge from a contextual reading of the three provisions of the 1900 Convention that we have looked at — Articles IV, VIII and Appendix I.

16. The *first point*, is that while the delimitation set out in Article IV provided for straight lines in the interior, the parties accepted that information concerning the relevant geography was wanting in material respects. That is the only reasonable way to interpret Appendix I’s stipulation that the boundaries depicted on the maps appended to the Convention “cannot” be “considered . . . absolutely correct”¹⁶.

¹¹ *Ibid.*, Appendix I.

¹² MEG, paras. 3.38-3.41.

¹³ *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), Appendix I. MEG, Vol. III, Annex 4.

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ *Ibid.*

17. *Second*, the parties agreed to a process for obtaining geographical information and for modifying the boundaries to account for that newly acquired information. This, again, is the only reasonable way of interpreting their agreement that commissioners or local delegates would, as Appendix 1 provides, (a) be “responsible . . . for delimiting . . . the boundaries on the ground” and (b) that they could modify the lines of demarcation “to delimit them more accurately” having regard to the position of “roads”, “rivers”, “cities” and “villages”—in other words, the geographical features of the area¹⁷.

18. *Third*, in regard to the designation of commissioners or local delegates the 1900 Convention contemplates two alternatives. Article VIII provides for the designation of commissioners within a specified period of time — four months from the exchange of ratifications. As will be explained by Ms Pasipanodya who will follow me, the parties did in fact do this. However, Appendix I also provides for the possibility that “local Delegates of both Nations” may be charged with delimiting the boundaries, and in so doing may modify the lines of demarcation. Spain and France both already maintained robust administrations in their respective west African colonies, each overseen by a Governor-General. Thus, there was no need to formally appoint local delegates — they already existed. Mr Loewenstein will explain how the Governor-Generals of the respective colonies fulfilled this function in relation to the eastern boundary of what is now Equatorial Guinea.

19. *The fourth point* is that the commissioners and local delegates had significant flexibility in proposing modifications to the boundary. This is plain from the choice of words used in Appendix I as well as in Article VIII. Appendix I provided that commissioners and local delegates had to use the “description of the boundaries as established in the Convention” as “a *basis*” for their work, but provided that at the same time they “may modify [the] said lines of demarcation in order to delimit them more accurately”¹⁸. That high degree of flexibility is reinforced by Article VIII, which placed minimal constraints on the work of the commissioners, who were instructed to act not only in accordance with the Convention but to follow the “*spirit*” of its “provisions”¹⁹.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Ibid.*, Art. VIII.

20. *Fifth*, the fact that the Parties did not intend to impose substantive limits on how the boundary in the Gulf of Guinea region could be modified is underscored by the absence in the Convention of any limitations on those modifications, so long as the modifications had a “basis” in the Convention and followed its provisions’ “spirit”. This contrasts with the Parties’ treatment in the same treaty of the boundary in the Sahara. The course of that boundary in the Sahara was set out in Article I²⁰. As you can see on your screens, part of the delimitation there ran through the Cabo Blanco peninsula. With respect to that portion of the boundary, Article I specified that “the delimitation” to be done by the Commission as referenced in Article VIII “shall be done so that the western portion of the peninsula, including Bahia del Oeste/baie de l’Ouest, is allocated to Spain, and that Cabo Blanco/Cap Blanc and the eastern portion of the peninsula go to France”²¹. In other words, in that area the parties limited the scope of how the boundary could be modified. However, they imposed no similar limitation with respect to modifying any part of the boundary in the territory adjacent to the Gulf of Guinea.

21. *The sixth* point is this: while the 1900 Convention provided that modifications proposed by the commissioners or local delegates required approval, the Convention did not provide for any specific or formal procedure by which such approval was to be obtained or given. Appendix I of the Convention, which deals with this issue puts the matter in unmistakable terms. We had it on the screen earlier and I repeat the words again: “The changes or corrections proposed by mutual agreement by [such] Commissioners or Delegates shall be submitted to the respective Governments for approval”²². No particular process for approval is set out or mandated. With respect to this sixth point, two particular features stand out. The first is that the Convention does not require that in order to secure approval that the Parties engage in any bilateral process whatsoever. For example, the provision does not require that the Parties amend the treaty. What is required is that the proposed changes are submitted by the commissioners or delegates to their *respective* governments, and approval is given by those *respective* governments. In other words approval could be given individually. The second point here is that just as there is no prescribed process for approval, there

²⁰ *Ibid.*, Art. I.

²¹ *Ibid.*

²² *Ibid.*, Appendix I.

is also no prescribed form of approval set out. It could be effectuated by any means. That, of course, included approval by conduct and implied approval.

22. The point that there is no prescribed process, and that approval need not be given bilaterally, stands in contrast with the requirements imposed elsewhere in the 1900 Convention with regard to the giving of consent for other matters dealt with in that Convention. We can contrast what Appendix 1 provides for with Article X, which required that the Convention itself be ratified and that instruments of ratification “be exchanged in Paris within six months, or sooner if possible”²³. And then consider Article V. This provision largely concerns navigational and fishing rights in Spanish and French territorial waters in the areas under consideration, as well as in the Muni and Utamboni Rivers. Article V contemplates the adoption of a régime in relation to the policing of these issues, “as well as other matters” concerning “border relations”, “lighting, beacons, water management and use”. However, it provides that such a régime would be subject to agreements or conventions, or to be more accurate, “concerted arrangements, between the two Governments” — “arrangements concertés”²⁴. In other words, it was specifically provided there that a bilateral agreement between the two Governments was required. This is unlike modifying the land boundary, where a simplified approval process was available.

23. Mr President, Members of the Court, the summary of what we have just reviewed is that: (a) Article IV sets out a land boundary between Spanish and French territories; (b) the Parties provided that this boundary could be modified to take account of their expanding geographical knowledge of the interior; (c) they provided mechanisms for obtaining such information and proposing modifications; and (d) they did not require any particular or formal process for approving such modifications.

IV. Applicable law to the boundary modification procedure established in the 1900 Convention

24. This brings me to the last part of my presentation, which deals with the applicable law. Here, I can be brief because the rules are so firmly established. When Gabon and Equatorial Guinea attained independence, they succeeded to the territories of their respective colonial predecessors.

²³ *Ibid.*, Art. X.

²⁴ *Ibid.*, Art. V.

As the Chamber of the Court put it in the *Burkina Faso/Mali* case: “By becoming independent, a new State acquires sovereignty with the territorial base and boundaries left to it by the colonial power”²⁵. This, the Chamber explained, “is part of the ordinary operation of the machinery of State succession”²⁶. Applying these rules in *Cameroon v. Nigeria*, the Court determined that when French Cameroons became independent on 1 January 1960, it “acceded to independence on the basis of the boundaries inherited from the previous period”; Nigeria did as well when it achieved independence on 1 October 1960²⁷. The Court therefore determined that “on the date of its independence Cameroon succeeded to title over Bakassi as established by the Anglo-German Agreement of 11 March 1913”, that treaty having been found by the Court to have established the parties’ respective titles during the colonial period²⁸.

25. African States have emphasized the critical importance of the rules concerning succession to title as defined on the date of independence. In 1963, all 32 signatories to the Charter of the Organisation of African Unity, including Gabon, pledged their “[r]espect for the sovereignty and territorial integrity of each State and for its inalienable right to independent existence”²⁹. And, the following year, the Cairo Resolution of the African Heads of State on Border Disputes Among African States “solemnly declare[d] that all Member States pledge themselves to respect the borders existing on their achievement of national independence”³⁰. The head of State of Gabon was one of those signatories.

26. In view of these rules of international law, the spatial extent of the titles to which Equatorial Guinea and Gabon succeeded upon independence were determined by the boundaries in force on those critical dates. Here, they are the boundaries established by the 1900 Convention, as subsequently modified in accordance with the terms of that treaty. The manner in which the portions

²⁵ *Frontier Dispute (Burkina Faso/Republic of Mali)*, Judgment, *I.C.J. Reports 1986*, p. 568, para. 30.

²⁶ *Ibid.*

²⁷ *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)*, Judgment, *I.C.J. Reports 2002*, p. 332, para. 35.

²⁸ *Ibid.*, p. 414, para. 220.

²⁹ MEG, para. 6.6; Organisation of African Unity, *Charter* (25 May 1963), Art. 3, para. 3.

³⁰ Organisation of African Unity, *Resolutions Adopted by the First Ordinary Session of the Assembly of Heads of State and Government Held in Cairo, UAR* (17-21 July 1964), p. 17 (emphasis added). MEG, Vol. III, Annex 44.

of the boundary were so modified in the Utamboni and Kie River areas will be shown in the presentations that follow.

27. Mr President, this concludes my presentation. I am grateful to you and the Members of the Court for your kind attention. I ask that you invite Ms Pasipanodya to the podium to address title in the Utamboni River area.

The PRESIDENT: I thank Professor Dapo Akande for his statement, and I will now invite Ms Tafadzwa Pasipanodya to take the floor.

Ms PASIPANODYA:

THE UTAMBONI RIVER AREA

1. Mr President, Madam Vice-President, Members of the Court, it is a privilege to appear before you to address Equatorial Guinea's title to the continental territory of the Utamboni River area.

2. This region is located in the south-western part of Equatorial Guinea. As you can see, it features rivers such as the Utamboni and the Muni that flow westward before emptying into Corisco Bay, as well as several tributaries to the Utamboni, including the Mitombe and the Miang Rivers³¹.

3. You have heard Professor Akande explain how Spain and France initially delimited the boundary in this area in Article IV of the 1900 Convention. Specifically, where the parties had a relatively strong sense of the local geography, the boundary proceeded along the thalwegs of the Muni River and then of the Utamboni River³². But where their geographical knowledge was more limited — beginning at the Utamboni's intersection with the 1 degree north line of latitude — the boundary followed this parallel until reaching the 9 degree line of longitude east of Paris³³. To give effect to Spain and France's desire to modify the boundary so as to correspond to the area's

³¹ MEG, para. 2.13.

³² *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 Mar. 1901), Art. IV; MEG, Vol. III, Annex 4; MEG, para. 3.36.

³³ *Ibid.*; MEG, para. 3.37.

geography, Article VIII of the 1900 Convention required the parties to appoint a commission tasked with exploring the area and proposing boundary modifications to achieve this end³⁴.

4. As I will show, the Commission appointed by Spain and France in 1901 did this. Because its respective Governments approved its modifications, the modified boundary established the limits of the title to which Gabon and Equatorial Guinea succeeded upon independence³⁵.

I. The 1901 Commission proposes modifications to the 1900 Convention boundary

5. I begin with the Commission's appointment. The importance that the parties attached to the Commission's work is evident from the appointment of senior officials to lead it: the *Administrateur des colonies* on the French side and a *Commandant d'État Major* on the Spanish³⁶. Reflecting the nature of the Commission's mandate, both contingents included engineering expertise³⁷.

6. The Commission began its expedition at the mouth of the Muni River on 2 August 1901³⁸. In the words of Article VIII, its task was to "trac[e] 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"³⁹, and to propose how to "modify said lines"⁴⁰.

7. That is precisely what the Commission did. The Commission explained in its report that it "propose[d] as a natural boundary" the line which is "most appropriate" in view of the area's geography and that "best reflects the spirit of the treaty"⁴¹. This is not contested by Gabon⁴².

³⁴ *Ibid.*, Art. VIII; MEG, paras. 3.40-3.41; *Letter from the French Minister of Colonies to the Administrator of the Franco-Spanish Delimitation Commission* (19 June 1901), p. 1 ("qui est chargée de procéder à une délimitation des possessions franco-espagnoles du golfe de Guinée, en exécution de la Convention du 27 Juin 1900 ..."); MEG, Vol. IV, Annex 55.

³⁵ MEG, paras. 3.54-3.66.

³⁶ Franco-Spanish Delimitation Commission of the Gulf of Guinea, *Border Project: Southern Border* (1 Jan. 1902), p. 1; MEG, Vol. III, Annex 14; Vilches' Diary of Operations, *The Territory of Biafra*, Franco-Spanish Delimitation Commission (1901) (excerpt), p. 13; REG, Vol. III, Annex 8.

³⁷ *Ibid.*

³⁸ MEG, Vol. I, para. 3.45; *Itinerary followed by the Commission for the Delimitation of the Gulf of Guinea*, p. 1; MEG, Vol. III, Annex 12.

³⁹ *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 Mar. 1901), Art. VIII; MEG, Vol. III, Annex 4.

⁴⁰ *Ibid.*, App. No. I; MEG, Vol. III, Annex 4.

⁴¹ Franco-Spanish Commission for Border Demarcation of the Gulf of Guinea, *Border Project (Southern Border)* (1 Jan. 1902), p. 1; MEG, Vol. III, Annex 14.

⁴² CMG, para. 7.29.

8. The Commission also produced a map, now on your screens. As you can see, the proposed boundary does not follow the 1 degree north line parallel. It primarily follows watercourses, including the Muni, the Utamboni and the Mitombe Rivers. Where watercourses were unavailable, the Commission proposed that the boundary follow existing paths that connected those watercourses. The result was a boundary formed by physical features that was both easy to identify and allowed for shared use of routes of commerce, transportation and communication. And, by both taking into account the area's geography and following the general direction of the 1 degree north parallel, the boundary gave effect to the spirit of the Convention.

9. The Commission understood that the proposed boundary had implications for the settlements in the area. Some villages located in French territory under Article IV of the 1900 Convention would shift to Spanish territory, while other villages located in Spanish territory would shift to the French⁴³. The Commission therefore identified specific villages that would have Spanish or French nationality according to whether the village was situated north or south of the proposed boundary⁴⁴. For example, the Commission designated the village of Assang as Spanish even though it was *south* of the 1 degree north parallel, because it was north of the Utamboni River which formed the boundary that the Commission was proposing in this area⁴⁵.

II. Spain's exercise of sovereignty without protest from France or Germany

10. Spain and France approved the Commission's boundary modification in the Utamboni River area where they considered the Commission's work sufficiently accurate. In areas to the east, however, the work of the Commission was less accurate. This was primarily because of the Commission's inability to maintain the accuracy of its chronometers as it moved further eastward⁴⁶.

⁴³ MEG, para. 3.47; REG, para. 5.19; Franco-Spanish Delimitation Commission of the Gulf of Guinea, "Table of the Villages Recognized by the Delimitation Commission of Spanish Guinea with Names of Chiefs, Tribes, and Nationality According to the Border Project (Southern Border)" (2 Jan. 1902); MEG, Vol. III, Annex 15.

⁴⁴ *Ibid.*

⁴⁵ MEG, para. 3.47.

⁴⁶ MEG, Vol. I, para. 3.51; REG, Vol. I, para. 5.20; Kingdom of Spain, *Letter from the Colonial Section of the Ministry of State* (20 Apr. 1907), p. 141; MEG, Vol. IV, Annex 56. *See also*, The French Republic, *Letter from the French Ministry of Colonies to Ministry of Foreign Affairs* (1 Dec. 1906); MEG, Vol. IV, Annex 55*bis*; Kingdom of Spain, *Letter from the Minister of State Concerning the Borders of Congo and Spanish Guinea* (20 Apr. 1907); MEG, Vol. IV, Annex 58.

In these areas, the parties declined to approve the proposed modifications so the boundary there remained the parallel as described in Article IV of the 1900 Convention⁴⁷.

11. But Spain and France's approval of the modification in the Utamboni River area is plain from their conduct⁴⁸. For example, the town of Asobla, which was known to be located south of the 1 degree north parallel shortly after the Commission completed its work, fell to Spain under the Commission's modified boundary, because it was north of the Utamboni River. Spain developed the town into a significant regional centre, serving as the seat of Spain's administrative subdistrict and a key military post⁴⁹. Since at least 1905, Asobla housed Spain's police force, customs post, judge, health clinic, treasury administration and postal service⁵⁰. Spain collected taxes from Asobla and allocated a budget for the town⁵¹. Spain undertook all of these activities with France's full knowledge and absence of protest⁵². And, for its part, France carried out no acts of administration in Asobla or anywhere else in the area that had shifted to Spain as a result of the Commission's boundary⁵³.

12. In June 1914, after Germany assumed administration of the French territory, a Spanish-German Commission convened for the purpose of identifying natural boundaries in what the head of the German delegation referred to as "the southeast corner of Spanish Muni", that is, *to the east* of the Utamboni River area, where the previous Commission's proposals had not been accepted due to inaccuracies of its work⁵⁴.

13. You can see on your screens the villages identified by the Spanish-German Commission according to their respective nationalities, in the area where the 1901 Commission's modifications

⁴⁷ MEG, Vol. I, paras. 3.52-3.53.

⁴⁸ *Ibid.*, para. 3.52.

⁴⁹ MEG, Vol. I, para. 3.55; Spanish Territories of the Gulf of Guinea, *Decree on Territorial Division, Official Bulletin* (1 Mar. 1907), p. 256; MEG, Vol. V, Annex 114; L. Martín y Peinador, "Geographical Studies: Morocco and Spanish Places, Algeria, Tunisia and Tripoli, Sahara and Spanish Sahara, Spanish Mainland and Island Guinea, Moroccan Problem" (1908), pp. 234 and 240; MEG, Vol. VII, Annex 221.

⁵⁰ MEG, Vol. I, para. 3.55; A. Barrera, "What They are and What They Should be: the Spanish Possessions in the Gulf of Guinea" *General Marine Review*, Conference of the Royal Geographic Society (Nov. 1907), p. 3; MEG, Vol. IV, Annex 57.

⁵¹ MEG, Vol. I, para. 3.55; Royal Geographical Society, "Legislation and Provisions of the Central Administration", *Magazine of Colonial and Mercantile Geography*, Spain (1907), p. 506; MEG, Vol. VII, Annex 220.

⁵² MEG, para. 3.56; The Cottés Mission to South Cameroon, *Presentation of Scientific Results, According to Works of Various Members of the French Section of the Commission for Delimitation Between the French Congo and Cameroon (Southern Border) and the Documents Studied at the Museum of Natural History* (1911). MEG, Vol. III, Annex 16.

⁵³ *Ibid.*

⁵⁴ MEG, Vol. I, para. 3.58; The German Empire, Report No. 4, Imperial German Muni Expedition, Dr Olshausen (16 June 1914), p. 25; MEG, Vol. IV, Annex 63.

have been accepted. The Spanish villages are in orange; the German in purple. The Spanish-German Commission noted, for example, that Asobla was located in Spanish territory⁵⁵. In fact, Asobla became the seat of Spanish regional administration. The Commission also noted that Anguma and Nsogodam were Spanish⁵⁶. Each of these towns is located north of the modified boundary and south of the 1 degree north parallel. Germany, like France, did not protest Spanish administrative activities in this area⁵⁷. Nor did Germany carry out any administrative acts of its own.

14. This state of affairs in this area continued in the decades following France's resumption of sovereignty after World War I. Spain, without challenge by France, exclusively carried out sovereign acts of administration on its side of the modified boundary⁵⁸. Examples of these Spanish acts *à titre de souverain* are set out in our written pleadings. They include the censuses that Spain conducted in the area in 1932⁵⁹, in 1942⁶⁰, and again in 1950⁶¹. Each of these censuses included Asobla, Midyobo and Anguma, as well as many other locations south of the 1° north parallel. France protested none of them⁶².

15. Indeed, Spain continued to carry out the full range of governmental administration in the area that had shifted to it, including the operation of schools and courts, the enforcement of criminal laws, and the authorization and regulation of economic activity⁶³. For instance, Spain granted a major forestry concession, known as the Miang Concession, to the Spanish logging company Vasco

⁵⁵ 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 Aug. 1914); MEG, Vol. V, Annex 115.

⁵⁶ *Ibid.*

⁵⁷ MEG, Vol. I, para. 3.60; REG, para. 5.23; V. Rico, *Report Presented to the Courts by the Minister of State Concerning the Political and Economic Situation of the Spanish Possessions in West Africa in the Years 1916-1918* (1919); MEG, Vol. V, Annex 117.

⁵⁸ MEG, para. 3.61.

⁵⁹ EGR, para. 5.32; EGR, Figure R5.5; 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)); REG, Vol. III, Annex 11.

⁶⁰ MEG, paras. 3.63-64, Figure 3.11; Spanish Territories of the Gulf of Guinea, *Statistical Summaries: Provinces of Fernando Póo and Rio Muni 1948-1949*, Statistical Office of the General Government (1950), pp. 29, 44-61. MEG, Vol. V, Annex 127.

⁶¹ MEG, para. 3.65, Figure 3.12; Spanish Territories of the Gulf of Guinea, *Statistical Summaries: Provinces of Fernando Póo and Rio Muni 1948-1949*, Statistical Office of the General Government (1950), pp. 60-113. MEG, Vol. V, Annex 127.

⁶² MEG, para. 3.66.

⁶³ *Ibid.*, paras. 3.61-3.66.

Africana⁶⁴. The company established its headquarters in Elon, which became a substantial town located south of 1° north⁶⁵. According to Spain's 1950 census, the population directly associated with the Miang Concession made up the second-largest population centre in Spanish Cogo district⁶⁶. Spain administered and regulated the physical infrastructure associated with the Miang Concession, including 18 km of road located south of the 1° north line⁶⁷.

16. Spain's exercise of sovereignty in the Utamboni River area was plain for all to see. For example, in 1915, the United Kingdom Admiralty reported that Asobla housed a Spanish military garrison of 40-50 soldiers⁶⁸. When, in 1925, the League of Nations carried out a health survey in the area, it observed that Asobla, along with Mbung — another town located south of 1° north — were on "Spanish soil"⁶⁹. Moreover in 1937, French military intelligence indicated that Asobla and associated roads south of 1° north were Spanish⁷⁰. France's awareness that Spain was exercising sovereignty in the Utamboni River area, south of the 1° north line, is thus beyond doubt.

III. Spain's exercise of sovereignty without protest from Gabon

17. This was the situation that prevailed in the area through Gabon's independence on 17 August 1960. During the eight years that followed before Equatorial Guinea became independent on 12 October 1968, Spain continued to act as the sovereign in the Utamboni River area⁷¹. It conducted a census in 1965, for example⁷². As before, Spain's census included locations that had

⁶⁴ MEG, para. 3.64; 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. REG, Vol. III, Annex 19; MEG, Vol. II, Figure 3.13 (*Geographic Service of the Spanish Army: Topographic and Forestry Map of Guinea* (April 1952) (map excerpt, annotations added).

⁶⁵ EGR, para. 5.32; EGR, Vol. II, Annex P. U11.

⁶⁶ Spanish Territories of the Gulf of Guinea, *Statistical Summaries: Provinces of Fernando Póo and Rio Muni 1948-1949*, Statistical Office of the General Government (1950), pp. 80-91. MEG, Vol. V, Annex 127.

⁶⁷ EGR, Vol. I, para. 5.32; EGR, Vol. II, Figure 5.6.

⁶⁸ MEG, para. 3.60; United Kingdom, Cameroon, *Final Report: Enclosures Sept 1914 to May 1916* (3 October 1915), p. 10. MEG, Vol. IV, Annex 64.

⁶⁹ MEG, para. 3.62; A. Balfour et. al, *New Report on Tuberculosis and Sleeping Sickness in Equatorial Africa*, League of Nations Health Organization (April 1925). MEG, Vol. VII, Annex 224.

⁷⁰ The French Republic, *Synthesis of Information on: Spanish Guinea & German Acts in Cameroon under British Mandate*, Historical Archives of the Ministry of Defense, File R2 (1 August 1937) (excerpt), p. 13; MEG, Vol. V, Annex 123.

⁷¹ RG, paras. 5.37-5.47.

⁷² REG, para. 5.46, Figure R5.10; 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.

shifted to it under the modified boundary⁷³. And Spain continued to authorize and regulate economic activity, including awarding additional forestry concessions, such as the Vasco Africana Echam concession⁷⁴. Spain also created reserve areas for farming⁷⁵ and bitumen extraction⁷⁶. Each of these sovereign acts occurred south of the 1° north parallel. None elicited protest from Gabon⁷⁷.

18. In the face of Spain's continuous and unchallenged conduct on its side of the modified boundary in the Utamboni River area, from 1901 to Equatorial Guinea's independence in 1968, Gabon does not offer any countervailing French, German or Gabonese conduct. Nor does it produce a single protest against Spain's acts *à titre de souverain* in this area. Gabon's post-1960 conduct was thus consistent with France's conduct before it. The only possible conclusion is that the boundary proposed by the Commission was approved by Spain and France.

19. The map now appearing on your screens is a map of Gabon prepared by the French Government mapping agency Institut géographique national ("IGN") in 1961⁷⁸. As you can see, the boundary in the Utamboni River area does not follow the straight-line delimitation that had been established in Article IV of the 1900 Convention. Instead, the boundary follows the course of the Utamboni River, as proposed by the 1901 Commission. While the modified boundary depicted on the map does not reflect the full extent of the modification to which the parties had agreed in the eastern part of the Utamboni River area, it demonstrates that a very substantial modification had, in fact, occurred. The deep bulge labelled "Guinée Espagnole" that extends south of the 1° north parallel makes it impossible to contend otherwise.

20. Gabon's acceptance of that modification is evident in its diplomatic exchanges with Spain. On 10 December 1963, Gabon's Embassy in Spain sent a Note Verbale to Spain's Ministry of Foreign Affairs proposing negotiations "for the purpose of entering into a Convention aiming to

⁷³ *Ibid.*, pp. 37, 55, 69.

⁷⁴ *Ibid.*; The Spanish State, *Decree 1,505/1961* (20 July 1961), p. 9. REG, Vol. IV, Annex 24.

⁷⁵ *Ibid.*; Equatorial Guinea, Forestry Service, *Entry Register No. 4040* (16 September 1965), p. 13. REG, Vol. III, Annex 22.

⁷⁶ MEG, para. 3.105, Figure 3.27; ERG, para. 5.46. The Spanish State, *Order of 7 January 1964 Establishing the Provisional Reserve of Land with Bituminous Indications in the Río Muni Province, Entrusting the National Institute of Industry with Research Work*, Official Gazette (15 February 1964), p. 1. MEG, Vol. V, Annex 141.

⁷⁷ MEG, para. 3.107.

⁷⁸ MEG, Vol. II, Annex MR2; EGR, Figure 5.8.

define border relations between” Gabon and Spanish Rio Muni⁷⁹. In that regard, Gabon suggested that the parties establish a “list of villages on both sides of the border” that would be included in a “border zone” extending 10-15 km from the border⁸⁰.

21. Gabon’s proposal is telling. It proceeded on the premise that the parties already had an agreed border in that area; as a consequence, the proposed treaty need only address “border relations” not the border’s location.

22. Spain and Gabon ultimately agreed that the border zone should be fixed at 10 km from the border. On 23 April 1965, after Spain and Gabon had initialled the treaty’s text in January of that year⁸¹, Gabon’s Vice-President, on behalf of the Gabonese President, wrote to Spain’s Ambassador regarding the “exchange of letters” that would “determine the list of places and settlements included within the 10 kilometer zone”⁸². In that connection, Gabon transmitted “the list of Gabonese places included in the border zone”⁸³. Spain, for its part, assembled its own list of Spanish villages located within 10 kilometres of the border⁸⁴.

23. The locations of these villages merit careful attention. You can see them on your screens: the villages listed by Gabon are in green; the ones listed by Spain are in orange. Spain identified 20 villages south of the 1° north parallel as being Spanish. These included Asobla, Anguma and Midjobo. None of those 20 villages is included in Gabon’s list. Had Gabon considered them to be Gabonese, Gabon would surely have listed them. But it did not.

24. What the evidence shows is that, between 1901 and 1968, every instance of affirmative conduct *à titre de souverain* in the Utamboni River area, north of the river and south of the 1° north parallel, was undertaken by Spain. Neither France nor Germany nor Gabon ever exercised any form

⁷⁹ MEG, para. 3.103; EGR, para. 5.39; *Note Verbale from Embassy of Gabon in Spain to Ministry of Foreign Affairs of Spain* (10 December 1963). EGM, Vol. I, Annex 97.

⁸⁰ *Note Verbale from Embassy of Gabon in Spain to Ministry of Foreign Affairs of Spain* (10 December 1963), p. 1. MEG, Vol. I, Annex 97.

⁸¹ 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.

⁸² *Ibid.*, p. 2.

⁸³ *Ibid.*, pp. 2, 4-6.

⁸⁴ MEG, para. 3.104, Figure 3.26; 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), Appendix 2. MEG, Vol. III, Annex 8.

of sovereignty in the area. Unlike many cases before the Court, this case does *not* present a “battle of *effectivités*”. There is no competing conduct. Nor was there protest of Spain’s conduct from France, Germany or Gabon, despite Spain’s open and continuous exercise of sovereignty in the area.

25. In conclusion, Mr President, Spain’s legal title in the Utamboni River area is found in Article IV of the 1900 Convention, as modified by the parties in accordance with the procedures established in that Convention. Thus, when Equatorial Guinea succeeded to Spain’s title upon independence in 1968, it did so in respect of the territory encompassed by the boundary that had been proposed by the 1901 Commission and approved by the Parties.

26. Thank you very much, Mr President, Members of the Court. This concludes my remarks. May I ask that you call to the podium Mr Loewenstein, who will address Equatorial Guinea’s title to the land territory in the Kie River area.

The PRESIDENT: I thank Ms Pasipanodya. I now invite Mr Loewenstein to take the floor.

Mr LOEWENSTEIN:

THE KIE RIVER AREA

1. Mr President, Madam Vice President, Members of the Court, good afternoon. It is an honour to appear before you on behalf of the Republic of Equatorial Guinea. I will continue the presentation on title to Equatorial Guinea’s continental territory by addressing the Kie River area. That area, which you can see on your screens, covers the northern half of Equatorial Guinea’s eastern boundary with Gabon. As Professor Akande explained, this boundary was originally delimited in Article IV of the 1900 Convention by means of the 9 degree east of Paris meridian, beginning in the south at its intersection with the 1 degree north line of latitude, and extending to the north until meeting the boundary with the German colony of Kamerun.

2. As I will show, in 1919, Spain and France used the mechanisms established in the 1900 Convention to modify this boundary. As a result, for more than a century, its northern half has followed the north-flowing Kie River from its source in the south to the border with the colony of Kamerun — now the independent Republic of Cameroon — in the north. As you can see on your screens, after this agreed-upon modification, certain pockets of territory located east of the 9 degree

meridian shifted from French to Spanish sovereignty. Other areas located west of the meridian shifted from Spanish to French sovereignty. The territory shifted to Spain encompasses the towns of Ebebiyin in the north and Alen to the south, as well as a large number of villages.

3. Before addressing the 1919 agreement that modified the boundary, I pause to note that the desire to replace the 9 degree meridian as the boundary with north-south-oriented natural features had existed for nearly two decades prior to the Kie River's formal adoption as the boundary. As Ms Pasipanodya explained, in 1901 Spain and France appointed the Commissioners required under Article VIII of the 1900 Convention and dispatched them to obtain in the field geographical information about the area's interior and to propose modifications to the boundaries that had been described in Article IV. The Commission's resulting proposal for the eastern boundary, in the words of its report, "used bodies of water as natural land features" and where no bodies of water were available, "used indigenous paths" that were "permanent" in "nature" and "well-known among the inhabitants"⁸⁵. On the basis of such features, the Commission proposed deviations as large as 7 km from Article IV's straight-line boundary⁸⁶. You can see on your screens the Commission's proposal for the eastern boundary. It does not follow the meridian but rather the course of geographical features — mainly rivers — that track the meridian's general direction.

4. Now, as Ms Pasipanodya explained, due in large measure to the malfunctioning of its chronometers, the Commission was not, in fact, near the correct meridian. It was considerably to the west. For that reason, Spain and France declined to accept the Commission's proposed boundary modification in this area. But for present purposes, the pertinent point is that Spain and France agreed that the eastern boundary should be modified to follow rivers and other geographical features. The only disagreement was with the Commission's inadvertent westward shift of the proposed delimitation.

5. The relevant colonial authorities continued to agree that the boundary should follow geographical features after Germany obtained sovereignty over the territory lying on the eastern side of the border. As the Spanish Minister of State noted, Spain's Governor-General and Germany's

⁸⁵ Franco-Spanish Delimitation Commission of the Gulf of Guinea, *Border Project: Eastern Border* (1 Jan. 1902), pp. 9-10. MEG, Vol. III, Annex 13.

⁸⁶ *Ibid.*, p. 4.

Imperial Governor had, in 1912, “issued opinions” agreeing that the boundary should be modified to “allow the borders of both colonies to be established by natural boundaries, preferably rivers and the most notable land features, where rivers do not exist”⁸⁷. The respective Spanish and German authorities agreed that by making the boundary easily identifiable in this way, the modification would help avoid “friction”, that is, border incidents caused by uncertainty about the boundary’s precise location⁸⁸.

6. But for the commencement of the First World War, Spain and Germany would have formalized that modification, so that the border ran along the Kie River⁸⁹. However, Spain deferred doing so because it considered that taking this step during the hostilities could be viewed as inconsistent with its neutrality⁹⁰. What matters for present purposes is that the Spanish and German authorities both agreed that the boundary should be the Kie River, not the 9 degree meridian. That agreement is unsurprising. Not only would the river provide an easily identifiable boundary, under the 1908 treaty between France and Germany that set the border between German Kamerun and French Congo, the Kie River also delimited those colonial possessions immediately to the north⁹¹. You can see that boundary on your screens. And, I should add, even today, the Kie River still delimits their successors: Cameroon and Gabon.

7. When France supplanted Germany and re-occupied the territory lying to the east, Spain and France re-engaged on modifying Article IV’s eastern delimitation to take account of newly acquired information about the area’s geography — exactly as they had contemplated when concluding the 1900 Convention. Specifically, by letter dated 22 November 1917, Spain’s Governor-General proposed to the Governor of French Equatorial Africa that the eastern boundary be provisionally delimited by the Kie River⁹².

⁸⁷ Kingdom of Spain, *Letter from the Minister of State to the Ambassador of Spain to the German Empire* (4 Feb. 1914), p. 2. MEG, Vol. IV, Annex 62.

⁸⁸ *Ibid.*

⁸⁹ MEG, Vol. I, para. 3.68; *Letter from the Governor-General of Spanish Territories of Africa to the Governor of French Gabon* (22 Nov. 1917), pp. 1-2. MEG, Vol. IV, Annex 65.

⁹⁰ *Ibid.*

⁹¹ MEG, Vol. I, para. 3.68; *Convention between Germany and France to Define Precisely the Boundary Lines between the Kamerun and the French Congo Signed at Berlin* (signed 18 Apr. 1908, ratified on 28 July 1908), Art. 1. MEG, Vol. III, Annex 5.

⁹² MEG Vol. I, para. 3.69; *Letter from the Governor-General of Spanish Territories of Africa to the Governor of French Gabon* (22 No. 1917), pp. 2, 3. MEG, Vol. IV, Annex 65.

8. France responded by letter dated 24 January 1919⁹³. The Governor-General of French Equatorial Africa informed Spain's Governor-General that he had "received approval" for the boundary's modification⁹⁴. Specifically, he conveyed to Spain: "It is now agreed that the new border provisionally adopted for the eastern part of Spanish territory adjacent to the New Cameroon occupied territories shall be determined by the course of the N'KYE stream" beginning at the "stream's origin" in the south⁹⁵. The French Governor-General requested that his Spanish counterpart "communicate to me whether we are in complete agreement regarding the provisional adoption of these new borders"⁹⁶. There is no question that this had been approved in Paris. The French Minister of Colonies wrote that he had given this authorization on 21 November 1918⁹⁷.

9. Spain's response came by letter dated 1 May 1919⁹⁸. Its Governor-General informed the Governor-General of French Equatorial Africa that "I am completely in agreement with Your Excellency regarding the provisional adoption of considering as part of the eastern border of Spanish territory the course of the river N'kye"⁹⁹. Thus, by this exchange of notes between the colonies' respective highest officials, Spain and France agreed to modify the boundary so that, in the relevant part, it followed the Kie River. To the south, the boundary remained the straight line established in Article IV of the 1900 Convention.

10. Having reached this agreement on the eastern boundary's modification, Spain implemented it without objection from France. The evidence of Spanish *effectivités* is overwhelming. They are described in detail in the written pleadings¹⁰⁰. To cite but a few examples, in December 1920, Spain's Governor-General instructed the Spanish colonial authorities to construct a road along

⁹³ MEG, Vol. I, para. 3.69; *Letter No. [3 from the Governor-General of French Equatorial Africa to the Governor-General of the Spanish Territories of the Gulf of Guinea (24 Jan. 1919)*, p. 1. MEG, Vol. IV, Annex 66.

⁹⁴ *Letter No. 3 from the Governor-General of French Equatorial Africa to the Governor-General of the Spanish Territories of the Gulf of Guinea (24 Jan. 1919)*, p. 1. MEG, Vol. IV, Annex 66.

⁹⁵ *Ibid.*

⁹⁶ *Ibid.*

⁹⁷ *Letter from French Minister of Colonies to Minister of Foreign Affairs (24 Nov. 1919)*, p. 3. MEG, Vol. IV, Annex 68.

⁹⁸ *Letter from Spanish Governor-General of Spanish Guinea to His Excellency the French Governor-General of French Equatorial Africa (1 May 1919)*, p. 1. MEG, Vol. IV, Annex 67.

⁹⁹ *Ibid.*, p. 7.

¹⁰⁰ MEG, Vol. I, paras. 6.32, 6.37, 6.38, 6.40; REG, Vol. I, paras. 5.51, 5.62.

the eastern boundary as defined in the 1919 agreement¹⁰¹. In accordance with that agreement, the Spanish road traversed areas east of the 9 degree meridian and connected a large number of towns and settlements located on the Kie River's left bank¹⁰². You can see their locations on your screens. France did not protest.

11. Over the next five decades of colonial rule, Spain continued to carry out sovereign acts in the areas east of the meridian and west of the Kie River. Spain installed and maintained engineering structures along the Kie River road¹⁰³. Spain also carried out acts of civil administration¹⁰⁴. For instance, the census that Spain conducted in 1932 involved collecting data from the inhabitants of more than 20 towns located between the Kie River and the 9 degree meridian¹⁰⁵. You can see them on your screens. Spain conducted additional censuses over the decades, including in 1942¹⁰⁶ and 1950¹⁰⁷.

¹⁰¹ MEG, Vol. I, para. 3.74; Kingdom of Spain, *Letter No. 527 from the Spanish Governor-General* (8 December 1920), p. 1. MEG, Vol. IV, Annex 70.

¹⁰² *Ibid.*

¹⁰³ MEG, Vol. I, para. 3.76; Republic of Spain, *Order No. 328: Report on the Public Works Service of the Spanish Territories of the Gulf of Guinea* (1933), pp. 91-93. MEG, Vol. V, Annex 121; MEG, Vol. II, Figure 3.17; REG, Vol. I, para. 5.62.

¹⁰⁴ MEG, Vol. I, paras. 3.77-3.78; Republic of Spain, *Letter from the AT of Ebebiyin to the Governor-General of Spanish Territories of the Gulf of Guinea* (27 November 1938). MEG, Vol. IV, Annex 77; The Spanish State, *Letter from the Lead Engineer to the Governor-General of Spanish Territories of the Gulf of Guinea* (9 June 1939), p. 1. MEG, Vol. IV, Annex 78; The French Republic, *Synthesis of Information on: Spanish Guinea & German Acts in Cameroon under British Mandate*, Historical Archives of the Ministry of Defense, File R2 (1 August 1937), p. 14. MEG, Vol. V, Annex 123. "Territorial Demarcations — School Districts 1949-1959", *Official Gazette of the Spanish Territories in the Gulf of Guinea* (15 November 1952), p. 2. MEG, Vol. V, Annex 128; Spanish Territories of the Gulf of Guinea, *Official Gazette of the Gulf of Guinea Territories* (15 March 1948), p. 3. MEG, Vol. VII, Annex 225; Spanish Territories of the Gulf of Guinea, *Statistical Summaries: Provinces of Fernando Poo and Rio Muni 1948-1949*, Statistical Office of the General Government (1950), pp. 12-21, 23-30, 32-33. MEG, Vol. V, Annex 127; REG, Vol. I, para. 5.62; The Spanish State, Territories of the Gulf of Guinea, Ebebiyin Land Administration, *Ebebiyin Land Demarcation* (27 November 19[3]8). REG, Vol. III, Annex 13; The Spanish State, Territories of the Gulf of Guinea, N'sork Land Administration, *Letter from Military Administrator* (18 November 1938). REG, Vol. III, Annex 12; G. Nerin, *Spain's Last Forest Cannibals, Missionaries, and Civil Guards Account of the Conquest of the Fang in Spanish Guinea 1914-1930* (2010), p. 103. MEG, Vol. VII, Annex 236.

¹⁰⁵ REG, Vol. I, para. 5.62; Spanish Territories of the Gulf of Guinea, *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.

¹⁰⁶ MEG, Vol. I, para. 3.79; Spanish Territories of the Gulf of Guinea, *Statistical Summaries: Province of Rio Muni 1948-1949*, Statistical Office of the General Government (1950), pp. 3-21. MEG, Vol. V, Annex 127; MEG, Vol. II, Figure 3.18; REG, Vol. I, para. 5.62.

¹⁰⁷ MEG, Vol. I, para. 3.80; Spanish Territories of the Gulf of Guinea, *Statistical Summaries: Province of Rio Muni 1948-1949*, Statistical Office of the General Government (1950), pp. 60-113. MEG, Vol. V, Annex 127; MEG, Vol. II, Figure 3.19; REG, Vol. I, para. 5.62.

12. Spain's many other sovereign acts included, among other things, building schools and health facilities¹⁰⁸; granting land concessions¹⁰⁹; regulating indigenous markets and agricultural production¹¹⁰. Spain also built and operated transportation and communications infrastructure, such as an airfield, post office and radio station¹¹¹. These acts of administration occurred in towns and villages throughout the Kie River area.

13. Spain's administration of the town of Alen — located east of the 9 degree meridian and west of the Kie River — is illustrative. You can find in the annexes to the written pleadings extensive documentary evidence that, in this town, Spain maintained a military garrison¹¹², a school¹¹³, telephone and radio telegraphic equipment¹¹⁴, and transportation infrastructure¹¹⁵; that Spain carried out censuses¹¹⁶; and that Spain regulated farming¹¹⁷. In other words, Spain's *effectivités* covered the spectrum of sovereign administration.

¹⁰⁸ MEG, Vol. I, para. 3.78; Spanish Territories of the Gulf of Guinea, *Statistical Summaries: Provinces of Fernando Poo and Rio Muni 1948-1949*, Statistical Office of the General Government (1950), pp. 32-33. MEG, Vol. V, Annex 127.

¹⁰⁹ MEG, Vol. I, para. 3.82; Spanish Territories in the Gulf of Guinea, *Official Gazette of the Spanish Territories in the Gulf of Guinea No. 2*, Santa Isabel (15 January 1954), p. 1. MEG, Vol. V, Annex 129; The Spanish State, *Legal Notices, Official Bulletin of 15 November 1960* (15 November 1960), p. 1. MEG, Vol. V, Annex 136.

¹¹⁰ MEG, Vol. I, para. 3.78; Spanish Territories of the Gulf of Guinea, *Statistical Summaries: Provinces of Fernando Poo and Rio Muni 1948-1949*, Statistical Office of the General Government (1950), pp. 23-30. MEG, Vol. V, Annex 127.

¹¹¹ MEG, Vol. I, paras. 3.77, 3.81; The French Republic, *Documentation Plan of the Spanish Territories of the Gulf of Guinea, Ministry of Arms* (16 February 1940), p. 10. MEG, Vol. V, Annex 124; The French Republic, *Synthesis of Information on: Spanish Guinea & German Acts in Cameroon under British Mandate*, Historical Archives of the Ministry of Defense, File R2 (1 August 1937), p. 14. MEG, Vol. V, Annex 123.

¹¹² MEG, Vol. I, para. 3.75; G. Nerin, *Spain's Last Forest Cannibals, Missionaries, and Civil Guards Account of the Conquest of the Fang in Spanish Guinea 1914-1930* (2010), p. 196. MEG, Vol. VII, Annex 236.

¹¹³ MEG, Vol. I, para. 3.78; Spanish Territories of the Gulf of Guinea, *Official Gazette of the Gulf of Guinea Territories* (15 March 1948), p. 3. MEG, Vol. VII, Annex 225.

¹¹⁴ MEG, Vol. I, para. 3.81; The French Republic, *Documentation Plan of the Spanish Territories of the Gulf of Guinea, Ministry of Arms* (16 February 1940), p. 10. MEG Vol. V, Annex 124.

¹¹⁵ MEG, Vol. I, para. 3.76; Republic of Spain, *Order No. 328: Report on the Public Works Service of the Spanish Territories of the Gulf of Guinea* (1933), pp. 91-92, 177-178. MEG, Vol. V, Annex 121; REG, Vol. I, para. 5.62.

¹¹⁶ MEG, Vol. I, para. 3.79; MEG, Vol. II, Figure 3.18; Spanish Territories of the Gulf of Guinea, *Statistical Summaries: Province of Rio Muni 1948-1949*, Statistical Office of the General Government (1950), pp. 12-21. MEG, Vol. V, Annex 127; REG, Vol. I, para. 5.62; Spanish Territories of the Gulf of Guinea, *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)), p. 26. REG, Vol. III, Annex 11.

¹¹⁷ MEG, Vol. I, para. 3.78; Spanish Territories of the Gulf of Guinea, *Statistical Summaries: Provinces of Fernando Poo and Rio Muni 1948-1949*, Statistical Office of the General Government (1950), pp. 175-176. MEG, Vol. V, Annex 127.

14. France protested none of these acts, in Alen or elsewhere, despite being aware of them. For instance, in August 1937, French intelligence reported in detail on Spain's road, radio transmitters, and airfield, all located east of the 9 degree line¹¹⁸.

15. Indeed, France, which made no attempt to carry out any administrative acts of its own in these areas, fully understood that the 1919 agreement had modified the boundary. Consider this 1940 intelligence report on Spain's territories in the Gulf of Guinea¹¹⁹. This French report included the detailed 1:20,000 scale sketch-map of Ebebiyin and environs that you can see on your screens¹²⁰. Note the depiction of the Kie River in the east. France labelled the area *east* of the river as "Gabon". And France placed a row of Xs on the Kie's left bank, indicating the location of the boundary. This is the same symbol that France used to indicate the boundary with Cameroon, which you can see in the map's north-west corner.

16. The map's accompanying description confirms that France recognized the river, not the 9 degree meridian, as the boundary. In view of possible hostilities with Spain, France studied Ebebiyin's military vulnerabilities and recorded that Spain's military post at Ebebiyin was located 2 km from what French intelligence described as "the boundary"¹²¹. The Kie River is, in fact, 2 km from Ebebiyin.

17. France's recognition that the Kie River was the boundary is likewise crystal clear in a July 1953 confidential note prepared by France's Inspector General of the Overseas Geographical Services¹²². The Inspector General correctly observed that "having accepted the KYE as a practical boundary in 1919, we" — that is, France — "cannot consider" Spain's "occupation of the territory of the western bank and the construction of a road as an encroachment" into French territory¹²³. In

¹¹⁸ MEG, Vol. I, para. 3.81; The French Republic, *Synthesis of Information on: Spanish Guinea & German Acts in Cameroon under British Mandate*, Historical Archives of the Ministry of Defense, File R2 (1 August 1937), pp. 8, 9, 12. MEG, Vol. V, Annex 123.

¹¹⁹ MEG, Vol. I, para. 3.81; The French Republic, *Documentation Plan of the Spanish Territories of the Gulf of Guinea*, Ministry of Arms (16 February 1940). MEG Vol. V, Annex 124.

¹²⁰ The French Republic, *Documentation Plan of the Spanish Territories of the Gulf of Guinea*, Ministry of Arms (16 February 1940), p. 5. MEG, Vol. V, Annex 124.

¹²¹ *Ibid.*, p. 23.

¹²² Note No. 545 from the National Geographic Institute for the Political Affairs Directorate (8 July 1953). CMG, Vol. IV, Annex 98.

¹²³ *Ibid.*, p. 3.

placing the matter beyond doubt, the Inspector General described the territory in question as having been, in his words, “*acquired by Spain*”¹²⁴.

18. Gabon, like France before it, also accepted the modified boundary after its independence in 1960. For instance, Gabon did not protest when Spain carried out a census in 1965 in more than 30 towns east of the 9 degree meridian, the locations of which you can see on your screens¹²⁵.

19. Particularly revealing of Gabon’s acceptance of the Kie River as the boundary is Gabon’s actions in 1965 when negotiating its agreement with Spain concerning border crossings and related matters. As Ms Pasipanodya explained, Spain and Gabon listed villages located within 10 km of the border. You can see their locations on your screens. Each of the villages is located within 10 km of the Kie River. Spain listed as Spanish villages situated west of the Kie River and east of the 9 degree meridian¹²⁶. And, Gabon listed villages that are also within 10 km of the river. In fact, Gabon listed as Gabonese two villages — Assok II and Kos — situated *west* of that meridian and *east* of the Kie River¹²⁷. You can see these villages on your screens highlighted in white.

20. Placing beyond doubt that Gabon considered the river to be the boundary, Gabon included on its list the villages of Bilossi, Bengoye and Emieng. Each is located within 10 km of the Kie River and *more* than 10 km from the 9 degree meridian¹²⁸. They are highlighted in white on your screens. The conclusion is inescapable: Gabon accepted the Kie River as the boundary.

21. Gabon’s actions in this regard are unsurprising. They are perfectly consistent with its endorsement of the Cairo Resolution in 1964¹²⁹, which required respect for the boundaries in force at the moment African States achieved independence.

¹²⁴ *Ibid.*

¹²⁵ REG, Vol. I, para. 5.68; 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.

¹²⁶ MEG, Vol. I, para. 3.108; The Spanish State, Letter No. 383 *from the Presidency of the Government to the Spanish Ministry of Foreign Affairs* (20 October 1965), p. 3. MEG, Vol. IV, Annex 100.

¹²⁷ MEG, Vol. II, Figure 3.28; 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), p. 4. MEG, Vol. IV, Annex 99.

¹²⁸ 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), pp. 4-6. MEG, Vol. IV, Annex 99.

¹²⁹ MEG, Vol. I, para. 6.6; *Organisation of African Unity, Resolutions Adopted by the First Ordinary Session of the Assembly of Heads of State and Government Held in Cairo, UAR* (17-21 July 1964), p. 17. MEG, Vol. III, Annex 44.

22. Mr President, as Professor Akande explained, when Equatorial Guinea became independent, it succeeded to the titles held by Spain at that moment. The evidence establishes that Spain held title to all the territory east of the Kie River, which Spain and France had agreed upon as the boundary in that area.

23. Mr President, this concludes my presentation. Thank you for your kind attention. I ask that you invite the honourable Attorney General of Equatorial Guinea to the podium, who will address the situation following Equatorial Guinea's independence.

The PRESIDENT: I thank Mr Loewenstein for his statement. J'appelle maintenant à la barre S. Exc. Anatolio Nzang Nguema Mangué. Excellence, vous avez la parole.

M. NZANG NGUEMA MANGUE :

**LE COMPORTEMENT DES PARTIES SUR LE TERRITOIRE CONTINENTAL DEPUIS
L'INDÉPENDANCE DE LA RÉPUBLIQUE DE GUINÉE ÉQUATORIALE**

1. Monsieur le président, Mesdames et Messieurs les juges, c'est un honneur et un privilège de comparaître devant vous au nom de mon pays, la République de Guinée équatoriale. Il me revient de conclure la présentation de la Guinée équatoriale concernant les titres juridiques relatifs à son territoire continental.

2. Comme le professeur Akande l'a mentionné, je me référerai à la manière dont, conformément à la convention de 1900 et à ses modifications convenues entre l'Espagne et la France, la Guinée équatoriale a effectivement exercé sa souveraineté depuis son indépendance en 1968, exercice qui a été continu et pacifique dans les territoires transférés par l'Espagne dans les régions des rivières Outamboni et Kyé. Ces actes de la Guinée équatoriale constituent le type d'*effectivités infra legem* que la Cour a considéré susceptibles de confirmer l'existence d'un titre.

I. La région de la rivière Outamboni

3. Je traiterai, en premier lieu, de la région de l'Outamboni. Comme l'a expliqué M^{me} Pasipanodya, dans cette région, les Parties ont utilisé les procédures prévues par la convention pour modifier la frontière identifiée à l'article 4 de la convention de 1900, afin que celle-ci suive les

caractéristiques naturelles du terrain¹³⁰. Tout comme l'Espagne a administré *à titre souverain* la zone qui lui fut transférée en vertu de cette modification, comme M^{es} Loewenstein et Pasipanodya l'ont expliqué, la Guinée équatoriale a continué de le faire depuis son indépendance jusqu'à nos jours¹³¹.

4. La ville de Midyobo en est un bon exemple. M^{me} Pasipanodya a démontré comment l'Espagne y a exercé toutes les fonctions gouvernementales sans protestation de la part de la France ni du Gabon après son indépendance en 1960 jusqu'à l'indépendance de la Guinée équatoriale en 1968. Après son indépendance, la Guinée équatoriale a poursuivi l'exercice d'actes de gouvernement, en assurant par exemple le fonctionnement de l'école et du dispensaire, ainsi que la présence d'un poste militaire. Aujourd'hui encore, la Guinée équatoriale continue d'exercer les mêmes fonctions étatiques. Voici une image satellite récente de la ville de Midyobo, contenant des indications sur l'emplacement du poste militaire équato-guinéen, de l'école et du dispensaire¹³². Les effectivités de la Guinée équatoriale comprennent également l'acquisition de données de recensement de la population et l'organisation des élections¹³³.

5. Depuis son indépendance, jusqu'à présent, la Guinée équatoriale a accompli ces actes à titre souverain dans toute la région de la rivière Outamboni¹³⁴. Le Gabon n'a jamais accompli quelque acte de souveraineté que ce soit dans aucune de ces villes ni aucun de ces villages de cette région. Cela est le cas de *toutes* les localités figurant sur cette carte.

II. La région de la rivière Kyé

6. Il en va de même pour la région de la rivière Kyé, qui accueille entre autres la ville d'Ebebiyin, où j'ai grandi et complété mes études secondaires, alors que je travaillais en aidant les citoyens gabonais à transporter les produits qu'ils achetaient à Ebebiyin en Guinée équatoriale,

¹³⁰ Mémoire de la Guinée équatoriale (ci-après, « MGE »), par. 3.43-3.53 ; RGE, par. 5.16-5.21 ; Vilche's Diary of Operations, *The Territory of Biafra*, Franco-Spanish Delimitation Commission (1901), RGE, vol. III, annexe 8 ; Franco-Spanish Delimitation Commission of the Gulf of Guinea, *Border Project: Southern Border* (1 January 1902), RGE, vol. III, annexe 4.

¹³¹ RGE, par. 5.38-5.50.

¹³² RGE, par. 5.48, fig. R5.13.

¹³³ 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), P.U21 & P.U22 (preuve de recensement) et P.U24 & P.U25 (preuve de campagne électorale), RGE, vol. III, annexe 5 ; voir également, Republic of Equatorial Guinea, *Minutes of Village Council Elections in the District of Kogo, Village Council of Midjobo Esensus, Ngonekieñ, Mebonde-Elón Ngambe and Asobla* (Years 1996, 1997, and 1998), RGE, vol. V, annexe 55.

¹³⁴ RGE, par. 5.37-5.47.

principalement d'origine espagnole, et ramenaient jusqu'à la rive orientale de la rivière Kyé au Gabon.

7. Comme vous pouvez le voir sur cette image satellite, depuis l'indépendance de la Guinée équatoriale, la plus grande ville sur la rive de la rivière Kye, Ebebiyin, est devenue une ville importante de mon pays. Elle se situe entièrement à l'ouest de la rivière Kyé et s'étend des deux côtés du 9° méridien à l'est de Paris¹³⁵. La Guinée équatoriale déploie l'ensemble des activités gouvernementales dans cette ville, de part et d'autre du méridien¹³⁶.

8. La Guinée équatoriale exerce également sa souveraineté sur toutes les villes et tous les villages de la région de la rivière Kyé situés à l'est du 9° méridien et à l'ouest de la rivière. L'emplacement de certains d'entre eux est clairement établi sur cette image satellite. Dans toutes ces localités, la Guinée équatoriale administre, entre autres, des écoles, des hôpitaux, des postes militaires, ainsi que des infrastructures de communication et de transport¹³⁷. L'emplacement de ces installations est par exemple visible dans la ville d'Alen sur cette image satellite¹³⁸. Le poste de la garde coloniale espagnole à Alen a été créé par l'Espagne dans les années 1920. Bien que ce poste ne soit plus utilisé, l'armée de Guinée équatoriale a établi un nouveau poste dans le village très proche de Masama, également situé entre le méridien de 9° est de Paris et la rivière Kyé¹³⁹.

9. En effet, en 2011, les Parties ont concrètement exprimé leur reconnaissance mutuelle de la rivière Kyé comme frontière, avec l'inauguration de deux ponts sur celle-ci, l'un près d'Ebebiyin et l'autre près de Mongomo. Cet événement résulte d'un accord conclu entre la Guinée équatoriale et le Gabon en 2007, que vous pouvez trouver à l'onglet n° 18 de vos dossiers de procédure, et dont le titre est éloquent : « Accord entre le Gabon et la Guinée équatoriale relatif à la construction d'un pont

¹³⁵ *Ibid.*, par. 5.84.

¹³⁶ *Ibid.*, par. 5.82.

¹³⁷ RGE, par. 5.86 ; 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), annexes P.U1, P.U5-P.U8 (Mibonde), P.U10, P.U12, P.U13 (Elón), RGE, vol. III, annexe 5.

¹³⁸ RGE, par. 5.86.

¹³⁹ *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), RGE, vol. III, annexe 5 ; RGE, vol. II, annexe P.K.14.

frontalier et d'un tronçon de route bitumée avec des ouvrages entre les deux pays »¹⁴⁰. L'utilisation de l'expression « pont frontalier » ne peut signifier qu'une reconnaissance du fait que le pont est situé sur la frontière. En d'autres termes, l'accord est basé sur la reconnaissance commune des Parties que les ponts traversent la frontière, et les ponts traversent la rivière Kyé¹⁴¹.

10. En outre, l'article 2 de l'accord stipule que la ville d'Ebebiyin se trouve « en Guinée équatoriale »¹⁴². Cela correspond précisément à ce que l'Espagne et la France avaient convenu en 1919 lorsqu'elles ont établi que la rivière Kyé serait la frontière. Et c'est précisément ce que la carte française d'Ebebiyin de 1940 rapporte, ainsi que M. Loewenstein l'a montré. Comme la Kyé est une frontière, la Guinée équatoriale et le Gabon disposent d'installations douanières et d'immigration de part et d'autre de leurs côtés respectifs de cette rivière. Voici leur emplacement. Celles de la Guinée équatoriale sont situées à l'est du 9^o méridien, sans objection de la part du Gabon.

11. Le Gabon n'a pas protesté lors de la construction des ponts frontaliers sur la rivière Kyé. Au contraire, le président Ali Bongo du Gabon a assisté à leur inauguration officielle en 2011. En ce qui concerne le pont de Mongomo, il a déclaré que cet heureux événement « résulte de l'accord signé entre nos deux pays en 2007 », qui « comporte [la] construction d'un pont frontalier situé sur la rivière Kyé entre le village de Medzeng en territoire gabonais et la ville de Mongomo en territoire de Guinée équatoriale »¹⁴³. Vous avez vu sur vos écrans une image satellite de la zone décrite par le président du Gabon. Comme vous pouvez le constater, la Guinée équatoriale maintient des contrôles frontaliers et douaniers de son côté de la rivière Kyé, tout comme le Gabon le fait du sien. En d'autres termes, la rivière Kyé est la frontière, exactement comme la France et l'Espagne en étaient convenues et comme le président Ali Bongo du Gabon l'a réaffirmé à la cérémonie d'inauguration des ponts.

¹⁴⁰ RGE, par. 5.71-5.73 ; 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, annexe 176.

¹⁴¹ 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), annexes P.E1 (poste d'immigration), P.E2 (poste douanier), P.E3 (poste de santé), P.E4 (poste de contrôle frontalier du Gabon), P.E5 (signal indiquant la direction de la rivière Kyé), P.E6 (tour de téléphonie cellulaire de GETESA), P.E7 (route circulaire), RGE, vol. III, annexe 5.

¹⁴² 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, annexe 176.

¹⁴³ RGE, par. 5.72 ; Republic of Equatorial Guinea, Presidential Press, Video "Inauguration of the Ebebiyin and Mongomo Bridges" (4 August 2011), at 23:28, RGE, vol. II, annexe V3 (transcript at RGE, vol. V, annexe 66).

12. Monsieur le président, Mesdames et Messieurs les juges, pour résumer, dans les régions de l'Outamboni et de la rivière Kyé, l'Espagne, et par la suite la Guinée équatoriale, a administré à *titre souverain* et de manière continue et exclusive les nombreux villes, villages et hameaux de ces deux régions. Il est donc fondamental pour la stabilité de la région que la Cour reconnaisse que, même si la convention de 1900 a force de loi entre les Parties, la frontière entre les Parties n'est pas simplement celle énoncée par son article 4. Le texte de la convention lui-même permettait aux Parties de modifier cette frontière. Les effectivités *infra legem* que le professeur Akande, M^{me} Pasipanodya, M. Loewenstein et moi-même avons décrites reflètent ces modifications convenues entre Parties. Selon les termes du compromis, la Cour peut et doit en tenir compte. Ne pas le faire, et considérer simplement la convention de 1900 comme un titre documentaire contenant des lignes droites aveugles — ce que les puissances coloniales n'ont elles-mêmes pas fait —, permettrait au Gabon de mettre en danger des décennies de paix et de coexistence établie dans les régions de la rivière Outamboni et de la rivière Kyé.

13. Monsieur le président. Je vous remercie de votre attention et vous prie d'appeler M^e Alison Macdonald à la barre.

Le PRÉSIDENT: Je remercie S. Exc. le procureur général pour son exposé. I call now on Ms Alison Macdonald to take the floor. You have the floor, Madam.

Ms MACDONALD:

**THE LEGAL TITLES, TREATIES AND INTERNATIONAL CONVENTIONS
HAVING THE FORCE OF LAW FOR DELIMITING
THE PARTIES' MARITIME BOUNDARY**

1. Mr President, Madam Vice-President, Members of the Court, it is an honour for me to appear before you on behalf of the Republic of Equatorial Guinea.

2. I will address the legal titles, treaties and international conventions that have the force of law in the relations between Equatorial Guinea and Gabon in so far as they relate to the delimitation of the maritime boundary.

3. As you have heard from Professor d'Argent, Article 1 of the Special Agreement determines the Court's jurisdiction. As he explained, the Court's jurisdiction is not limited to "preuves

documentaires”, but extends to identifying *all* applicable “legal titles, treaties and international conventions”¹⁴⁴.

4. When it comes to the issue of the maritime boundary between the Parties, Gabon argues that in the document presented in 2003, the Parties “definitively established” the boundary between the two States¹⁴⁵. Gabon asks you to conclude that this document not only has the force of law between the Parties, but, even more remarkably, that it is the *only* legal title which has that force with respect to the delimitation of the maritime boundary. In this way, Gabon seeks to exclude obligations under general international law, as well as the 1900 Convention and the United Nations Convention on the Law of the Sea.

5. Equatorial Guinea respectfully submits that Gabon’s case here is wrong in *two* fundamental respects.

6. *Firstly*, Gabon fails to establish that any treaty was adopted or agreed in 1974 that could be said to belong on the list of applicable legal titles, let alone to the exclusion of all others. You will recall that Professor Sands showed you the text of the key provisions of this mysterious document, in at least three different versions. These make clear on their own terms that no definitive maritime boundary was agreed in September 1974. And such a conclusion, we say, is only strengthened when one considers that, as you heard from Mr Parkhomenko, the Parties’ conduct between September 1974 and May 2003 would be inexplicable if the maritime boundary really had been agreed in 1974. Why, we ask, would the Parties have proceeded, in the years that followed, to negotiate a maritime boundary which had already been established, let alone by using a different approach to the one taken in the 2003 document, and let alone with no mention of the alleged treaty which had supposedly settled the issue years before? Why, we ask, did the document never surface when the Parties sought to establish a joint development zone — in the same maritime area which had already, allegedly, been delimited in 1974? Why did Gabon never refer to the document when it concluded maritime boundary treaties with third States?

7. Far from being the *only* legal title invoked by the Parties, as you have seen, this alleged agreement was never invoked *at all* for nearly three decades after it was supposedly concluded. In

¹⁴⁴ *Special Agreement between the Gabonese Republic and the Republic of Equatorial Guinea* (15 November 2016).

¹⁴⁵ See e.g. RG, Vol. I, para. 3.18.

all the circumstances, taking account of the document's text and the Parties' 30 years of conduct, Equatorial Guinea submits that, whichever piece of paper Gabon seeks to rely on, it simply cannot be regarded as a "legal titl[e], treaty, or convention . . . with the force of law between the Parties"¹⁴⁶.

8. I now turn to the *second* fundamental flaw in Gabon's case. This is Gabon's attempt to exclude from consideration any legal titles *other* than the agreement that they say — wrongly — was adopted in 1974.

9. Starting with the 1900 Convention, Gabon does not dispute that this has the force of law between the Parties¹⁴⁷. Mr Parkhomenko has shown you that both Parties repeatedly invoked it during their maritime boundary negotiations, recognizing it time and time again as one of the fundamental legal instruments needed to delimit the boundary. Gabon now seeks to sideline this Convention on the basis that it is "silent with regard to the demarcation of the maritime boundary"¹⁴⁸. Inconsistently, however, Gabon concedes that the Convention "refers to two elements relevant to maritime spaces", one of which is "the terminal point of the land boundary"¹⁴⁹.

10. Now this, we say, is fundamental. This Court — and other courts and arbitral tribunals — have stated time and again that a treaty that establishes the land boundary terminus is relevant for the delimitation of the maritime boundary between the two States¹⁵⁰. As Gabon accepts, the 1900 Convention does just that for, as the famous expression records, the land dominates the sea¹⁵¹. It is impossible to determine the Parties' maritime boundary without referring to the land boundary terminus — at the risk of stating the obvious, this is the essential starting-point for any delimitation. Thus the 1900 Convention, so far as it establishes the land boundary terminus, is an essential legal

¹⁴⁶ *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.

¹⁴⁷ *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.

¹⁴⁸ CMG, Vol. I, para. 9.9.

¹⁴⁹ *Ibid.*

¹⁵⁰ See e.g. *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, Judgment, *I.C.J. Reports 2021*, pp. 241-241, para. 98.

¹⁵¹ See e.g. *North Atlantic Coast Fisheries Case (Great Britain, United States)*, Grounds for the Dissent to the Award on Question V by Dr Luis M. Drago, Reports of International Arbitral Awards (RIAA) XI, 167, p. 205; *Grisbadarna Case (Norway, Sweden)*, Arbitral Award of 23 October 1909, RIAA XI, 155, 159; and *North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands)*, Judgment, *I.C.J. Reports 1969*, p. 51, para. 96.

instrument in the delimitation exercise, and it falls squarely within the category of legal titles covered by Article 1 of the Special Agreement.

11. Turning to the United Nations Convention on the Law of the Sea, to which both States have been party since the late 1990s, Gabon fully accepts that it “governs the principles applicable to maritime delimitation between two States whose coasts face each other or are adjacent”¹⁵². But Gabon then, wrongly, goes on to argue that the UN Convention is not “in itself [a] legal title”. It argues that the Convention “establish[es] a vocation to a title” instead of constituting title itself¹⁵³. As Professor d’Argent recalled by referring to the *Gulf of Maine* case, a “‘legal title’ . . . is always and exclusively the effect of a legal operation”¹⁵⁴. Because it is therefore absurd to separate the title from the operation that gives rise to it, the Special Agreement allows the Court to identify treaties and conventions that, by their legal operation, result in and thereby *constitute* the title. And, as Mr Parkhomenko showed, the Parties have consistently invoked the UN Convention during their negotiations as a treaty essential for equitable delimitation of their maritime boundary. This is hardly surprising, given that the Convention provides the essential legal framework for the delimitation. Again, therefore, this Convention falls squarely within the scope of Article 1 of the Special Agreement.

12. Finally, turning to customary international law, Equatorial Guinea relies on the well-established principle that the title of a State to adjacent maritime areas “is based on the principle that the land dominates the sea through the projection of the coasts or the coastal fronts”¹⁵⁵. This is because “the land is the legal source of the power which a State may exercise over territorial extensions seaward”¹⁵⁶. And land in this context, of course, includes islands.

13. Now here, Gabon seeks to mischaracterize Equatorial Guinea as invoking customary international law *as a legal title* to the adjacent waters. But as you will appreciate this is not

¹⁵² CMG, Vol. I, para. 9.14.

¹⁵³ *Ibid.*

¹⁵⁴ *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.

¹⁵⁵ *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment, I.C.J. Reports 2009, p. 89, para. 77.

¹⁵⁶ *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, I.C.J. Reports 2012 (II), p. 674, para. 140, citing to *North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands)*, Judgment, I.C.J. Reports 1969, p. 51, para. 96.

Equatorial Guinea's position. As this Court has made clear, title to the relevant water — including the territorial sea — is *based on* the principle which I just outlined. And again, that principle is essential to the delimitation of the Parties' maritime boundary: the legal titles to the maritime area in Corisco Bay and the Gulf of Guinea emanate from the Parties' respective titles to insular and continental land territory. And the principle of customary international law which makes this so must necessarily "concern" the delimitation of the Parties' maritime boundary, thus falling again within Article 1 of the Special Agreement.

14. In conclusion, therefore, Equatorial Guinea respectfully asks the Court to find that — firstly, the Parties have never reached any agreement delimiting their maritime boundary; and — secondly, the legal titles, treaties and international agreements that concern the delimitation of the Parties' common maritime boundary include

- (i) the 1900 Convention in so far as it establishes a land boundary terminus;
- (ii) the United Nations Convention on the Law of the Sea; and
- (iii) customary international law in so far as it recognizes that a coastal State's entitlement and legal title to adjacent maritime areas derive from its title to land territory.

15. Mr President, Members of the Court, I thank you for your attention. This concludes the first round of the oral argument by Equatorial Guinea.

The PRESIDENT: I thank Ms Alison Macdonald. Her statement brings then to an end the first round of oral argument of Equatorial Guinea. The hearings in this case will resume on Wednesday 2 October, at 10 a.m., for the opening of Gabon's first round of oral argument. The sitting is adjourned.

The Court rose at 4.35 p.m.
