Corrigé
Corrected

CR 2024/33

International Court of Justice

THE HAGUE

Cour internationale de Justice

LA HAYE

YEAR 2024

Public sitting

held on Thursday 3 October 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 jeudi 3 octobre 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
		Abraham
		Yusuf
		Xue
		Iwasawa
		Nolte
		Charlesworth
		Brant
		Gómez Robledo
		Cleveland
		Aurescu
		Tladi
	Judges *ad hoc*	Wolfrum
		Pinto
	Registrar	Gautier

Présents : M. Salam, président
M^me^ Sebutinde, vice-présidente
MM. Tomka
Abraham
Yusuf
M^me^ Xue
MM. Iwasawa
Nolte
M^me^ Charlesworth
MM. Brant
Gómez Robledo
M^me^ Cleveland
MM. Aurescu
Tladi, juges
M. Wolfrum
M^me^ Pinto, juges *ad hoc*

M. Gautier, greffier

The Government of the Gabonese Republic is represented by:

HE Mr Régis Onanga Ndiaye, Minister for Foreign Affairs, in charge of Sub-Regional Integration and Gabonese Living Abroad;

HE Mr Paul-Marie Gondjout, Minister of Justice, Keeper of the Seals;

HE Ms Marie-Madeleine Mborantsuo, Honorary President of the Constitutional Court,

as Agent;

HE Mr Guy Rossatanga-Rignault, Secretary General of the Office of the President of the Republic,

as Co-Agent, Counsel and Advocate;

HE Mr Serge Mickoto Chavagne, Ambassador of the Gabonese Republic to the Kingdoms of Belgium and the Netherlands, to the Grand Duchy of Luxembourg and to the European Union,

as Co-Agent;

Mr Ben Juratowitch, KC, member of the Bar of England and Wales, member of the Paris Bar, Essex Court Chambers, London,

Ms Alina Miron, Professor of International Law, University of Angers, member of the Paris Bar, Founding Partner of FAR Avocats,

Mr Daniel Müller, member of the Paris Bar, Founding Partner of FAR Avocats,

Mr Alain Pellet, Professor Emeritus, University Paris Nanterre, former Chairperson of the International Law Commission, member and former President of the Institut de droit international,

Ms Isabelle Rouche, member of the Paris Bar, Asafo & Co.,

Ms Camille Strosser, member of the Paris Bar and of the Bar of the State of New York, Freshfields Bruckhaus Deringer LLP,

Mr Romain Piéri, member of the Paris Bar, Founding Partner of FAR Avocats,

Ms Élise Ruggeri Abonnat, Senior Lecturer, University of Lille,

Mr Ysam Soualhi, PhD candidate, Faculty of Law, University of Angers,

Mr David Swanson, David Swanson Cartography, LLC,

Mr Samir Moukheiber, trainee lawyer, Freshfields Bruckhaus Deringer LLP,

as Counsel and Advocates.

Le Gouvernement de la République gabonaise est représenté par :

S. Exc. M. Régis Onanga Ndiaye, ministre des affaires étrangères, chargé de l'intégration sous-régionale et des Gabonais de l'étranger ;

S. Exc. M. Paul-Marie Gondjout, ministre de la justice, garde des sceaux ;

S. Exc. M^me^ Marie-Madeleine Mborantsuo, présidente honoraire de la Cour constitutionnelle,

comme agente ;

S. Exc. M. Guy Rossatanga-Rignault, secrétaire général de la présidence de la République,

comme coagent, conseil et avocat ;

S. Exc. M. Serge Mickoto Chavagne, ambassadeur de la République gabonaise près les Royaumes de Belgique et des Pays-Bas, le Grand-Duché de Luxembourg et auprès de l'Union européenne,

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M. Daniel Müller, membre du barreau de Paris, associé fondateur du cabinet FAR Avocats,

M. Alain Pellet, professeur émérite de l'Université Paris Nanterre, ancien président de la Commission du droit international, membre et ancien président de l'Institut de droit international,

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M^me^ Camille Strosser, membre des barreaux de Paris et de l'État de New York, cabinet Freshfields Bruckhaus Deringer LLP,

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M^me^ Élise Ruggeri Abonnat, maîtresse de conférences, Université de Lille,

M. Ysam Soualhi, doctorant à la faculté de droit de l'Université d'Angers,

M. David Swanson, David Swanson Cartography, LLC,

M. Samir Moukheiber, avocat stagiaire, cabinet Freshfields Bruckhaus Deringer LLP,

comme conseils et avocats.

The Government of the Republic of Equatorial Guinea is represented by:

HE Mr Domingo Mba Esono, Minister Delegate of Hydrocarbons and Mining Development,

as Agent;

HE Mr Carmelo Nvono Ncá, Ambassador of the Republic of Equatorial Guinea to the French Republic, the Principality of Monaco and the United Nations Educational, Scientific and Cultural Organization,

as Co-Agent;

HE Mr Simeón Oyono Esono Angué, Minister of State for Foreign Affairs, International Cooperation and Diaspora,

HE Mr Pastor Micha Ondó Bile, Adviser to the Presidency of the Government,

HE Mr Juan Olo Mba Nseng, Adviser to the Presidency of the Government,

HE Mr Rafael Boneke Kama, Adviser to the Presidency of the Government,

HE Mr Lamberto Esono Mba, Secretary General of the Ombudsman, Lawyer at the Malabo Bar Association,

HE Ms Rosalía Nguidang Abeso, Director General of Borders, Lawyer at the Malabo Bar Association,

HE Mr Pascual Nsue Eyi Asangono, Director General of Consular, Cultural, Legal and Diaspora Affairs, Lawyer at the Malabo Bar Association,

HE Mr Miguel Oyono Ndong Mifumu, Ambassador of the Republic of Equatorial Guinea to the Kingdom of Belgium,

Mr Francisco Moro Nve, State Attorney, member of the Malabo Bar Association,

Mr Aquiles Nach Dueso, Lawyer at the Malabo Bar Association,

HE Mr Domingo Esawong Ngua, official in the Ministry of National Defence,

Mr Asensi Buanga Beaka, official in the Ministry of Hydrocarbons and Mining Development,

as Members of the Delegation;

Mr Derek C. Smith, Attorney at Law, Foley Hoag LLP, member of the Bar of the District of Columbia,

HE Mr Anatolio Nzang Nguema Mangue, Attorney General of the Republic of Equatorial Guinea, Lawyer at the Malabo Bar Association,

Mr Dapo Akande, Chichele Professor of Public International Law, University of Oxford, Barrister, member of the Bar of England and Wales, Essex Court Chambers, member of the International Law Commission,

Mr Pierre d'Argent, Full Professor, Université catholique de Louvain, member of the Institut de droit international, Foley Hoag LLP, member of the Bar of Brussels,

Le Gouvernement de la République de Guinée équatoriale est représenté par :

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comme agent ;

S. Exc. M. Carmelo Nvono Ncá, ambassadeur de la République de Guinée équatoriale auprès de la République française, de la Principauté de Monaco et de l'Organisation des Nations Unies pour l'éducation, la science et la culture,

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S. Exc. M. Simeón Oyono Esono Angué, ministre d'État chargé des affaires étrangères, de la coopération internationale et de la diaspora,

S. Exc. M. Pastor Micha Ondó Bile, conseiller auprès de la présidence du Gouvernement,

S. Exc. M. Juan Olo Mba Nseng, conseiller auprès de la présidence du Gouvernement,

S. Exc. M. Rafael Boneke Kama, conseiller auprès de la présidence du Gouvernement,

S. Exc. M. Lamberto Esono Mba, secrétaire général du bureau du défenseur des droits, juriste, barreau de Malabo,

S. Exc. M^me^ Rosalía Nguidang Abeso, directrice générale des frontières, juriste, barreau de Malabo,

S. Exc. M. Pascual Nsue Eyi Asangono, directeur général des affaires consulaires, culturelles, juridiques et de la diaspora, juriste, barreau de Malabo,

S. Exc. M. Miguel Oyono Ndong Mifumu, ambassadeur de la République de Guinée équatoriale auprès du Royaume de Belgique,

M. Francisco Moro Nve, avocat de l'État, membre du barreau de Malabo,

M. Aquiles Nach Dueso, juriste, barreau de Malabo,

S. Exc. M. Domingo Esawong Ngua, fonctionnaire au ministère de la défense nationale,

M. Asensi Buanga Beaka, fonctionnaire au ministère des hydrocarbures et du développement minier,

comme membres de la délégation ;

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Mr Yuri Parkhomenko, Attorney at Law, Foley Hoag LLP, member of the Bar of the District of Columbia,

Ms Tafadzwa Pasipanodya, Attorney at Law, Foley Hoag LLP, member of the Bars of the District of Columbia and the State of New York,

Mr Paul S. Reichler, Attorney at Law, 11 King's Bench Walk, member of the Bars of the Supreme Court of the United States and the District of Columbia,

Mr Philippe Sands, KC, Professor of International Law, University College London, Barrister, 11 King's Bench Walk,

as Counsel and Advocates;

Mr Diego Cadena, Attorney at Law, Foley Hoag LLP, member of the Bar of Ecuador,

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Mr Baldomero Casado, Attorney at Law, Foley Hoag LLP, member of the Texas and Madrid Bars,

Mr Coalter G. Lathrop, Sovereign Geographic, member of the Bar of North Carolina,

Mr Remi Reichhold, Barrister, 11 King's Bench Walk,

Mr Peter Tzeng, Attorney at Law, Foley Hoag LLP, member of the Bars of the District of Columbia and the State of New York,

Ms Elena Sotnikova, Foley Hoag LLP,

Mr M. Arsalan Suleman, Attorney at Law, Foley Hoag LLP, member of the Bars of the District of Columbia and the State of New York,

as Counsel;

Ms Gretchen Sanchez, Foley Hoag LLP,

Ms Nancy Lopez, Foley Hoag LLP,

as Assistants.

M. Andrew B. Loewenstein, avocat au cabinet Foley Hoag LLP, membre du barreau du Commonwealth du Massachusetts,

M^me^ Alison Macdonald, KC, *barrister*, Essex Court Chambers (Londres),

M. Yuri Parkhomenko, avocat au cabinet Foley Hoag LLP, membre du barreau du district de Columbia,

M^me^ Tafadzwa Pasipanodya, avocate au cabinet Foley Hoag LLP, membre des barreaux du district de Columbia et de l'État de New York,

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M^me^ Elena Sotnikova, cabinet Foley Hoag LLP,

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comme conseils ;

M^me^ Gretchen Sanchez, cabinet Foley Hoag LLP,

M^me^ Nancy Lopez, cabinet Foley Hoag LLP,

comme assistantes.

The PRESIDENT: Please be seated. The sitting is open.

I would like to welcome once more the eminent representatives of the Gabonese and Equatorial Guinean Governments who are in the Great Hall of Justice today. In particular, I recognize the presence of His Excellency Mr Simeón Oyono Esono Angué, Minister of Foreign Affairs, International Cooperation and the Diaspora of the Republic of Equatorial Guinea, and their excellencies Mr Régis Onanga Ndiaye, Minister for Foreign Affairs, in charge of Sub-Regional Integration and Gabonese Living Abroad, and Mr Paul-Marie Condjout, Minister of Justice, Keeper of the Seals as leaders of their respective national authorities present at the Court today.

La Cour se réunit cet après-midi pour entendre le second tour de plaidoiries du Gabon. Je donne maintenant la parole au Professeur Pierre d'Argent. Vous avez la parole, Monsieur.

M. D'ARGENT : Je vous remercie, Monsieur le président.

LA PORTÉE DU COMPROMIS

1. Monsieur le président, Mesdames et Messieurs les juges, les plaidoiries du Gabon que vous avez entendues hier peuvent se résumer en quelques mots : « la convention de Bata ou le chaos ». La stratégie est limpide, mais elle ne trompe personne.

Elle ne trompe personne car les termes du compromis ont été soigneusement choisis pour éviter le chaos que le Gabon agite devant vous comme un épouvantail si, comme nous le soutenons…

Le PRÉSIDENT : [Inaudible]… de traduction, donc… Vous pouvez essayer ?

M. D'ARGENT : Je continue ? C'est bon ? Je recommence.

Le PRÉSIDENT : Allez-y, s'il vous plaît.

M. D'ARGENT : Je recommence, Madame la vice-présidente ? Merci. Mesdames et Messieurs les juges, Monsieur le président, comme je le disais, les plaidoiries du Gabon que vous avez entendues hier peuvent se résumer en quelques mots : « la convention de Bata ou le chaos ». Cette stratégie est limpide, mais elle ne trompe personne.

2. Elle ne trompe personne car les termes du compromis ont été soigneusement choisis pour éviter le chaos que le Gabon agite devant vous comme un épouvantail si, comme nous le soutenons,

la prétendue convention de Bata ne fait pas droit dans les relations entre les Parties. Alors, il n'est pas douteux bien entendu que cette question — celle de savoir si cette convention, cette prétendue convention fait ou non droit entre Parties — est le nœud central de ce différend. Et, en réalité, les Parties auraient pu conclure un accord se limitant à demander à la Cour de se prononcer à cet égard. Ce n'est toutefois pas ce qu'elles ont fait et le compromis de 2016 confère à la Cour une compétence plus large dont les termes méritent d'être examinés de près à nouveau compte tenu de ce qui a été dit hier. Les voilà à nouveau à votre écran et je me permettrai, excusez-moi, de les lire à nouveau :

> « La Cour est priée de dire si les titres juridiques, traités et conventions internationales invoqués par les Parties font droit dans les relations entre la République Gabonaise et la République de Guinée équatoriale s'agissant de la délimitation de leurs frontières maritime et terrestre communes et de la souveraineté sur les îles Mbanié, Cocotiers et Conga. »

3. La Cour est donc appelée à dire si chacun des titres juridiques, traités et conventions invoqués par les Parties fait droit dans leurs relations « s'agissant de la délimitation de leur[] frontière[] maritime … commune[] », « s'agissant de la délimitation de leur[] frontière[] … terrestre commune[] » ou « s'agissant … de la souveraineté » — trois questions que le professeur Pellet a justement appelées « les trois éléments du différend énumérés au paragraphe 1 de l'article premier »[1] — vous venez de le voir. Faisant cela, nous en convenons, la Cour n'est pas appelée — je le répète — à délimiter le territoire ou la mer, ni à attribuer les îles en souveraineté. Et c'est bien pour cela que la Cour peut connaître de titres juridiques, traités et conventions « s'agissant de la délimitation » terrestre, « s'agissant de la délimitation » maritime, « s'agissant … de la souveraineté » insulaire.

4. En espagnol — l'autre version authentique du compromis —, les mots « s'agissant de la délimitation » sont « en lo que se refiere a la delimitación », ce qui peut se traduire plus littéralement par « en ce qu'ils concernent la délimitation », ce que reflète la traduction anglaise établie par le Greffe : « in so far as they concern the delimitation … [or] the sovereignty over the islands ». Il n'est donc pas seulement question d'identifier des titres juridiques, des traités ou des conventions qui sont des titres de souveraineté ou qui procèdent à des délimitations terrestres ou maritimes. Les mots « s'agissant de la délimitation »/« en lo que se refiere a la delimitación » ont été choisis avec soin et à dessein. Comme la traduction anglaise du Greffe le manifeste clairement, ces mots signifient que

[1] CR 2024/31, p. 36, par. 22 (Pellet).

la Cour peut identifier comme faisant droit entre parties des titres juridiques, des traités et des conventions dans la mesure où ils concernent (« in so far as they concern ») la délimitation terrestre, la délimitation maritime ou la souveraineté insulaire, et cela quand bien même, je le répète, ces titres juridiques ne seraient pas le titre de délimitation ou le titre de souveraineté, et quand bien même le traité ou la convention qui fait droit ne contient pas une ligne de délimitation. Il suffit que le titre juridique, le traité ou la convention concerne la délimitation ou la souveraineté insulaire, au sujet desquelles la Cour, à nouveau, n'est pas appelée à se prononcer.

5. Mon collègue et ami le professeur Pellet a diagnostiqué dans ma plaidoirie de lundi « un véritable abcès de fixation sur l'expression "titre documentaire" »[2], tout en déclarant, et je m'en réjouis, n'être « pas particulièrement attaché[] à la notion de titre documentaire »[3]. Dont acte. Dès lors, mon « abcès de fixation » est relativement bénin, mais je suis en revanche plus inquiet de la véritable cécité dont fait preuve le Gabon au sujet du texte du compromis et qui l'amène à en tronquer les termes. Comme je viens de le rappeler, ses termes ne limitent pas la compétence de la Cour à l'identification des titres de souveraineté ou des textes conventionnels contenant une délimitation terrestre ou maritime. La Cour n'est donc pas condamnée, pour reprendre le titre de la plaidoirie du professeur Pellet, à « [l]a recherche d'un titre juridique » — pas plus d'ailleurs qu'elle n'est condamnée à la recherche du temps perdu, même si elle devra s'interroger sur la signification des quelque 10 477 jours de silence gabonais sur lesquels mes collègues reviendront. La Cour n'est pas condamnée à la recherche d'un titre juridique — qui pour le Gabon est évidemment, et à tous égards, la prétendue convention de Bata — parce que le compromis lui permet d'identifier tous les titres juridiques, traités et conventions qui, ayant été invoqués par une Partie, font droit entre Parties « s'agissant de » — « in so far as they concern » — la délimitation terrestre ou maritime, ou de la souveraineté insulaire.

6. Ainsi, Mesdames et Messieurs les juges, au regard des termes du compromis, vers lesquels il faut évidemment toujours revenir, la Cour est compétente pour se prononcer sur toutes les prétentions de la Guinée équatoriale.

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[2] CR 2024/31, p. 27, par. 6 (Pellet).

[3] CR 2024/31, p. 28, par. 7 (Pellet).

7. Je commence par la convention des Nations Unies sur le droit de la mer. Il n'est pas contesté qu'il s'agit d'une convention internationale. Il n'est pas contesté non plus qu'elle fait droit dans les relations entre Parties. Toutefois, le Gabon considère que la Cour ne peut pas se prononcer à son égard car la convention de Montego Bay ne serait, en matière de délimitation maritime, qu'un « entitlement », une « vocation au titre » et non un « titre juridique »[4]. Nous sommes bien d'accord, mais tel n'est pas le problème.

8. En effet, au risque de me répéter, le compromis donne pour mission à la Cour de dire si les conventions invoquées par les Parties font droit dans leurs relations « *s'agissant de la délimitation* de leurs frontières maritime [ou de leur frontière] terrestre » ou de la souveraineté insulaire. Ces mots du compromis ne limitent donc pas la compétence de la Cour aux seules conventions « de délimitation », c'est-à-dire celles qui tracent une ligne dans l'eau ou sur la terre. Si, comme nous le soutenons, la prétendue convention de Bata ne fait pas droit entre Parties, il n'en reste pas moins que la convention des Nations Unies sur le droit de la mer sera incontestablement une convention faisant droit entre Parties « s'agissant de la délimitation de leur[] frontière[] maritime ». L'alternative « la convention de Bata ou le chaos » est donc une fausse alternative : même sans la convention de Bata, qui n'en est pas, il y a du droit international applicable entre Parties « s'agissant de la délimitation de leur[] frontière[] maritime » et cela quand bien même l'instrument conventionnel en question n'effectuerait pas lui-même de délimitation.

9. Pour dire les choses concrètement et simplement : si M[e] Juratowitch a tort, mais que le professeur Pellet et M[e] Rouche ont raison, la Cour devrait conclure que la convention des Nations Unies sur le droit de la mer n'est pas une convention faisant droit entre Parties « s'agissant de la délimitation de leur[] frontière[] maritime ». Ce résultat est parfaitement absurde. Et, bien sûr, le compromis ne peut se comprendre en présumant que M[e] Juratowitch a raison.

10. Pour la même raison, « s'agissant [à nouveau] de la délimitation de leur[] frontière[] maritime » — « in so far as [it] concern[s] » —, l'extrémité de la frontière terrestre fait assurément droit entre Parties, de même que le principe de droit coutumier selon lequel la terre domine la mer !

[4] CR 2024/31, p. 29, par. 10 (Pellet).

11. Qu'en est-il de la succession d'États dont il a beaucoup été question ?

12. Le professeur Pellet a affirmé qu'« on ne peut succéder qu'à quelque chose et ce quelque chose, c'est le titre juridique »[5]. En réalité, Mesdames et Messieurs les juges, on ne succède jamais à quelque chose. On succède toujours à quelqu'un. Cela est vrai pour les personnes, mais également pour les États. Succéder à une personne physique ou à une personne morale signifie devenir, en lieu et place de celle-ci, titulaire de ses droits ou de ses obligations, lesquels, par l'effet de la succession, changent de titulaire. Le successeur n'a aucun titre sur les droits du *de cujus* sans l'opération juridique de succession. Bien sûr, s'il n'y a pas de droits préalables sur un objet déterminé, cette opération est sans effet à cet égard. Mais s'il y a des droits, c'est la succession qui crée la nouvelle titularité du droit, qui crée le titre sur l'objet, au profit du successeur. Il ne s'agit pas seulement d'identifier un « possesseur »[6], comme l'a dit mon ami le professeur Pellet. L'État successeur est bien plus que le possesseur du titre d'autrui. Et c'est bien en ce sens que la jurisprudence de la Cour considère la succession d'États comme titre juridique au sens de source du droit de l'État successeur sur le plan international[7]. Il s'agit bien du droit du successeur, pas du droit du prédécesseur. Et le dictionnaire coordonné par le regretté professeur Salmon ne dit rien d'autre. Aucune des trois acceptions du mot « titre » qui y sont reprises n'est exclue par le compromis. Le Gabon et la Guinée équatoriale ne sont pas titulaires de titres au nom des anciennes puissances coloniales. Ils possèdent chacun leur propre titre territorial et celui-ci est constitué par la succession d'États. Soutenir que, sur la base du compromis, la Cour ne pourrait pas dire que le titre juridique résultant de la succession d'États fait droit entre Parties s'agissant de la délimitation terrestre, ou s'agissant de la délimitation maritime, ou s'agissant de la souveraineté insulaire, est à nouveau absurde. Et j'imagine que le Gabon ne soutient pas être simplement possesseur du titre juridique de la France et qu'il ne soutient pas non plus que le titre juridique de la France est le sien car la France, Mesdames et Messieurs les juges, n'a aucun titre juridique qui fait droit entre Parties.

13. S'agissant de l'*uti possidetis*, le professeur Pellet a soutenu que ce principe « n'est qu'une modalité de transmission d'un titre préexistant » étant prétendument, comme la succession d'États

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[5] CR 2024/31, p. 28, par. 8 (Pellet).

[6] CR 2024/31, p. 29, par. 10 (Pellet).

[7] *Différend frontalier terrestre, insulaire et maritime (El Salvador/Honduras ; Nicaragua (intervenant)), arrêt, C.I.J. Recueil 1992*, p. 389, par. 45.

un « passeur » de titre, mais non un « créateur » de titre[8]. Il a aussi cité l'arrêt *Nicaragua c. Honduras* qui rappela que « l'*uti possidetis juris* présuppose que les autorités coloniales centrales aient procédé à une délimitation territoriale », ce qui signifie simplement que la condition d'application de l'*uti possidetis juris* est l'existence, avant les indépendances, d'une ligne administrative interne au sein du même empire colonial. Si cette condition d'application existe en tant que fait, ce que réalise l'application effective du principe *uti possidetis juris* est la transformation (la transformation — et non la « transmission ») de la ligne administrative interne en frontière internationale au moment des indépendances.

14. Monsieur le président, la Guinée équatoriale ne remet en rien en cause la jurisprudence *Burkina Faso/Mali* par laquelle la Cour articula les quatre rapports bien connus pouvant exister entre titres et effectivités. C'est en connaissant cette jurisprudence que les Parties ont conclu le compromis de 2016 et ses mots, à nouveau, permettent à la Cour d'identifier tout titre juridique faisant droit dans les relations entre Parties « s'agissant de la délimitation » terrestre en particulier. Les effectivités peuvent assurément être confirmatives du titre[9]. Et en l'espèce, elles confirment l'« instantané »[10] colonial qu'il y a lieu d'identifier « s'agissant de la délimitation » de la frontière terrestre, et cet instantané est formé par la convention de Paris telle qu'appliquée paisiblement et de commun accord par les puissances coloniales au jour des indépendances. C'est en ce sens que la Guinée équatoriale invoque les effectivités sous le vocable « *infra legem* » et c'est en ce sens qu'elles concernent la délimitation terrestre. Elles relèvent donc du compromis.

15. Monsieur le président, Mesdames et Messieurs les juges, comme vous le voyez, l'espèce que vous êtes appelés à trancher ne requiert pas de vous aventurer dans des grandes théories sur ce qui compte ou ce qui ne compte pas dans l'abstrait comme titre juridique de souveraineté ou de délimitation. Le compromis vous permet d'identifier tous les titres juridiques invoqués par les Parties, tous les traités, toutes les conventions, pourvu qu'ils fassent droit entre elles « s'agissant de la délimitation » terrestre, « s'agissant de la délimitation » maritime ou « s'agissant … de la

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[8] CR 2024/31, p. 29, par. 9 (Pellet).

[9] *Différend frontalier (Burkina Faso/République du Mali), arrêt, C.I.J. Recueil 1986*, p. 586-587, par. 63 ; *Différend territorial et maritime entre le Nicaragua et le Honduras dans la mer des Caraïbes (Nicaragua c. Honduras), arrêt, C.I.J. Recueil 2007 (II)*, p. 712-713, par. 172-175.

[10] *Différend frontalier (Burkina Faso/République du Mali), arrêt, C.I.J. Recueil 1986*, p. 568, par. 30.

souveraineté » insulaire. Le titre juridique, le traité, la convention faisant droit entre Parties doit, comme le disent la version espagnole du compromis et sa traduction anglaise, « concerner » l'un de ces « trois éléments du différend ». Si tel est le cas, le titre juridique, le traité, la convention peut être identifié par la Cour comme tel puisque la Cour n'est pas appelée à délimiter la terre ou la mer, pas plus qu'à dire pour droit qui est souverain sur les îles.

16. Mesdames et Messieurs de la Cour, je termine en soulignant encore un point au sujet des mots du compromis. Les termes du compromis vous demandent de dire si les titres juridiques, traités et conventions invoqués « font droit dans les relations entre » Parties. La version espagnole de « font droit dans les relations » est « son aplicables en las relaciones », la traduction anglaise étant « have the force of law in the relations between the Parties ». Alors ces mots peuvent paraître quelque peu désuets ou procéder d'une circonvolution. En réalité, ils n'ont pas été choisis au hasard. Et s'agissant de la prétendue convention de Bata, mais aussi des autres titres juridiques, traités et conventions invoqués, ils invitent la Cour à regarder les choses de manière globale, concrète et substantielle, et non de manière formelle. Comme mon ami M[e] Juratowitch l'a dit tout en pratiquant l'inverse, « international law puts substance over form »[11]. C'est exactement ce que le compromis vous demande de faire en examinant si un titre juridique, un traité ou une convention fait droit, *son aplicables*, *has the force of law*, dans les relations entre Parties. En d'autres termes, dans le contexte très particulier et obscur de la prétendue conclusion de la prétendue convention de Bata, puis de sa totale disparition dans les archives de l'ancienne puissance coloniale et de sa non-application entre Parties durant près de trois décennies alors que les circonstances de leurs relations demandaient qu'il soit fait état de ce document entre elles, et enfin, dans les circonstances de sa soudaine et totalement inattendue résurgence photocopiée, vous ne pouvez vous arrêter à la seule question de son existence documentaire (encore que celle-ci soit douteuse en l'absence d'original) et au seul article 10 qui figure sur le document présenté pour la première fois en 2003. Pas plus d'ailleurs que vous ne pouvez vous arrêter à l'invocation, incantatoire et désincarnée, de *pacta sunt servanda*[12].

17. Sur ce sujet, puis-je vous demander, Monsieur le président, de bien vouloir appeler à la barre le professeur Philippe Sands ? Je remercie à nouveau la Cour pour sa bienveillante attention.

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[11] CR 2024/31, p. 40, par. 16 (Juratowitch).

[12] CR 2024/31, p. 24, par. 39 (Rossatanga-Rignault).

Le PRÉSIDENT : Je remercie le professeur Pierre d'Argent pour sa déclaration. I now invite the next speaker, Professor Philippe Sands, to take the floor.

Mr SANDS:

THE HUNTING OF THE DOCUMENT PRESENTED BY GABON IN 2003

1. Mr President, Madam Vice-President, Members of the Court, I will respond to the arguments you heard yesterday from Gabon, on the subject of the agreement which is said to have been signed in September 1974. This was addressed by the distinguished Agent of Gabon (Ms Mborantsuo), the distinguished Co-Agent (Mr Rossatanga-Rignault) and Counsel including Mr Juratowitch.

2. Gabon's Agent confirmed that "*durant plusieurs années*" — 29 years to be precise — "*la Convention de Bata n'a pas été mentionnée expressément dans les relations entre les . . . États*"[13]. From this, she continued, two things followed: the first was that "*les différends étaient réglés*", which is very obviously not true; the second was the suggestion that as a result of the silence "*les relations entre les deux États s'étaient considérablement améliorées*"[14]. This is what one might call pure supposition, a claim that the silence of Gabon was a matter of choice, almost tactical. There is not a shred of evidence before the Court to support that wholly implausible assertion.

3. Nor is there evidence to support the other claims made by the distinguished Agent. She told you that the failure to mention the supposed agreement reflected a desire to avoid rocking the boat, to maintain a degree of harmony, as though it was not 10,477 days of silence but 10,477 days of sheer unadulterated friendliness. This, she said, was "*[d]ans la plus pure tradition africaine*"[15]. Again, there is not a shred of evidence before you to support this assertion and then she continued that the conclusion of the so-called treaty was "*l'un des motifs du coup d'État qui a coûté la vie au président Macías*"[16]. Again, there is no evidence whatsoever to support this explanation for decades of silence.

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[13] CR 2024/31, p. 11, para. 5 (Mborantsuo).

[14] *Ibid.*

[15] CR 2024/31, p. 11, para. 6 (Mborantsuo).

[16] *Ibid.*

4. Then the Agent turned to the question of why Gabon did not have a copy of the supposed agreement. This is what she said: "*la mauvaise tenue des archives du fait de la conjonction de conditions climatiques défavorables, du manque de personnel qualifié et de moyens techniques*"[17].

5. Please forgive me, Madam Agent, if I confess to a degree of scepticism. Yesterday morning, I happened to go on the website of the *Journal Officiel de la République gabonaise*, which you will find at: www.journal-officiel.ga. This is what you will see if you go onto the website.

6. If you type in the word "*traité*" in the search bar, you will find numerous agreements from 1963 to 2022. If you type in the word "*convention*", you will get even more hits. They include agreements from the very period in question. For example, you will see on the screen now in the *Journal Officiel* of 8 October 1973, the details on the ratification of ILO Convention No. 106. If you then click on the link, you will see what is up on the screen now.

7. The *Journal Officiel* website indicates that the ILO Convention was deliberated and adopted by the Gabonese National Assembly. This of course is in strict accordance with Article 52 of Gabon's Constitution of 1972, in force at the time, which provided that treaties "that entail cession, exchange, or addition of territory may be ratified only by virtue of a law", and "shall take effect only after having been properly ratified". The same provision of the Constitution then goes on to state as you can see "[n]o cession, no exchange, no addition of territory shall be valid without the consent of the Gabonese people called upon to decide by referendum, after consultation with the populations concerned"[18].

8. In short, if there was an agreement in September 1974, Gabon could very easily have put it before the National Assembly, or published it in the *Journal Officiel*, as it did with so many other treaties from that period. And it could have called for a popular consultation, as required by its Constitution. With respect, the claim of poor archives, or climatic conditions, or the absence of personnel or the absence of technical means, is not substantiated by readily available other information on Gabon's practice at the very time we are concerned with.

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[17] CR 2024/31, p. 12, para. 9 (Mborantsuo).

[18] The Gabonese Republic, *Constitution of the Gabonese Republic* (29 July 1972), Article 52. MEG, Vol. VI, Annex 189.

9. The explanation that was given for 29 years of silence is totally implausible. So why the silence? That is a matter of argument and of evidence, and it is a question that cannot be answered clearly on the basis of direct evidence in these proceedings. But the evidence that is before the Court allows you, the judges, to draw reasonable inferences: either Gabon chose not to publish this particular document, for reasons unknown, or there was no agreement. The failure to deliberate or to ratify, or to publish in the *Journal Officiel*, or to even mention an agreement, is consistent really with only one conclusion. There was no agreement, and there was no agreement that was intended to, or did, produce legal effects under the law of Gabon or international law.

10. In this regard, widely known and manifestly public, Article 7 of Equatorial Guinea's 1973 Constitution also required procedures to be followed, and rendered "illegal and invalid conventions and treaties which infringe or diminish its jurisdiction or sovereignty over any portion of the national territory, the territorial sea, and air space"[19]. The failure to follow procedures, or to publish, or to talk about, or to even mention, indicates that the document — or the documents, because there are several versions — were not intended to, or did not have, legal force between the countries in relation to title over territory.

11. The question also arises as to which version of this document Gabon seeks to — or is entitled to — invoke in these proceedings. You will recall that, yesterday, Mr Juratowitch very very briefly put Version 2 on the screen, and then it just disappeared[20]. But Version 2 — which is Gabon's re-transcription — is the only document that Gabon registered with the United Nations Treaty Section (*UNTS*)[21]. It has not been corrected and it has not been updated. Paragraph 2 of Article 102 of the United Nations Charter stipulates that Gabon cannot invoke before the Court — the principal judicial organ of the United Nations — a treaty that has not been registered. In contrast to *Qatar* v. *Bahrain*, the Special Agreement in this case specifically provides for the invocation of legal titles,

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[19] *Letter No. OR 511 EQGU from* the Permanent Representative of the Republic of Equatorial Guinea in the United Nations *to* the Secretary General of the United Nations *concerning* the Distribution of the Constitution of the Republic of Equatorial Guinea of 4 August 1973 (13 December 1973), p. 5, art. 7. REG, Vol. III, Annex 7.

[20] CR 2024/30, p. 41 (Juratowitch).

[21] The Republic of Equatorial Guinea and The Gabonese Republic, *Convention Delimiting the Land and Maritime Boundaries of Equatorial Guinea and Gabon* (12 September 1974) (Retyped Spanish-language version, as published in the UNTS). MEG, Vol. VII, Annex 216.

including treaties and conventions[22]. Gabon has now told you that it *only* seeks to invoke Annex 155 to its Counter-Memorial, which I referred to on Monday as Version 3[23]. But that document — which is different from Version 2 — has not been registered under Article 102 of the UN Charter. It is not open to Gabon to invoke Annex 155 to its Counter Memorial in these proceedings. It is stuck with Version 2, which Mr Juratowitch has, in this very courtroom, disavowed.

12. Gabon's Co-Agent turned to address the events that led to the signature of the supposed agreement of 1974. This is what he assured you: "*Cette signature . . . ne tombait pas du ciel*". No, he argued, it was "*l'aboutissement d'un processus de plusieurs années de négociations dans le cadre de la médiation et de rencontres bilatérales*"[24].

13. Well, over the past 30 years, I have been involved in the negotiation of a number of land and boundary agreements, although surely not as many as some of you sitting on this Court. On every occasion, the act of signature and adoption of a final text is preceded by lengthy, substantive negotiations, with draft language and text that reflect offer and counter-offer and re-offer, as various texts and drafts and documents see the light of day. Indeed —I may make a slight excursus — this has been going on, in my own direct experience, in relation to the negotiations on the exercise of sovereignty over the Chagos Archipelago, which began in November 2022. Since then, there have been 13 rounds of talks, as recently as last week and even last night, involving a huge amount of paper and many drafts. As you may know, this morning — a historic day — the Prime Ministers of Mauritius and the United Kingdom announced that an agreement had been reached to resolve all outstanding matters, on the basis of international law. That includes, of course, this Court's seminal Advisory Opinion of February 2019, the ITLOS Judgment of 2021, and the two dissenting opinions in the Annex VII arbitration of 2015 which opened the door to this historic and remarkable moment. The simple point is: we all know that negotiations on these things produce volumes of paper.

14. What happened to the paper and the drafts in this case? It seems nothing exists. The supposed agreement appears indeed to have emerged out of thin air, literally from one day to the

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[22] *Maritime Delimitation and Territorial Questions between Qatar and Bahrain Bahrain (Qatar* v. *Bahrain), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1994*, p. 122, para. 29.

[23] RG, Vol. I, para. 2.2 *(b)*; *Lettre* du président du Gabon *à* l'ambassadeur de France au Gabon (28 October 1974), CMG, Vol. V, Annex 155.

[24] CR 2024/31, pp. 20-21, para. 22 (Rossatanga-Rignault).

next. There is no evidence before this Court of any negotiations on the text of a treaty, or any draft language. We have no idea who prepared the text, who drafted it, and apparently, Gabon doesn't either. The Co-Agent pointed to no evidence to support his claim about lengthy negotiations, you have no witness testimony; you have no evidence. As I said on Monday, the burden is on Gabon to prove that the document on which it relies is a treaty, that it was truly discussed and negotiated, and that it has the force of law between the Parties[25]. Mr Juratowitch did not challenge that assertion.

15. But neither he nor the Agent, nor the Co-Agent, pointed to any evidence to support their claims as to how this so-called agreement was negotiated and adopted, or why no mention of it was made for nearly 30 years.

16. What did Mr Juratowitch say? Well, he started by telling us that the so-called "Bata Convention" exists as a treaty with the force of law. That is pure assertion. But does it? The only thing we know for certain is that a piece of paper exists that includes the word "convention" on it. I can write the word convention on this piece of paper, but that is not going to give it the force of law or make it a treaty with the force of law, as the finely drafted *compromis* in this case requires. The mere existence of a piece of paper with typewritten material on it does not make it a treaty. The issue for proof is whether that scrap is a treaty that has the force of law in relations between the Parties. We say the paper on which Mr Juratowitch relies did not, then, and does not, today, and has never had the force of law. For 29 years Gabon proceeded in negotiations, engagements, discussions on the basis that it did not have the force of law.

17. That conclusion follows inexorably from the following undisputed evidence:

— *First*, no original copy of a treaty having the force of law appears to exist. Gabon did not retain an original, Equatorial Guinea does not have an original and, despite extensive searches, including at the official French archives, no original is before the Court.

— *Second*, Gabon did not — as Mr Juratowitch said — send the French Ambassador an *authenticated* copy: it sent a photocopy. Mr Juratowitch's theory of auto-certification by a Head of State or an accredited diplomat is novel and unsupported by evidence or practice.

[25] CR 2024/29, p. 40, para. 20 (Sands).

— *Third*, Gabon did not publish the supposed agreement in its own *Journal Officiel*, as it could have done.

— *Fourth*, Gabon did not refer the supposed agreement to its National Assembly for deliberation and adoption as its Constitution required, and it could have done. Nor did Equatorial Guinea.

— *Fifth*, Gabon did not hold a referendum on the contents of the agreement as its Constitution required and as it could have done.

— *Sixth*, for 29 years Gabon did not seek to register the supposed agreement at the United Nations as the Charter requires.

— *Seventh*, Gabon's President made no public statements in relation to the adoption of a supposed agreement having the force of law.

— *Eighth*, the President of Equatorial Guinea has never said that an agreement was signed which had the force of law.

18. That is the hill that Gabon has to climb and to explain. Mr Juratowitch told you that there are "four key documents in evidence that permit the Court to reach a conclusion on the existence of the Bata Convention and the authenticity of the copy of it relied on by Gabon"[26]. With great respect, he is wrong.

19. First, he relies on the copy sent by the President of Gabon to the French ambassador in Libreville, received on 31 October 1974[27]. This is not an "authenticated duplicate of an official act", as contended[28]. It is a copy of a copy of a document that appears to be in the form of a treaty. Sure, it adopts the kind of language we tend to see in a treaty, but that does not mean that it has the force of law or is even a treaty. There is a signature that is said to be that of the President of Equatorial Guinea. But actually, we have no idea whether the President of Equatorial Guinea signed the document or did not; or if it is his signature or not. Mr Juratowitch suggested there is no "forensic difficulty" in relation to that signature[29]. But of course, he overlooks the fact that a forensic analysis usually requires physical examination of an actual document, and in this case, of course, we do not

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[26] CR 2024/31, p. 40, para. 18 (Juratowitch).

[27] *Lettre* du président du Gabon *à* l'ambassadeur de France au Gabon (28 Oct. 1974), CMG, Vol. V, Annex 155.

[28] CR 2024/31, p. 38, para. 7 (Juratowitch).

[29] CR 2024/31, p. 39, para. 13 (Juratowitch).

have such a document. And no forensic analysis has been performed. We invite you to treat that document and the supposed signature with caution.

20. Mr Juratowitch then mentioned, as a second "key document", the letter under cover of which the supposed agreement was sent to France. He made reference to the letterhead, to the "stamp in the left corner", to an "official seal" and to a "reference number"[30]. Counsel for Gabon seems curiously attached to matters of form. How does any of this authenticate or evidence the existence of a final agreement entered into six weeks earlier, specifically on 12 September 1974, and which is said to have the force of law? Plainly, it does not.

21. The third "key document" on which he relies is a letter of 16 January 2004 from the French Ambassador to Gabon. But all this letter does is confirm that a "*photostat*" — its word — of a document exists[31]. It does not offer confirmation of any "chain of custody of an authentic copy", as counsel claimed[32]. Sure, it supports a chain of custody — but of what? Of a piece of paper that has the word convention written on it. Nothing more. It says nothing about the authenticity or force of law of what the document purports to say.

22. The final "key document" referred to by Mr Juratowitch perhaps is the most interesting. It is a dispatch from the French Ambassador, a distinguished gentleman, in Equatorial Guinea to the French Minister of Foreign Affairs, no less. It is dated 2 October 1974[33], and it is Annex 152 to Gabon's Counter-Memorial. It is a lengthy letter, and Mr Juratowitch relied on carefully selected parts of it to support his claim that Equatorial Guinea's President had recognized Gabonese sovereignty over Mbañe, Cocoteros and Conga[34]. We invite you to read all of that letter with care. It is at tab 1 of your judges' folder, with an English translation. I will just deal with parts of it.

23. The Ambassador describes at the beginning President Bongo's demeanour on his return from Equatorial Guinea after 12 September, and he mentions his claim — the President's claim — that the frontier dispute was "*définitivement réglé*"[35]. "*Définitivement réglé*" is not the same thing as

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[30] CR 2024/31, p. 37, para. 3; p. 38, para. 8 (Juratowitch).

[31] CR 2024/31, p. 41, para. 18 *(d)* (Juratowitch).

[32] CR 2024/31, p. 41, para. 19 (Juratowitch).

[33] CR 2024/31, pp. 40-41, para. 18 (Juratowitch).

[34] CR 2024/31, p. 43, para. 30 (Juratowitch).

[35] *Dépêche d'actualité No. 40/DA/DAM-2* de l'ambassadeur de France en Guinée équatoriale *à* la direction des affaires africaines et malgaches du ministère des affaires étrangères français (2 Oct. 1974), p. 2. CMG, Vol. V, Annex 152.

saying that a treaty was signed. And indeed, if you carry on reading the letter, you will see that the situation is not as straightforward as Gabon says. The French Ambassador explains that his colleague, M. Dépenaud Ndouna, the Gabonese Ambassador to Equatorial Guinea, "no longer conceals the fact and even confirms that the conversations that took place in Malabo, and especially, on September 11 and 12, in Bata, were conducted with difficulty under unpleasant conditions".

24. On this account, it seems that on the morning of 12 September the Parties may have made some progress, but very obviously things then went wrong — belly up. According to the account of Gabon's Ambassador, "[a]t the end of an afternoon of prickly discussions, the Head of State of Gabon, tired of these about-faces, ultimately returned to his capital without anything having been definitively signed, except for a purely formal communiqué whose text only received limited publicity"[36].

25. The French Ambassador continues in his letter on the state of negotiations by the end of the evening. It seems that offers may have been made in relation to the land and maritime boundaries, and that President Macías may have been willing to countenance a deal on Mbañe, Cocoteros and Conga[37]. But was a deal actually reached and agreed? It was not, because Equatorial Guinea, if you read the letter carefully, had concerns about certain elements, including in respect of territorial waters, the use of a "parallel line" as opposed to a parallel along the latitude[38].

26. So in clear terms, the French Ambassador then writes — this is more than two weeks after 12 September — "no final decision could be made before President Bongo left"[39]. No final decision. What followed? The Gabonese delegation returned, the French Ambassador says, but the Gabonese Ambassador, he continues, "does not yet know if the delegation of Gabonese experts that came to Bata around September 20 was able to achieve a final result"[40]. That is not proof of an agreement.

27. Let us be really clear here: this is the French Ambassador to Equatorial Guinea writing on 2 October 1974. There is no doubt — none — from this letter that as of that date he was not saying that an agreement in the form of a treaty was signed on 12 September.

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[36] *Ibid.*

[37] *Ibid.*, p. 3.

[38] *Ibid.*

[39] *Ibid.*, p. 4.

[40] *Ibid.*

28. The French Ambassador then proceeds to explain that the previous day, 1 October, he was received by President Macías in Bata, who assured him that France was one of the first countries that would be informed of "the status of the boundary negotiations *underway*"[41]. "Underway" in English is not the same as "concluded". "*En cours*" in French is not the same as "*conclus*". There is no evidence here of any agreement having been signed.

29. The only reasonable conclusion to be drawn from this evidence is that as of 2 October 1974, negotiations were still underway, no final agreement had been reached, and no treaty having the force of law had been signed.

30. Twelve days later, on 14 October 1974, the French Ambassador sent an update to the French Minister of Foreign Affairs. This is at tab 2 of your folders. The French Ambassador reports on President Macías' meeting with heads of diplomatic missions on 13 October 1974. Here are some of the salient points that are reported:

— *First*, President Macías says that "as soon as the accord is signed" — "*dès la signature de l'accord*" — certain things would follow. It is plain from reading this letter that as of 13 October 1974, or afterwards, there was no document signed, because there was no relocation of any inhabitants from Equatorial Guinea.

— *Second*, the Ambassador reports that President Macías had "given up on any subsequent discussion of land boundaries; however, the same cannot be said about maritime boundaries. In fact, the current impasse regarding them is at the level of expert negotiations and the two heads of state have not yet personally discussed them"[42].

— *Third*, while various alternatives had been discussed with respect to the delimitation of the maritime boundary, the Gabonese delegation told President Macías that "negotiations could continue on this subject for months in vain". And so they did, not just months, but years, decades. This caused President Macías to reply that "he would wait for the opportunity to discuss the matter with President Bongo himself"[43]. It seems that never happened.

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[41] *Ibid.*, p. 5 (emphasis added).

[42] *Ibid.*, p. 5.

[43] *Ibid.*, p. 6.

31. There is, in short, no evidence before the Court that the two Presidents did meet and did agree. But there is clear evidence that no treaty having the force of law within the meaning of the Special Agreement had been concluded on 12 September 1974. You simply cannot read the totality of the evidence before you and conclude, to a standard of "conclusive evidence", or with a sufficient "degree of certainty", that on 12 September 1974 a binding agreement was signed[44].

32. Mr President, this case is very different from others in which the question of an agreement signed by two Heads of State has come up. Let us not forget what this Court said in *Nicaragua* v. *Honduras*: "[t]he establishment of a permanent maritime boundary is a matter of grave importance and agreement is not easily to be presumed"[45]. Those words were cited with approval by the International Tribunal for the Law of the Sea (ITLOS) in *Bangladesh* v. *Myanmar*[46]. ITLOS, in that case, said, "[t]he fact that the Parties did not submit the [document in question] to the procedure required by their respective constitutions for binding international agreements is an additional indication that the Agreed Minutes were not intended to be legally binding"[47].

33. Equally the Court's Judgment in *Cameroon* v. *Nigeria* is easily distinguishable[48]. Unlike the supposed agreement in this case, the Maroua Declaration in that case, signed on 1 July 1975, was recognized by both parties as authentic and its validity was confirmed by a subsequent exchange of letters between the parties[49]. As the Court noted, the parties "treated the Declaration as valid and applicable", and Nigeria did "not claim to have contested its validity or applicability" for two years[50]. By stark contrast in the present case, there is no evidence before the Court that the Parties *ever* recognized the validity or applicability of the 1974 document, but there is evidence that Equatorial Guinea contested its applicability and validity from the very moment it was first invoked by Gabon, in 2003, and at all times thereafter. Moreover, unlike the Maroua Declaration, this supposed

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[44] *Corfu Channel (United Kingdom* v. *Albania), Merits, Judgment, I.C.J. Reports 1949*, p. 17.

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

[46] *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar)*, *Judgment, ITLOS Reports 2012*, para. 95.

[47] *Ibid.*, para. 97.

[48] *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria; Equatorial Guinea intervening), Judgment, I.C.J. Reports 2002*, p. 303.

[49] *Ibid.*, p. 426, para. 253.

[50] *Ibid.*, p. 431, para. 267.

agreement was adopted in manifest violation of the internal laws of Gabon and Equatorial Guinea, laws which had been duly publicized, and which concerned rules of their internal laws of fundamental importance, as I have already shown you[51]. Gabon readily admits that its own President purposively sought to circumvent Gabon's constitutional requirements[52].

34. Mr President, the evidence before you suggests that it is possible that the Parties may have reached an understanding on elements of a possible future agreement. But the evidence makes it crystal clear that no such agreement with the force of law, in the sense of the Special Agreement in this case, was concluded on 12 September 1974, or at any time thereafter.

35. That is why the negotiations continued, in September and October of that year, and then in 1979, and then for years and decades thereafter. At no point after 12 September 1974, and at no point in any of these exchanges, engagements or negotiations, did Equatorial Guinea accept Gabon's claims to Mbañe, Cocoteros and Conga. And, more significantly still, at no point in that period or in any of those contacts did Gabon refer to any supposed agreement in response to Equatorial Guinea's assertions of sovereignty over those islands, and maritime claims.

36. That is what the evidence shows, and it is reflected in Judge Tomka's question of yesterday. He said:

> "From 1985 to 2003, Gabon appears to have never asserted its rights under the 'Bata Convention' in response to Equatorial Guinea's claims to the Mbanié, Cocotiers and Conga islands. Can Gabon explain why it did not invoke the alleged treaty before Equatorial Guinea or its negotiators from 1985 to 2003 and, if Gabon did invoke it during this period, *where is the evidence?*"[53]

37. Mr Parkhomenko will have more to say on this in due course. But the evidence makes it clear that at no point after 12 September 1974 did Gabon ever invoke the supposed agreement. Why not? The explanation provided by Gabon's Agent — that Gabon did not wish to hurt the feelings of its neighbour — is, we say, with the very greatest respect, totally unconvincing. The only plausible explanation is that Gabon failed to assert its rights under the supposed agreement because there was no agreement treated as having the force of law between the Parties.

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[51] *Ibid.*, p. 430, para. 265. See also: REG, Vol. I, paras. 9 and 3.52-3.57; Article 46 (1) of Vienna Convention on the Law of Treaties 1969.

[52] RG, Vol. I, para. 2.2 *(g)*.

[53] CR 2024/32, p. 55 (Judge Tomka) (emphasis added).

38. Against this background, you can understand with greater clarity the so-called corroborative evidence on which Mr Juratowitch relies. One aspect of this stuck out to us: the only persons he referred to were nationals of third parties. He invoked the French ambassador or the Spanish ambassador. But the most striking aspect of all the evidence that is before you is that there is no expression of belief on the part of Gabon itself that there was an agreement, and certainly not one that had the force of law.

39. The newspaper article in *L'Union* says that the two Presidents signed a communiqué, not a boundary agreement[54]. The communiqué is said, in the newspaper report, to refer to an agreement, but of course as for the agreement, we have never seen the communiqué, for the original of that too seems to have been lost.

40. You were shown a short video clip, the best 45 seconds from Gabon's perspective — you watched it, we watched it. Did President Bongo say in that video that an agreement was signed? No, he did not. He is reported only to have said that "*tout est réglé*". But, as the French Ambassador made clear in his letter which came after that video, matters were most definitely not "*réglé*" on 12 September, or 14 October.

41. The same goes for every instance of the supposed corroboration cited by Gabon and Mr Juratowitch. This or that ambassador expresses this or that view that they understand there is an agreement — or a possible agreement — or something is going on — we do not quite know what: it is all hearsay, and it all emanates from a single source: President Bongo and his claim that "*tout est réglé*". Unilateral statements and hearsay do not give rise to an agreement between two States on the delimitation of their land and maritime boundaries. And none of this is evidence of *Gabon's* understanding of whether a binding agreement had entered into force. All of its conduct, and all of its statements during 30 years of negotiations with Equatorial Guinea, show that it did not understand there to be an agreement in force.

42. And this is why, presumably, by February 1977, Gabon's Foreign Minister was able to share with the Spanish Ambassador the view that the agreement had not been submitted to the

[54] "*'Tout est réglé !' avec la Guinée Équatoriale*", *L'Union* (20 Sept. 1974), p. 1. CMG, Vol. V, Annex 150.

National Assembly or ratified and the Ambassador concluded, presumably from that conversation, that it had "fallen by the wayside"[55].

43. A brief word on one point made by Maître Rouche. She said, yesterday, that it was, her word, "*incontestable*" that the supposed agreement of 1974 delimits the Parties' maritime boundary[56]. Really? Really? It's just not true. Equatorial Guinea has contested that proposition from the moment it first set eyes on the document. And we go further: even on its own terms, as I explained on Monday, with the *nota bene* in the version that has been registered at the United Nations, the two Heads of State were said to be obliged to "subsequently proceed with a new drafting of Article 4"[57]. No new drafting ever happened, no new drafting even appears to have been requested by Gabon. And Gabon offers no explanation for the material differences between the various versions of the *nota bene*.

44. Ms Rouche did, however, say that the *nota bene* was put in place for a reason. That reason, she said, was to respond to the "frustration" of President Macías, which was said to have been expressed "*immédiatement après la signature de la Convention de Bata*". In support of that argument, she refers to "*des échanges avec les représentants diplomatiques en poste en Guinée Équatoriale juste après la signature de la Convention de Bata*"[58]. What does she refer to? She refers to the letter of 2 October 1974, which I have just taken you through at some length, which is Annex 152 of Gabon's Counter-Memorial. You have now seen parts of that document for yourself[59]. Where in Annex 152 does the French Ambassador say that a treaty was signed on 12 September 1974? Nowhere. Where in Annex 152 is it said that a *nota bene* was added to a signed agreement after 12 September 1974 to respond to the frustrations of President Macías? Nowhere. This is pure invention. What the French Ambassador said was that President Bongo "returned to his capital without anything having been definitively signed..."[60]. There was no agreement.

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[55] *Letter No. 85 from* the Director General of the Ministry of Foreign Affairs *to* the Spanish Ambassador in Malabo (25 February 1977). REG, Annex 44.

[56] CR 2024/32, p. 43, para. 7 (Rouche).

[57] The Republic of Equatorial Guinea and The Gabonese Republic, *Convention Delimiting the Land and Maritime Boundaries of Equatorial Guinea and Gabon* (12 September 1974) (Retyped Spanish-language version, as published in the *UNTS*). MEG, Vol. VII, Annex 216.

[58] CR 2024/32, p. 43, para. 10 (Rouche).

[59] CR 2024/31, pp. 40-41, para. 18 (Juratowitch).

[60] *Ibid.*

45. I conclude. The arguments put by Gabon are unfortunate. You have before you a scrap of paper — actually, various versions of scraps of paper — whose authenticity has not been proved, which disappeared for nearly three decades, which was not invoked for 10,477 days of sublime friendliness across repeated rounds of negotiations over nearly 30 years, which was not ratified, which was not published, which was not registered, which on its face required further action which has not been performed over 50 years, and which is accompanied — as I have shown you — by the clearest possible evidence from France's ambassador that nothing definitive was signed on 12 September 1974. And yet, somehow, against the background of all of that, Gabon stands before you and argues that you have a binding agreement with the force of law.

46. It is not a compelling argument, Mr President. It is, however, one that brings to mind certain lines written by a great, late Canadian poet, Leonard Cohen. You are probably not aware that Mr Cohen was a classmate of Maître Yves Fortier's, former mediator in this case, at McGill Law School — they sat next to each other — in the 1950s. Cohen left the law but always remained attached to it, and many of his poems and songs touch on the law. There is one in particular, which appears in his last album, which is called "*You Want it Darker*". The poem is called "*Treaty*"[61]. Let me read you three lines: "I wish there was a treaty . . . I wish there was a treaty . . . I wish there was a treaty we could sign".

47. I thank you, Mr President, for your kind attention, and I invite you to call Mr Parkhomenko to the podium.

The PRESIDENT: I thank Professor Sands for his statement. I now invite the next speaker, Mr Parkhomenko, to take the floor.

[61] Leonard Cohen, "*You Want It Darker*" (2016), track 2 "*Treaty*", available at: https://www.youtube.com/watch?v=NU5FPAR7ass (last accessed 3 October 2024).

Mr PARKHOMENKO:

THE PARTIES' CONDUCT SINCE 1974 CONFIRMS THAT THE DOCUMENT PRESENTED BY GABON IN 2003 HAS NO FORCE OF LAW AND ESTABLISHES NO LEGAL TITLE IN THE RELATIONS BETWEEN THE PARTIES

1. Mr President, Madam Vice-President, Members of the Court, good afternoon.

2. When two States consider they have concluded a treaty that definitively has resolved their sovereignty and boundary disputes, what do they normally do — and what are they expected to do under international law — when one of them calls into question the rights established by such a treaty? A State would invoke — and is expected to invoke — that treaty. Why? To protect its rights under that treaty, especially if they concern such "a matter of grave importance" as "[t]he establishment of a permanent . . . boundary" and territorial sovereignty[62].

3. But this is not what happened in this case. The record conclusively shows that not once prior to 1979 or since 1979 until 2003 did Gabon invoke the 1974 document to protect its alleged rights under that document[63]. The record conclusively shows that Gabon admitted that the Parties have continued to have the same outstanding sovereignty and boundary disputes and that these disputes should be resolved based on other treaties, legal titles and legal principles[64].

4. Yesterday, Gabon avoided this history of non-invocation of the document between 1974 and 2003, just like it did in its written pleadings. All Gabon was able to argue was that: (1) "States often negotiate about matters on which they have already agreed"[65], and that (2) Gabon's failure to invoke the 1974 document as an alleged title is "not relevant" to the question of whether this document is a "title"[66] having the force of law between the Parties, as the Court is asked to find under the *compromis*. Neither argument has any merit.

5. I will address them in turn.

6. Gabon admits that it did not invoke the 1974 document before 1979, and that in 1979 the Parties resumed their diplomatic efforts to resolve their disputes over islands and continental

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

[63] CR 2024/29, pp. 52-56, paras. 3-21 (Parkhomenko); MEG, Vol. I, paras. 5.1-5.17; REG, Vol. I, paras. 3.58-3.80.

[64] *Ibid.*

[65] CR 2024/31, p. 56, para. 86 *(g)* (Juratowitch).

[66] CR 2024/31, p. 57, para. 86 *(i)* (Juratowitch).

territory. Gabon expressly admitted during those negotiations that the Parties sought to establish a joint development zone because they had "overlapping sovereignty in [those] waters" and that the determination of their maritime boundaries was still to be made "in due time" — sometime in the future[67]. If a State believes that it has concluded a treaty that definitively established a maritime boundary and thus resolved overlapping boundary disputes and sovereignty claims in disputed waters, why would it say that the parties continued to have overlapping sovereignty claims and that their maritime boundary was yet to be determined? It makes no sense. But that is what Gabon did.

7. During those negotiations, Equatorial Guinea also made clear that the joint development zone "proposed by" Gabon "is located entirely within territory that falls under the sovereignty of Equatorial Guinea", and that Gabon's proposal did not respect Equatorial Guinea's sovereignty over the islands in Corisco Bay, including Mbañe[68]. If a State, like Gabon, believes that it has concluded a treaty definitively establishing title over insular features claimed by another State, would it not invoke such a treaty to protect its rights? Yes, it would. But, significantly, Gabon did not[69].

8. Gabon does not dispute that the Parties ultimately failed to agree on a joint development zone. But Gabon does not address what happened next: the Parties continued negotiations to resolve the very same disputes that Gabon now pretends to have been definitively resolved in 1974[70].

9. When the Parties met in November 1985, they negotiated about a maritime boundary. That is why they agreed to establish "a sub-commission of experts"[71]. Did they establish it to implement Article 4 or revise this provision based on the *nota bene* in the 1974 document? No. The jointly signed negotiation minutes confirm that the Parties established the sub-commission "to study in detail the delimitation of the maritime boundaries"[72] based on certain "principles and basic criteria" that they considered should "be used in delimiting" their maritime boundary[73]. I mentioned those

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[67] *Minutes of the Second Session of the Ad Hoc Commission on the Review of the Oil Cooperation Agreement Between the Republic of Equatorial Guinea and The Gabonese Republic,* Malabo (10-13 September 1984), p. 139. MEG, Vol. VII, Annex 205.

[68] *Ibid.*, p. 140. MEG, Vol. VII, Annex 205.

[69] *Ibid.*, p. 141. MEG, Vol. VII, Annex 205.

[70] CR 2024/29, p. 53, para. 8-9 (Parkhomenko).

[71] *Minutes of the Guinean-Gabonese Ad Hoc Commission on the Delimitation of the Maritime Boundary in Corisco Bay,* Bata (10-16 November 1985), p. 165. MEG, Vol. VII, Annex 207.

[72] *Ibid.*, p. 165. MEG, Vol. VII, Annex 207.

[73] *Ibid.*, p. 166. MEG, Vol. VII, Annex 207.

principles and criteria already in my first round. Gabon responded nothing to that. These principles included "[t]he principle of acceptance of the borders inherited from the former colonial powers (Treaty of Paris of 1900)", "[t]he principle of applying law of the sea international conventions that have been ratified and accepted by the States" and "[r]espect for States' sovereignty over their respective national territories"[74]. Did Gabon include the 1974 document on the list of these principles and basic criteria? No. How did it fail to do so if it believed that this document was a binding treaty that should be applied for the delimitation of their maritime boundary? The only credible answer is that it knew that this document was not a binding treaty.

10. Gabon's position during the negotiations in November 1985 further confirms that Gabon did not consider itself to have any rights under the 1974 document — unless you accept an implausible claim that it passed it in silence so as not to upset its neighbour. Equatorial Guinea expressly "reject[ed] the baseline that Gabon presented, since it pass[ed] through Mbane island", which Equatorial Guinea claimed as "an integral part of [its] national territory"[75]. Gabon objected to that claim and insisted that Mbañe is "an integral part of [the] Gabonese territory"[76]. If a State believes that it has concluded a treaty that definitively established a right over a disputed insular feature, would it not invoke that treaty to protect its right and to object to a claim inconsistent with that right? Of course, it would! Did Gabon? No. Because it knew that no such treaty ever had the force of law between the Parties.

11. After Gabon resumed its negotiations with Equatorial Guinea in January 1993, the record reflects that the Parties still could not "proceed to determine the maritime boundary"[77]. Why? Because "each Party" still "claim[ed] sovereignty over Conga, Cocoteros, and Mbañe"[78]. That is why Equatorial Guinea then "proposed" to resolve those outstanding disputes through "international mediation or arbitration"[79]. If a State believes that sovereignty over certain islands has been already determined by a treaty having the force of law, would it not invoke such a treaty to protect its rights?

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[74] *Ibid.*

[75] *Ibid.*, p. 167. MEG, Vol. VII, Annex 207.

[76] *Ibid.*

[77] Report of the Border *Subcommission of the Ad Hoc Commission on the Gabon-Equatorial Guinea Boundaries* (20 January 1993), p. 206. MEG, Vol. VII, Annex 210.

[78] *Ibid.* MEG, Vol. VII, Annex 210.

[79] *Ibid.*

Of course, it would. Did Gabon? No, it did not. It is not credible that Gabon truly believed there was a treaty giving it the disputed island but chose not to invoke it.

12. Gabon also failed to invoke the 1974 document to support its claims regarding the land boundary. During the Parties' negotiations in January 1993, Gabon relied exclusively on the 1900 Convention[80]. Equatorial Guinea explained that the land border "is a logical result of the work of the Franco-Spanish Commission"[81]. How did Gabon respond? It took "proper note"[82] of Equatorial Guinea's position to raise the boundary "situations bequeathed by the colonial powers" to "the highest echelons of [both] countries so that a definitive boundary may be adopted"[83]. Took "proper note"? Why did not Gabon properly note that the land boundary had been settled by the 1974 document? The only plausible explanation is that it knew that the Parties had no agreement having the force of law between them.

13. "At the invitation" of Gabon[84], the Parties again met in January 2001. The head of the Gabonese delegation "asked the Parties to work in compliance with the following [treaties] governing the legal framework of this work:

— The French-Spanish Convention of June 27, 1900;

— The United Nations Charter;

— The Charter of the Organization of African Unity;

— The International Convention on the Law of the Sea."[85]

14. There is a glaring omission from Gabon's list of applicable treaties. How could Gabon have failed to include the 1974 document on this list if it truly considered that the document was a binding agreement having the force of law between the Parties?

15. Gabon also "urged" the Parties "to base their work" on such "principles" as "respecting borders inherited from colonization" and "respecting the sovereignty and territorial integrity of each

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[80] *Ibid.*, p. 203, MEG, Vol. VII, Annex 210; *French Report of the Border Sub-Commission of the Ad-Hoc Border Commission Gabon-Equatorial Guinea* (20 January 1993), p. 193. MEG, Vol. VII, Annex 209.

[81] *Report of the Border Sub-Commission of the Ad Hoc Commission on the Gabon-Equatorial Guinea Boundaries* (20 January 1993), p. 204. MEG, Vol. VII, Annex 210.

[82] *Ibid.*, p. 205. MEG, Vol. VII, Annex 210.

[83] *Ibid.*

[84] The Gabonese Republic, *Minutes of the Ad Hoc Border Committee,* Libreville (31 January 2001), p. 230. MEG, Vol. VII, Annex 212.

[85] *Ibid.*

State"[86]. Another glaring omission: Gabon failed to urge for the 1974 document. In fact, it failed to mention it at all. Moreover, the 1974 document, which purports to modify the borders inherited from colonization, is inconsistent with the principle of respecting borders inherited from colonization, which Gabon urged the Parties to apply in resolving their sovereignty and boundary disputes.

16. Equally glaring is Gabon's failure to mention Article 4 or its *nota bene* from the 1974 document when discussing a maritime boundary during the 2001 negotiations[87]. Gabon, as before, completely ignored this document. Instead, Gabon negotiated over delimitation solution proposed by Equatorial Guinea, which, as you can see on this slide, is completely different from the line Gabon now alleges was "definitively established" in 1974[88]. Why did not Gabon tell Equatorial Guinea that its proposal was unacceptable because it conflicted with the idea that the Parties allegedly established a boundary in 1974? Obviously, because, whatever the 1974 document may be, it is not a binding agreement that can be invoked against Equatorial Guinea.

17. In sum, Gabon's consistent and continuous position that the Parties' negotiations for three decades was marked by total silence about the 1974 document and its acceptance that the Parties should resolve their ongoing disputes about the same matters, based on other treaties, legal titles and legal principles.

18. Gabon was also silent about the 1974 document outside the formal negotiations when the Parties were asserting maritime claims, granting oil and gas concessions in the disputed maritime areas, and delimiting their maritime boundaries with third States. Mr Juratowitch told you these were not of such a nature as to call for Gabon's invocation of the 1974 document[89]. That is not an argument. It is an excuse.

19. In May 1990, Gabon protested an oil exploration permit granted by Equatorial Guinea in Corisco Bay. In that protest, Gabon did not assert any alleged rights under the 1974 document. Instead, it claimed that the "permit does not respect either this median line or this parallel"[90]. This

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[86] *Ibid.*

[87] *Ibid.*, p. 232. MEG, Vol. VII, Annex 212.

[88] RG, Vol. I, para. 5.7.

[89] CR 2024/31, p. 56, para. 86 *(g)* (Juratowitch).

[90] *Letter No. 293 from* the Minister of Foreign Affairs and Cooperation *to* the Embassy of the Republic of Equatorial Guinea in Gabon *concerning* Note. No 253.89/AMGE of 16 October 1989 in reference to the Clarion Petroleum Permit Issued to the Company of the Same Name (4 May 1990), p. 295. REG, Vol. IV, Annex 46.

was the line that Gabon believed defined the extent of rights it believed it could claim. But the line Gabon asserted in 1990 is different from the line that Gabon alleges to have been definitively established in 1974. And the reason Gabon did not invoke the 1974 document is clear from its admission that "the area in which the . . . permit is located *is very much under dispute and is the subject of negotiations*"[91], by "the *ad hoc* commission on borders of the two countries"[92].

20. On 13 September 1999, Gabon protested Equatorial Guinea's decree establishing its maritime boundary with Gabon as the median line constructed using Mbañe, Cocoteros and Conga as base points[93]. But the basis of that protest was not any right under the 1974 document, but rather Gabon's "Decree No. 2066/PR dated December 4, 1992", a unilateral act establishing Gabon's straight baselines that itself made no reference to the 1974 document, let alone to any rights allegedly created by this piece of paper[94].

21. On Monday, I showed you on slides 5 and 6 in tab 5 of the judges' folders the maritime boundaries that the Parties established in their treaties with São Tomé and Príncipe. We heard nothing from Mr Juratowitch about why Gabon chose not to protest the delimitation agreement between Equatorial Guinea and São Tomé and Príncipe, which established a boundary that Gabon admits is located "well to the south" of the putative delimitation line under the 1974 document and covers a maritime area that would have fallen to Gabon if the 1974 document had the force of law between the Parties[95]. Nor did Mr Juratowitch explain why Gabon, in its own maritime delimitation agreement with São Tomé and Principe, ended the maritime boundary well to the south, instead of extending it further north to give effect to its alleged rights under the 1974 document.

22. On Wednesday, Mr Juratowitch referred to a principle of international law that a territorial régime established by a treaty achieves a permanence which the treaty itself does not necessarily

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[91] *Ibid.*, p. 296. REG, Vol. IV, Annex 46.

[92] *Ibid.*

[93] Republic of Equatorial Guinea, *Decree No. 1/1999 Designating the Median Line as the Maritime Boundary of the Republic of Equatorial Guinea* (6 March 1999), pp. 359-363. MEG, Vol. VI, Annex 193.

[94] *Note Verbale from* the Embassy of The Gabonese Republic to the Republic of Equatorial Guinea *to* the Ministry of External Affairs, International Cooperation, and Francophony of the Republic of Equatorial Guinea (13 September 1999), p. 207. MEG, Vol. VI, Annex 178.

[95] CMG, Vol. I, para. 4.18.

enjoy[96]. The Court first articulated this principle in *Libya/Chad*[97]. What is lacking in our case is a treaty. Here, the only thing that has achieved permanence in 30 years between 1974 and 2003 was the Parties' mutual recognition that their disputes over islands, land territory and maritime boundary were unresolved by any treaty or any agreement. Unlike the conduct of the parties in *Libya/Chad*, which the Court found dispositive, the conduct of the Parties in this case does not show that the Parties have "accepted and acted upon" the 1974 document[98]. It shows the opposite.

23. Mr Juratowitch spent a considerable amount of time that Equatorial Guinea failed to establish "a conceptual basis" for "the termination of the Bata Convention under the law of treaties"[99]. That is because we have never argued that the so-called Bata Convention was terminated. Our case is that it never entered into force between the Parties. Something that never came into existence cannot be terminated. There was nothing to terminate in this case, as confirmed by the Parties' consistent conduct over a 30-year period.

24. Mr Juratowitch cannot be right in asserting that Gabon's consistent failure to invoke the 1974 document for 30 years is "not relevant" for the question of whether it constitutes a "title"[100]. It is very pertinent — and we say it is conclusive — on the question of Gabon's understanding of what that document signified. We say that Gabon's failure to invoke — or even to mention this document during bilateral negotiations with Equatorial Guinea over the very same issues addressed in that document — especially in circumstances where any reasonable State would have been sure to invoke it — constitutes irrefutable proof that Gabon, like Equatorial Guinea, did not consider any binding agreement to have been reached in 1974. In terms that may be familiar to the Court, Gabon's failure to invoke the 1974 document *for 30 years* manifested "an attitude manifestly contrary to the right" that it now claims, such that Gabon "is precluded from claiming" the alleged right[101].

25. We do not oppose the suggestion that States sometimes engage in negotiations over matters that have been resolved by prior agreements. But it is simply not credible that they would completely

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[96] CR 2024/31, pp. 55-56, para. 86 *(f)* (Juratowitch).

[97] *Territorial Dispute (Libyan Arab Jamahiriya/Chad), Judgment, I.C.J. Reports 1994*, p. 37, paras. 72-73.

[98] *Ibid.*, pp. 34-35, para. 66.

[99] CR 2024/31, pp. 54-55, para. 86 *(a)-(d)* (Juratowitch).

[100] CR 2024/31, p. 56, para. 86 *(i)* (Juratowitch).

[101] *Temple of Preah Vihear (Cambodia* v. *Thailand), Merits, Judgment, I.C.J. Reports 1962*, separate opinion of Vice-President Alfaro, p. 40.

ignore a prior agreement on the very same subject-matter, if such an agreement existed. At the very least, if Gabon were prepared to reopen issues that it believed had been resolved in an earlier treaty, it would have invoked the treaty as a starting-point for any further negotiations, especially if such a treaty were entirely in its favour. Again, it is simply not credible that Gabon understood the 1974 document to have the force of law between the Parties but chose not to invoke it for 30 years in the course of those negotiations. Its consistent conduct, as well as that of Equatorial Guinea, manifested a common understanding that both Parties had no agreement having the force of law between them either in 1974, or any time thereafter.

26. Mr President, Members of the Court, Gabon's argument on Wednesday brought to my memory what Franz Kafka once said: "By believing passionately in something that still does not exist, we create it." Unfortunately for Gabon, this is not a rule of international law. Gabon may have began believing in 2003 that it really exists but before this Court, that is not sufficient to create one. I thank you for your kind attention and ask you to invite Mr Reichler to the podium.

The PRESIDENT: I thank Mr Yuri Parkhomenko for his statement. Before asking Mr Reichler to take the floor, the Court will observe a 15-minute break.

The Court adjourned from 4.30 p.m. to 4.45 p.m.

The PRESIDENT: Please be seated. Mr Reichler, you have the floor.

Mr REICHLER:

THE LEGAL TITLES TO DISPUTED ISLANDS

1. Mr President, Members of the Court, I will begin by giving Equatorial Guinea's answer to Judge Cleveland's question about the meaning and legal significance of the term "dependencies", and whether this has relevance here. Our answer begins by referring to the Court's jurisprudence, and then applies it to the facts of this case.

2. In its Advisory Opinion in the *Chagos Archipelago* case, without which Professor Sands especially, and I can assure you, from personal experience, the historic agreement announced today would have been inconceivable. In that Advisory Opinion, the Court determined that the Chagos

Archipelago was a "dependency" of Mauritius, and thus an integral part of Mauritius' territory. There are a number of references to this in the Opinion:

> "By the Treaty of Paris of 1814, France ceded Mauritius and all its dependencies to the United Kingdom."[102]

> "Following the conclusion of the 1814 Treaty of Paris, the 'island of Mauritius and the Dependencies of Mauritius', including the Chagos Archipelago, were administered without interruption by the United Kingdom."[103]

> "The Mauritius Constitution Order of 26 February 1964 . . ., promulgated by the United Kingdom Government, defined the colony of Mauritius in Section 90 (1) as 'the island of Mauritius and the Dependencies of Mauritius'."[104]

> "In many of these reports [by the United Kingdom to the Fourth Committee], the islands of the Chagos Archipelago, and sometimes the Chagos Archipelago itself, are referred to as dependencies of Mauritius."[105]

3. The Advisory Opinion does not define the word "dependency" but it leaves little doubt about what it comprehended: small islands, including — but not only — uninhabited islands, that had no autonomous administration but were historically administered from a larger geographic entity upon which they were dependent and to which they were considered attached. In the case of Chagos, the detachment of these dependencies by the United Kingdom was regarded by the Court as a violation of Mauritius' territorial integrity.

4. In *El Salvador/Honduras*, the Court found that:

> "The small size of Meanguerita, its contiguity to the larger island, and the fact that it is uninhabited, allow its characterization as a 'dependency' of Meanguera, in the sense that the Minquiers group was claimed to be a 'dependency of the Channel Islands'"[106].

5. In the *Minquiers and Ecrehos* case, the Court found that:

> "When the British Embassy in Paris, in a Note of November 12th, 1869, to the French Foreign Minister, had complained about alleged theft by French fishermen at the Minquiers and referred to this group as 'this dependency of the Channel Islands', the French Minister, in his reply of March 11th, 1870, refuted the accusation against French

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[102] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019 (I)*, p. 107, para. 27.

[103] *Ibid.*, p. 136, para. 170.

[104] *Ibid.*, p. 107, para. 28.

[105] *Ibid.*, p. 108, para. 29.

[106] *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening), Judgment, I.C.J. Reports 1992*, p. 570, para. 356.

> fishermen, but made no reservation in respect of the statement that the Minquiers group was a dependency of the Channel Islands."[107]

On the basis of its sovereignty over the Channel Islands, Britain was thus declared sovereign over these small rocks and islets, as well[108].

6. The rule goes back at least as far as the *Island of Palmas* case: "As regards groups of islands, it is possible that a group may under certain circumstances be regarded as in law a unit, and that the fate of the principal part may involve the rest"[109].

7. These cases are directly relevant here. Both Parties agree that Mbañe, Cocoteros and Conga are very tiny islets in close proximity to Corisco Island. The Parties agree, as well, that, as Professor Miron told you, the three islets "have never had a permanent population"[110]. And the evidence shows that these tiny, uninhabited islets were historically regarded — by both Spain and France — as dependencies of Corisco Island, and that both States consistently recognized that Spain held title to Corisco Island "and its dependencies", including, specifically, these three islets.

8. I am afraid to say that my dear friend, Professor Miron, has been very casual with you in addressing this evidence, by making assertions that are demonstrably wrong or unsupported by any citation to the record.

9. Professor Miron told you that "two colonial powers thought they had sovereignty over these islands"[111]. This is simply false. There is no evidence — absolutely none — that France ever claimed sovereignty over Mbañe, Cocoteros or Conga. To the contrary, the evidence shows that France expressly recognized Spain's title to Mbañe and Cocoteros by name. The only island in Corisco Bay to which France ever — ever — claimed title was Elobey, and by 1900 France had renounced its claim and recognized Spain's title to that island as well. And today, Gabon recognizes Equatorial Guinea's title to that island. It is not disputed.

10. This is what France actually said about Corisco Island and Mbañe in 1886 in the Mixed Commission with Spain:

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[107] *Minquiers and Ecrehos (France/United Kingdom), Judgment, I.C.J. Reports 1953*, p. 71.

[108] *Ibid.*, p. 72.

[109] *Island of Palmas Case (Netherlands/United States of America)*, Award of 4 April 1928, *RIAA*, Vol. II (1949), p. 855.

[110] CR 2024/32, p. 30, para. 43 (Miron).

[111] CR 2024/32, p. 36, para. 65 (Miron).

> "The former king of Corisco died in 1843, shortly after the annexation of that island. Oregock, who succeeded him that same year, took the title of King of Corisco, Elobey and dependencies, in the act of February 18, 1846, which confirmed this annexation; and he recognized that these islands were Spanish, swearing loyalty in the hands of the Most Illustrious envoy of Her Majesty the Queen of Spain"[112].

11. Let me stop here for a moment, with France's own words on the subject. Professor Miron questioned the derivation of Spain's title by virtue of agreement with a local leader. She asked: who recognized him as a leader who could convey title to territory? We have the answer here: *France.* France itself recognized Spanish title based on annexation and the agreement of the king of that territory. There is no evidence — none — that France ever questioned the legitimacy of Spain's agreement with the King of Corisco, or the King's authority to cede his territory to Spain, or place it under the Spanish Crown's sovereignty. Now, more than 180 years after this agreement, and more than 55 years after Spain's title passed to Equatorial Guinea, Gabon — or at least, its counsel — asks the Court to find the 1843 agreement invalid. Just imagine the chaos that would be created, throughout Africa and the world, if titles to territory, acquired by succession from former colonial powers, could be disputed simply by questioning the authority of local leaders who conveyed the territory two centuries earlier. No thank you, Professor Miron.

12. To continue reading France's memorandum: "The letter of nationality, issued on that occasion to the inhabitants of Corisco specifies that Elobey Chico is part of the dependencies of the first of these islands"[113].

13. At which point there is a footnote, which reads, as you saw on Monday: "The geographical dependencies of Corisco are: Laval [Leva] and the one called Baynia [Mbañe]."[114]

14. This French memorandum goes on to assert that "Spain cannot rely on this document to claim Elobey Grande; as for Elobey Chico, an uninhabited rock at the time, it depends on Grande, and not on Corisco"[115]. This is consistent with France's claim, at the time, to the Elobeys, Grande and Chico, but not to any other islands in Corisco Bay, and certainly not to Mbañe, which it recognized as a dependency of Corisco, which it recognized as Spanish.

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[112] French-Spanish Commission, Conference on the Delimitation in West Africa, Archives of the French Ministry of Foreign Affairs, *Annex to Protocol No. 17* (24 December 1886), p. 2. MEG, Vol. III, Annex 11.

[113] *Ibid.*

[114] *Ibid.*

[115] *Ibid.*

15. The act of 1846 to which the French memorandum refers is the Record of Annexation issued by the King of Corisco, which we showed you on Monday. Professor Miron challenged this on two grounds. First, she said, our version, Annex 112 to the Memorial, is a transcription rather than an authentic copy of the original manuscript. This criticism came as a surprise to us, because Gabon made no such complaint in its Counter-Memorial or its Rejoinder. But, no matter, because we do have an authentic copy of the original manuscript — right here — and we will be glad to supply it to Gabon or to the Court immediately upon request.

16. Professor Miron's second objection was to our translation, specifically of the Spanish words: "la Isla de Corisco, Elobey y *sus* actuales dependencias son españolas". The English translation attached to our Memorial reads: "The Island of Corisco, Elobey and *its* current dependencies are Spanish". We discovered what we thought was an error while we were preparing for these hearings and we asked our professional translators to take another look. Their corrected translation reads: "The Island of Corisco, Elobey and *their* dependencies are Spanish." To be sure, the word "sus" could mean "their" or "its", but in this context "its" would be incorrect because it is followed by "dependencies" — plural — and Elobey has only one dependency, Elobey Chico. Corisco has several dependencies, as France itself has recognized, including Mbañe and Leva. The correct translation is therefore: "The Island of Corisco, Elobey and their dependencies are Spanish."

17. Professor Miron claims to be "lost in translation", and I am prepared to take her at her word. But there is no reason for her to presume that anyone else is lost, and certainly not the Court. We provided in Monday's judges' folders the original Spanish, our initial translation and a corrected one. We leave it to the Court to determine which to rely upon, knowing that it is benefited by having native Spanish speakers on the Bench.

18. This is another French document presented at the Mixed Commission, in 1887. Professor Miron called your attention to this part: "From the facts that we have just recalled it is clear and evidenced that there was an attempt to give the text acts of 1843, 1846 and 1858 an extension they could not contain."[116]

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[116] French-Spanish Commission, Conference on the Delimitation in West Africa, Archives of the French Ministry of Foreign Affairs, *Protocol No. 30* (16 September 1887), pp. 12-13. MEG, Vol. III, Annex 3.

19. Professor Miron asserted that this shows that France "vigorously opposed the extension of Spain's claim beyond Corisco Island"[117]. But if you read further, you find that France accepted Spain's title to the Corisco Island dependencies; its objection was to the extension of this title to the mainland coast, as Spain was then claiming:

> "In effect, the act of 1843 is the one to which Spain owes the annexation of Corisco and of its natural dependencies, the islets of Laval [Leva] and Baynia [Mbañe], included in the zone of the territorial waters of that island. The proof that Corisco's dependencies did not extend to any part of the African Continent is that the letter of nationality . . ."[118].

And it goes on to explain what that proof is: that the Corisco Island dependencies did not include the African coast. That part was omitted from Professor Miron's presentation.

20. Next, she tells us that this does *not* constitute French recognition that Leva and Mbañe are natural dependencies of Corisco, as this appears to say, because in her estimation they are not included in the "zone of territorial waters" of that island since they lie six miles from it[119], and, she tells us, Corisco's territorial waters extended only for "three nautical miles"[120]. Where did she come up with that? We cannot tell, because she provided no citation. In any event, that was definitely not France's position. On Monday, we showed you this memorandum from the French Foreign Minister to the Minister of Overseas France. We present it again only to respond to Professor Miron, who skipped right over it: "Over the past fifty years, Baynia Island [Mbañe] was occupied by the Spanish on several occasions, without protest or alternate occupation by us. Baynia Island is located within the six nautical mile limit forming the boundary of Spanish territorial waters"[121].

21. There can be no doubt — none — that Mbañe was, and is, a dependency of Corisco Island and that France has always — always — recognized it as such. There is no record — none — that France ever claimed Mbañe for itself or challenged Spain's claim to title over it as a dependency of Corisco. Professor Miron had the opportunity yesterday, but she did not present a single document in which France ever — ever — claimed Mbañe or opposed Spain's claim to it. On Monday, we

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[117] CR 2024/32, p. 26, para. 25 (Miron).

[118] French-Spanish Commission, Conference on the Delimitation in West Africa, Archives of the French Ministry of Foreign Affairs, *Protocol No. 30* (16 September 1887), p. 13. MEG, Vol. III, Annex 3.

[119] CR 2024/32, p. 31, para. 48 (Miron).

[120] *Ibid.*

[121] MEG, Vol. I, para. 3.32; The French Republic, *Letter from the Minister of Foreign Affairs to the Minister of Overseas France* (6 May 1955), pp. 3-4. MEG, Vol. IV, Annex 94.

showed you this map. An official French map from 1968. It was produced by the Institut géographique national — which was then an agency of the French Government. It shows that, for France, Mbañe belonged to Equatorial Guinea. What did Professor Miron have to say about this? Absolutely nothing. She chose to ignore it. There is no doubt about Spain's and then Equatorial Guinea's sovereignty over Mbañe. Certainly, France had no doubt about this.

22. Nor can there be any doubt that France regarded Cocoteros as another dependency of Corisco, and also under Spanish, and then Equatoguinean, title. The same May 1955 memorandum from the French Foreign Minister, at tab 15 of our judges' folder on Monday, described Mbañe as "the primary land mass . . . to which the Cocotier islet belongs", and it went on to state "'Cocotier' must be considered as following the fate of Baynia Island [Mbañe], of which it is a geographical dependency"[122]. Those are France's words.

23. On Monday, we called your attention to a French Notice to Mariners issued the following month, in June 1955, which states, in English translation: "As Spanish sovereignty over Cocoteros Island has been recognized by the French High Officials, the Cocotiers beacon located in Spanish territory is Spanish"[123]. Yesterday, Professor Miron told you that this was just a draft, never published. Again, where did this come from? Again, there is no citation, just the words of counsel. Maybe she was giving us her own unbiased opinion, instead of evidence. So let's go back to the document. Right here in the third line under the words I just read, it says, in English translation of the French text: "Date on which the AVURNAV" — that is the French acronym for "Avis d'urgence aux navigateurs" — or Urgent Navigation Warning, that is, *this very notice* — was *sent*: "June 11, 1955"[124]. On the next page of the French original, it shows that this document was signed on 4 July 1955, confirming that this warning had been sent. Professor Miron tells us it was signed by a low-level person. The stamp identifies the signer as the Chief of the Subdivision of Maritime Beacons. Presumably, he, or she, would know if the warning had been sent on 11 June 1955, as the document says.

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[122] MEG, Vol. I, para. 3.32; The French Republic, *Letter from the Minister of Foreign Affairs to the Minister of Overseas France* (6 May 1955), pp. 3-4. MEG, Vol. IV, Annex 94.

[123] REG, Vol. I, para. 4.31; Bulletin to Advise Sailors, *Bulletin of Information No. 626* (1955), p. 1. REG, Vol. III, Annex 17.

[124] *Ibid.*

24. Earlier that year, France began to construct the beacon at Cocoteros before it received Spain's authorization. The Spanish Governor directed the French territorial administrator to suspend the work and the French complied[125]. The following year, the French Director of the Maritime and Beacons Service wrote this, which is at grey tab 3 of today's judges' folder: "Following a minor dispute with the Spanish authorities, Spanish sovereignty over the islet of Baynia [Mbañe] and the islet of Cocoteros had to be recognized. The Spanish authorized the completion, by the French services, of the construction of the beacon at the islet of Cocoteros"[126].

25. Professor Miron had the temerity to draw a comparison between Spain's expulsion of unauthorized persons from its own sovereign territory — recognized by France as Spanish territory — and Gabon's military invasion and conquest of Mbañe, despite the fact that France and Gabon itself had previously recognized Mbañe as Spanish, and then Equatoguinean. The "wild west"? Hardly. The only outlaws were those dispatched by Gabon in 1972.

26. Where is the evidence that France ever claimed title to Mbañe, to Cocoteros or to Conga? Professor Miron supplied none yesterday. Zero. Nor did Gabon in its written pleadings or annexes. The evidence, as we have shown you, establishes that only one colonial Power — Spain — ever claimed title to these particular islands and that France never opposed Spain's claim.

27. You were told yesterday about "overlapping claims in the Gulf of Guinea"[127]. That was true, but misleading. The evidence shows that France's only claim was to the Elobeys — Elobey Grande and Elobey Chico — and nothing more. This is the map, shown to you yesterday, reflecting the territory Gabon claims that France acquired through agreements with local leaders. Professor Miron told you that this showed "there were indeed rival claims"[128]. However, as you can see, the only islands claimed by France are the Elobeys. So, too, with this map, which was also shown

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[125] MEG, Vol. I, para. 3.30-3.31; The Spanish State, Telegram No. [ ]11 from the General Directorate of Morocco and Colonies to the Governor of Spanish Territories of the Gulf of Guinea (8 Mar. 1955). MEG, Vol. IV, Annex 88. The Spanish State, Telegram No. 7 from the Governor of Spanish Territories of the Gulf of Guinea to the Director-General of Morocco and Colonies (12 Mar. 1955). MEG, Vol. IV, Annex 91; The Spanish State, Letter from the Governor-General of the Spanish Territories of the Gulf of Guinea to the General Directorate of Morocco and Colonies (17 Mar. 1955). MEG, Vol. IV, Annex 89.

[126] REG, para. 4.31; The French Republic, Letter from the Director of the Lighthouse and Beacon Service to the Director General of Public Works of French Equatorial Africa (26 Jan. 1956), pp. 4-6 (emphasis added). CMG, Vol. IV, Annex 102.

[127] CR 2024/32, p. 25, para. 23 (Miron).

[128] CR 2024/32, p. 25, para. 23 (Miron).

to you yesterday. This, too, shows that the only overlapping claims of Spain and France in Corisco Bay were to the Elobeys, which are the only islands depicted in maroon, representing territory claimed by Gabon.

28. Professor Miron told you the Mixed Commission dealt with disputed islands in addition to the mainland. Again, this is true, but misleading. At the Mixed Commission, the only disputed islands were the Elobeys. As the French documents from the Mixed Commission, which we just saw, showed, France did not challenge Spain's claims to any other islands. It expressly recognized them as dependencies of Corisco, and thus Spanish. And as I have said, the dispute over the Elobeys was resolved in Spain's favour before the 1900 Convention. As Professor Miron acknowledged, Article VII of that Convention gave France a right of first refusal in case Spain ever wished to cede Corisco or Elobey to another State, an undeniable reflection of France's acceptance of Spain's title to these islands.

29. Professor Miron points to the absence of reference to Mbañe, Cocoteros or Conga in the 1900 Convention. But what of it? There were no disputes about title to these islands. There was not a single document ever produced that identified any of these islands as disputed. France had long recognized them as Spanish. There was no need to address them in a Convention focused on resolving disputed claims. It is just as false to assert that "the question of sovereignty remained unresolved after the 1900 Convention"[129]. The evidence shows that there were no disputes over Mbañe, Cocoteros or Conga before or after that Convention, because France never claimed them or disputed Spain's title.

30. I do not have time to correct all of the inaccurate or misleading statements about the evidence that you heard yesterday. The fact that I have not addressed every one of them should not be interpreted as an acceptance of any of them. It is one thing to be eloquent — something we all aspire to be — it is another to strive to be accurate in presenting evidence to the Court.

31. I come finally to the matter of sources of title. On Monday, I referred to the sources of title identified by the Court in its jurisprudence, including *Burkina Faso/Mali*, *El Salvador/Honduras* and

[129] CR 2024/32, p. 32, para. 52 (Miron).

Western Sahara, and I stated that Spain had satisfied the conditions for establishing title laid down by the Court. Professor Miron disagreed, so I will briefly return to this issue.

32. *Colonial occupation.* Professor Miron said that this can only be a source of title to territory not previously inhabited[130]. That legal assertion is debatable but whatever its legal correctness, she agreed that Mbañe, Cocoteros and Conga have never been inhabited[131].There is one exception. The evidence showed that Spain, and then Equatorial Guinea, sent guards there to protect their sovereignty over the islet. This, however, is a manifestation of occupation, not evidence of prior habitation.

33. *Agreement with local rulers.* The evidence, which we reviewed again today, shows that Spain acquired title to Corisco Island and its dependencies through agreement with the King of Corisco, and that France accepted this[132].

34. *Public and notorious assertion of sovereignty without protest.* There can be no doubt that Spain openly and continuously proclaimed and asserted sovereignty over Corisco Island and its dependencies — including specifically Mbañe, Cocoteros and Conga — for at least 125 years, from 1843 to 1968, when Equatorial Guinea became independent, and that no State, not France or anybody else, ever protested or challenged Spain's sovereignty to these islands. The only challenge was to Spain's claim to the Elobeys, and France recognized Spain's sovereignty even over these islands by 1900.

35. *Effective administration over a prolonged period.* One hundred and twenty-five years of effective Spanish administration — uninterrupted and unchallenged, and undisputed — constitutes a sufficiently prolonged period to vest title in Spain.

36. And finally, *succession.* It cannot be disputed that the title to territory possessed by a colonial Power passes by succession to the newly independent State, in this case Equatorial Guinea. France itself recognized Equatorial Guinea's sovereignty over Mbañe, specifically, as reflected in its official 1968 map, issued in the same year as Equatorial Guinea's independence.

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[130] CR 2024/32, p. 32, para. 51 (Miron).

[131] CR 2024/32, p. 30, para. 43 (Miron).

[132] Kingdom of Spain, Ministry of State, *Record of Annexation* (18 Feb. 1846). MEG, Vol. V, Annex 112.

37. Mr President, Members of the Court, the applicable law and the relevant evidence lead to only these conclusions: Mbañe, Cocoteros and Conga are dependencies of Corisco Island. Spain had uncontested legal title to all of them from 1843 to 1968. That title was recognized by France and then by Gabon after its independence in 1960. Spain's title passed by succession to Equatorial Guinea in 1968. As my colleagues have shown you, that title was never relinquished by Equatorial Guinea, and it could not be detached from Equatorial Guinea by an unlawful use of force.

38. I thank you, again, for your kind courtesy and patient attention, and I ask you to please call Professor Akande to the podium.

The PRESIDENT: I thank Mr. Paul Reichler for his statement. I now invite the next speaker, Professor Dapo Akande to take the floor.

Mr AKANDE:

LEGAL TITLE AND TREATIES THAT CONCERN THE DELIMITATION OF THE COMMON LAND BOUNDARY

1. Thank you, Mr President. Members of the Court, my task this afternoon is to address you once again on the legal titles that have the force of law in so far as they concern the delimitation of the common land boundary between the Parties. You have been provided with four written pleadings and you have already heard two rounds of oral pleadings on this subject. At this stage of the proceedings, in order to assist the Court, I propose:

— *first*, to set out the issues on which it is clear that the Parties are in agreement in relation to the land territory;

— *second*, to discuss those issues where on the basis of Gabon's presentation it might appear that the Parties disagree, but where examination of the record indicates that there is in fact agreement; and

— *third*, to identify those issues where disagreement remains. In relation to this third set of issues, I will respond to the mischaracterizations and, dare I say it, errors in the arguments of the other side.

I. Agreement between the Parties in relation to title to the land territory

2. Despite what might appear to be the case at first sight, and despite some of the portrayals by Gabon yesterday of Equatorial Guinea's arguments, there is in fact much agreement between the Parties with respect to the relevant points on the land territory.

3. First, the Parties agree that on the date of independence, first of Gabon, and then of Equatorial Guinea, each of those States succeeded to the territory to which France and Spain, respectively, had title on the basis of the 1900 Convention. It is not in dispute, and it need hardly be said, that neither of the Parties in these proceedings were parties to the 1900 Convention. However, on the date of independence that Convention became a relevant basis for their title to territory because of the legal operation of their succession to the rights and titles of France and Spain.

4. Second, it is not disputed that the 1900 Convention not only sets out a land boundary in Article IV, but that it also allowed for modifications to that boundary on the basis of procedures provided for in Article VIII of the Convention and Appendix I. It is agreed that these modifications could take place on the basis of proposals of commissioners or local delegates. This aspect of the 1900 Convention could not be put any better than Mr Müller put it yesterday, "*Of course*, [he said] it was possible to propose changes to the demarcation lines and submit them to the respective governments for approval"[133].

5. Third, the evidence is clear, and the Parties do not disagree, that the commissioners were in fact appointed and they made proposals for changes to the boundaries[134]. It is also not in dispute that local officials also made proposals for changes to the boundary[135].

6. Fourth, it is agreed that any modifications to the boundary required approval by the Parties[136].

7. The effect of all of these points on which the Parties are agreed is that *upon independence* the Parties succeeded to title to territory as set out in the 1900 Convention and that the 1900

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[133] CR 2024/31, p. 65, para. 23 (Müller).

[134] MEG, Vol. I, paras. 3.43-3.50; *Letter from* the French Minister of Colonies *to* the Administrator of the Franco-Spanish Delimitation Commission (19 June 1901), p. 1. MEG, Vol. IV, Annex 55; Franco-Spanish Delimitation Commission of the Gulf of Guinea, *Border Project: Southern Border* (1 January 1902). MEG, Vol. III, Annex 14; CMG, Vol. I, paras. 1.41-1.43.

[135] *Letter from* French Minister of Colonies *to* Minister of Foreign Affairs (24 November 1919), MEG, Annex 68.

[136] CR 2024/32, p. 13, para. 35 (Müller).

Convention allocates territory not just on the basis of the lines provided for in Article 5 but on the basis of any modifications that had been approved by that time. This is the title that existed for Gabon in August 1960 and which existed for Equatorial Guinea in October 1968. In our submissions, nothing has changed with respect to title since those dates.

II. Misleading impression by Gabon as to disagreements

8. Mr President, Members of the Court, let me now turn to those issues where the arguments made by Gabon give the misleading impression that there is disagreement between the Parties, but where, in reality, the Parties are in agreement.

9. Yesterday, Mr Müller argued that the 1900 Convention does not *require* replacement of the boundaries set out in Article 4 by natural features[137]. He stated, and I quote, "Contrary to what Equatorial Guinea's lawyer tried to suggest . . . neither Article 8 of the Paris Convention nor its annex requires the border defined in article 4 to be replaced by a new natural border." Well, we agree with him! There was no requirement to change the borders and no requirement to change it on the basis of natural features. What we said, in agreement with him, is that those provisions of the 1900 Convention *allow for* modifications and that they provide a procedure for doing so. Article 8 did require the appointment of commissioners who could propose modifications but since those proposals required approval, it necessarily follows that there could be no requirement that modifications be made.

10. Gabon also asserts that Equatorial Guinea relies on *effectivités* in order to overrule legal reality[138]. You were reminded of your case law which makes clear that in cases where there are *effectivités* which stand in contrast with the title, effect must be given to the legal title[139]. We do not dispute this legal principle. However, we do not argue that the actions on the ground by Spain, or indeed by France, stand in contrast with title or that they prevail over the legal title. We simply say, as Gabon agrees, that the proposed changes must be approved by the Parties, and we set out how the conduct of the parties to the 1900 Convention, and indeed the conduct of the Parties to this case,

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[137] CR 2024/31, p. 65, para. 23 (Müller).

[138] CR 2024/31, p. 65, para. 23 (Müller).

[139] CR 2024/32, p. 65, para. 25, note 234 (Müller).

provide evidence of such approval. Nothing here overturns legal reality. By contrast, this is a situation where it is the treaty itself that provides for the possibility of change.

11. Gabon insists, on a number of occasions, that the Paris Convention has not been amended[140]. We agree and we do not suggest otherwise. We do argue that the boundary line as set out in Article 4 was not the boundary at the moment of independence of Equatorial Guinea, or indeed of Gabon. However, this is not because the Convention was amended or changed. Not at all! Our argument is that the provisions of the 1900 Convention were applied and given effect!

12. So, as a general matter — and returning to what the Court is called upon to decide — there is agreement between the Parties that on the day before independence, the title that had the force of law relating to the delimitation of the land boundary is the 1900 Convention, and to the extent that any modifications to the boundary were approved by the Parties in accordance with the procedures set out in the Convention, there would be such title to territory based on the 1900 Convention. What then happened on the day of independence? Well, on that day, each of the Parties to this case, Gabon and Equatorial Guinea, succeeded to that title.

III. Matters truly in dispute in relation to the land boundary

13. Members of the Court, having identified the points in respect of which there is agreement on the titles relating to the delimitation of the land boundary, let me now turn to what remains truly in dispute.

14. Although both Parties are in agreement that proposals could be made to modify the boundary line in Article 4, and that proposals were in fact made, the first area of disagreement is whether these proposals were approved, both in the Utamboni and in the Kie River areas.

15. The second area of disagreement relates to whether anything has changed with regard to title since the day of independence. On this, as you have heard from my colleagues, Equatorial Guinea submits that there is no other convention or title that provides a new basis for title to territory in the period since both Gabon and Equatorial Guinea gained independence.

16. Let me return to whether the modifications proposed were approved in accordance with the 1900 Convention. Mr Müller told you yesterday that Equatorial Guinea seeks to replace approval

[140] *See e.g.* CR 2024/32, pp. 65-66, para. 26 (Müller).

"in due and proper form" with a simple claim of acquiescence[141]. However, no indication is given as to what this due and proper form is. Certainly, there is nothing in the 1900 Convention that specifies any particular form that approval must take.

17. Mr Müller also said that the Parties did not understand that the 1901 Commission would have a high degree of flexibility in engaging in their work. However, flexibility with regard to the proposals that the Commissioners may make is not to be confused, as he appeared to do, with the seriousness with which the Parties would inevitably handle matters of approval. We agree that Spain and indeed France did not take the issue of approval lightly. In fact, they examined the proposals seriously, and in relation to the southern boundary, some modifications were approved and others were rejected. You will recall that while the Parties implemented the proposals made by the 1901 Commission in the Utamboni River area, they rejected proposals for modifications further east.

18. Mr President, Members of the Court, nothing you heard yesterday calls into question the fact that Spain and France approved modifications to the boundary in the Utamboni and Kie River areas.

19. Turning first to the Utamboni River area, let us examine the situation existing when Gabon attained independence in 1960. Does the evidence show that France had approved modifying the Article IV line so as to give effect to the 1901 Commission's proposal in this area? The answer is: yes. In that regard, you need only to refer to the map of Gabon published by France's National Geographic Institute in 1961 to see France's contemporaneous official view of the territorial title to which Gabon had succeeded in this area. As you can see, France does *not* depict Gabon's northern boundary as following the parallel of 1 degree north described in Article IV of the 1900 Convention. Instead, the boundary continues to follow the Utamboni River after its first intersection with the parallel 1 degree north.

20. And, as you can see on your screens, the modifications that France approved track the course of the 1901 Commission's proposals for modifying the boundary in this area. The only meaningful difference between the French and the Spanish views on the modification's course concerns the means by which the boundary reconnects with the 1 degree north parallel in the eastern

[141] CR 2024/32, p. 13, para. 35 (Müller).

part of the Utamboni River area. But, Mr President, we need not be detained by the divergence on that matter. The Court is only asked to determine the titles in force between the Parties "in so far as they concern delimitation". It is not asked to delimit their boundary. It will be for the Parties themselves, either on a bilateral basis or having recourse to other peaceful means of dispute settlement, to delimit this portion of the boundary.

21. Gabon sought to deny France's approval of the modification on the basis that it was not reflected in the boundaries set out, internally, for the French administrative district on the southern side of the border. Let us examine that contention. The administrative district in question is known as Cocobeach. On Monday, my colleague Ms Pasipanodya explained how, in 1965, Spain and Gabon each listed villages located within 10 km of their respective sides of the border. You can see the locations of the places that were listed in the area identified as Guinee Espagnole on the 1961 map of the French National Geographic Institute. That area is south of the 1 degree north latitude. *All* of the villages listed in this area were listed by Spain. Gabon did not list any of them as belonging to it, even though they were located in the Cocobeach district. In other words, there was acceptance that the boundaries of Cocobeach had been modified in conformity with the 1901 Commission's proposal. There can be no doubt that this occurred. You can see on your screens the 1961 map's depiction of the Cocobeach district's northern limits. As you can see, they do not follow the parallel but rather the course of the Utamboni River.

22. Unable to deny, with any credibility, that France approved the boundary's modification, Gabon grasps at straws by trying to argue that *Spain* did not approve the modification. This, of course, requires trying to explain away decades of Spain's exercise of sovereignty south of the parallel of 1 degree north. How does Gabon attempt this feat? By raising the possibility that perhaps Spain believed that it was actually acting *north* of 1 degree north.

23. Now, to be fair, Gabon is correct in observing that the 1901 Commission located two settlements — Asobla and Anguma — north of the 1 degree parallel when they were actually located south of that line. But any misconception as to the locations of these towns in relation to the parallel was quickly dispelled. You can see on your screens a 1914 map of this area. Both Asobla and Anguma are correctly depicted as being south of the parallel of 1 degree north. Importantly, the 1914 Spanish-German Commission used an edition of this map when it surveyed the area and identified both towns

as being Spanish[142]. So, there is no doubt that Spain understood that when it was exercising sovereignty in those towns, it was doing so south of the parallel.

24. If any further confirmation were needed, it is supplied by the Geographic Service map of the Spanish Army, which subsequently surveyed the area. The results of its work can be seen in the topographic map appearing on your screens. Asobla and Anguma are both correctly located south of the line of 1 degree north. And, because the Geographic Service placed physical geodetic markers in the field, it pinpointed the precise geographic co-ordinates of each town, as you can see on your screens. The upshot is plain: Spain knew exactly where it was exercising sovereignty.

25. Mr President, this brings me to the Kie River area. That Spain and France approved modifying the boundary here is clear. The colonial powers' approval of the modification is undeniable because they entered into an agreement in 1919 via an exchange of notes. The terms of that agreement are unambiguous: the boundary is the Kie River and this modification was authorized. France's Minister of Colonies, writing to the French Minister of Foreign Affairs, in November 1919, makes this crystal clear when he says: "for the eastern border of Guinea . . . with your assent . . . I authorised the Governor General of French Equatorial Africa to accept . . . as the demarcation line . . . the course of the Kie River until the source of the said river"[143].

26. Gabon tries to make something of the fact that the terms of the 1919 agreement stated that the boundary was provisional. However, Gabon does not contest that the agreement continued to be applied, and that the Kie River was respected as the boundary until the moment when Gabon became independent. Accordingly, the photographs of the territorial situation existing at the moment of independence depicted the territories of Gabon and Equatorial Guinea as being delimited by the Kie River. In the words of the Chamber of the Court in *Burkina Faso/Mali*, the "principle of *uti possidetis* freezes the territorial title"[144].

27. Indeed, Gabon continues to act in conformity with this boundary modification in the Kie River area. You can see on your screens a satellite image of the northern portion of the boundary in the vicinity of the Equatorial Guinean city of Ebebiyin. The 9th degree meridian runs through this

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[142] REG, Vol. I, para. 5.26.

[143] MEG, Vol. IV, Annex 68.

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

substantial metropolitan area. The locations of Equatorial Guinea's customs and immigration facilities on the left bank of the Kie River are marked, as is the border bridge that is the subject of the Parties' 2007 agreement. If the boundary fixed in the 1919 agreement had somehow lost its legal effect upon the Parties' independence with the result that the boundary reverted back to the 9th degree meridian, as counsel for Gabon appeared to suggest, these facilities would be located in Gabonese territory. Yet, Gabon has never protested their presence. The only reasonable explanation for the absence of any such complaint by Gabon is that Gabon accepts that they are located on the Equatorial Guinea side of the line established in the 1919 agreement and that this line became part of the international boundary between Equatorial Guinea and Gabon upon independence.

28. Mr President, Members of the Court, this concludes my presentation. I am grateful to you and the Members of the Court for your kind attention. I ask that you now invite Mr Derek Smith to the podium to provide some concluding words with regard to Equatorial Guinea's case.

The PRESIDENT: I thank Professor Akande for his statement. I now invite the next speaker, Mr Derek Smith, to take the floor.

Mr SMITH:

SUMMATION

1. Mr President, Madam Vice-President, Members of the Court, it falls upon me to give some final remarks on what we have learned over the course of these oral proceedings.

2. With all the maps and documents and figures presented over these past few days, one might be forgiven for thinking that this is a very complex dispute. But at its core, it is really quite simple. There are four key facts that the Court should keep in mind.

3. *First*, before Equatorial Guinea and Gabon gained independence, Spain held legal title to the islands of Mbañe, Cocoteros and Conga, and the continental boundary between Spain and France was settled by the 1900 Convention as applied by the Parties.

4. *Second*, upon independence, Equatorial Guinea inherited Spain's legal title, and Gabon inherited France's legal title. France had no legal title to any of the islands in Corisco Bay, and recognized these islands as Spanish, and then as Equatoguinean, including on its own official maps.

5. *Third*, after independence, Gabon used armed force to occupy and claim title to Mbañe.

6. *And fourth*, 30 years later, Gabon attempted to justify this occupation and secure even more of Equatorial Guinea's inherited territory by presenting a dubious document and claiming that this document was alleged to upend the territorial situation existing at independence by:

— first, legitimizing Gabon's forceful occupation of Equatorial Guinea's territory,

— purporting to delimit the land boundary to Gabon's advantage compared to the colonial boundary just described by Professor Akande, and

— allegedly delimiting the maritime boundary on terms that obliterated the concept of equitable delimitation required under international law.

7. Gabon did this after engaging in decades of negotiations during which it never mentioned this document. It did not even do so when Gabon itself listed the legal titles, treaties and international conventions applicable to the resolution of the dispute between the Parties[145]. And it did not do so to oppose the claims of Equatorial Guinea, as noted by Professor Sands in his comments on the question by Judge Tomka.

8. Nothing said by Gabon during these oral proceedings has changed these four facts, and nothing has altered Equatorial Guinea's request based on them that the Court confirm the legal titles acquired by the Parties through succession.

9. Of course, Gabon characterizes things a little differently. Yesterday, Gabon again denied that its occupation of Mbañe was the origin of this dispute[146]. Rather, according to Gabon, this dispute arose from "divergences prevailing between France and Spain in the Gulf of Guinea during the colonial expansion of the European powers in Africa"[147]. This is simply false as a matter of historical fact — as Mr Reichler has aptly explained in both of his speeches[148]. Both Spain and France repeatedly acknowledged that Mbañe and the other islands and islets of Corisco Bay fell under the sovereignty of Spain and thus subsequently to Equatorial Guinea by succession[149]. And Gabon

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[145] CR 2024/29, p. 55, paras. 16-18 (Parkhomenko); MEG, Vol. I, paras. 5.6, 5.16-5.17.

[146] CR 2024/31, p. 15, para. 4 (Rossatanga-Rignault).

[147] *Ibid.*

[148] CR 2024/29, pp. 61-67, paras. 12-34 (Reichler).

[149] *Ibid.*

acknowledged this as well for nearly 12 years after its independence[150]. There was no dispute until Gabon asserted its aggressive maritime claims and invaded Mbañe, after Equatorial Guinea's independence.

10. In its written pleadings Gabon attempted to downplay its unlawful seizure of Equatorial Guinea's sovereign territory by calling what happened on 23 August 1972 a "police operation"[151]. Yesterday, Gabon's counsel doubled down on this euphemism, saying that Gabon's permanent armed occupation of Equatorial Guinea's territory was merely "the installation of a *gendarmerie* post on Mbañe"[152]. Of course, an armed "police operation" that arrests and expels officials and civilians of a sovereign neighbour from the neighbour's territory[153] is the seizure of territory by force, no matter what you call it, and the installation of a permanent post for the armed officials on that territory is occupation by force — again, no matter what you call it. Moreover, Gabon's counsel has never denied the fact that, subsequent to the invasion of Mbañe, Gabon stationed warships in the Río Muni estuary that sunk several Equatoguinean vessels supplying and connecting Corisco Island and its dependencies to the Equatoguinean mainland, thereby killing their crews[154]. There is also no dispute that Gabon later invaded Equatorial Guinea on the continent in 1974[155].

11. In relation to Gabon's 1974 land invasion, it is notable that Gabon's counsel yesterday tried to portray the events leading up to 12 September 1974 as a normal process of peaceful negotiation to settle a dispute between African brothers[156]. This is a total fabrication. Gabon, like the biblical Cain, was not behaving as a true brother. After signing the Joint Communiqué in Kinshasa in 1972, Gabon refused to withdraw from Mbañe and never co-operated to establish the OAU

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[150] CR 2024/29, p. 68, paras. 38-39 (Reichler).

[151] CMG, Vol. I, para. 2.50.

[152] CR 2024/31, p. 18, para. 15 (Rossatanga-Rignault).

[153] MEG, Vol. I, para. 4.9; Permanent Mission of the Republic of Equatorial Guinea to the United Nations, *Statement Before the United Nations Security Council by His Excellency Mr Jesus Alfonso Oyono Alogo* (September 1972), p. 9 (MEG, Vol. III, Annex 28); *Telegram from* Equatorial Guinea's Minister of Foreign Affairs *to* the Permanent Representative of the Republic of Equatorial Guinea to the United Nations (11 Sept. 1972) (MEG, Vol. VI, Annex 164).

[154] MEG, Vol. I, para. 4.9; *Telegram from* Equatorial Guinea's Minister of Foreign Affairs *to* the Permanent Representative of the Republic of Equatorial Guinea to the United Nations (11 Sept. 1972) (MEG, Vol. VI, Annex 164); *Memorandum from* the Ministry of Foreign Affairs of Spain summarizing President Macías' September 8th Speech to the Diplomatic Corps (15 Sept. 1972), p. 1 (MEG, Vol. VI, Annex 173).

[155] REG, Vol. I, paras. 3.4, 5.76; *Message Text from* the US Department of State EO Systematic *concerning* Equatorial Guinea-Gabon Land Border Problem (20 June 2005), p. 2 (REG, Vol. IV, Annex 52).

[156] CR 2024/31, pp. 20-21, para. 22 (Rossatanga-Rignault).

Commission to delimit the boundary that was the result of the mediation that Gabon said it engaged in normally[157]. There were no negotiations until 1974 — no further negotiations until 1974 — when Gabon's invasion near Ebebeyin forced President Macías to enter into talks again with Gabon.

12. It is this string of events, Mr President, Madame Vice-President and Members of the Court, that constitutes the origin of the dispute before you today. There was no territorial dispute between the Parties or their colonial predecessors before this.

13. All this proves that the legal titles, treaties and international conventions that have the force of law between the Parties concerning their disputed territory and maritime areas are those inherited by Equatorial Guinea and Gabon from Spain and France by virtue of succession. And with respect to the delimitation of maritime areas, of course, the United Nations Convention on the Law of the Sea and customary international law concern the delimitation. The relevant legal titles, treaties and international conventions do *not* include the use of force to occupy Mbañe, and they do not include the document Gabon asks the Court to impose on Equatorial Guinea to legitimate its occupation of Equatoguinean territory.

14. The Agent of Gabon was thus correct when she observed yesterday that "[t]his case should not have existed"[158]. If it were not for Gabon's repeated attempts to take more than what it inherited from France, there would be no dispute before the Court today.

15. Gabon tries to deny its invasion because it knows that peace and stability are pillars of the international order. As enshrined in the United Nations Declaration on Principles of International Law concerning Friendly Relations, peace requires that States do not use force to violate existing international boundaries or as a means of solving territorial disputes[159]. Gabon breached this principle. Equatorial Guinea, on the other hand, has for 50 years pursued only peaceful means to resolve this dispute, including direct referral to the Security Council, negotiations over the course of more than 30 years, three mediations and now bringing this matter to the Court[160]. It has refrained from all action that might escalate the situation into a deadly and destructive armed conflict. In these

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[157] MEG, Vol. I, paras. 410-412.

[158] CR 2024/31, p. 10, para. 2 (Mborantsuo).

[159] UN General Assembly, resolution 2625 (XXV), Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (24 Oct. 1970), pp. 77-78 (REG, Vol. III, Annex 6).

[160] MEG, Vol. I, Chaps. 4-5.

circumstances, it is appropriate to ask: what message would be sent to States if, in the end, the aggressor keeps the illegally seized territory and the State that puts its trust in international law is deprived of it?

16. Peace and stability are furthered by preserving Equatoguinean villages as Equatoguinean, and Gabonese cities and villages as Gabonese — as Spain and France agreed during their implementation of the 1900 Convention under Article 8 and Appendix 1 of that Convention.

17. In the instant matter, peace and stability will also be furthered if the Court pronounces on *all* legal titles, treaties and conventions invoked by the Parties, and does not exclude titles because they are not documentary titles — which was Gabon's position in its written pleadings[161] — or exclude conventions and treaties invoked by Equatorial Guinea because they are allegedly not legal titles — which was Gabon's position yesterday[162].

18. Recognition of the legal titles, treaties and international conventions invoked by Equatorial Guinea — the real titles, not like the photocopy Gabon first presented in 2003 — will preserve stable colonial boundaries, allow for a final settlement, permit peaceful relations between Equatorial Guinea and Gabon and stand as a strong affirmation of the principle that States shall refrain from the use of force against the territorial integrity of other States.

19. Mr President, Madame Vice President, Members of the Court, this brings my presentation to a close. I thank you for your attention to my presentation, and I would now ask, Mr President, that you give the floor to our honourable Agent, who will present the final submissions of Equatorial Guinea.

The PRESIDENT: I thank Mr Derek Smith for his statement. I shall now give the floor to His Excellency Mr Domingo Mba Esono, Agent of Equatorial Guinea. You have the floor, Sir.

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[161] CMG, Vol. I, para. 5.69.

[162] CR 2024/31, p. 30, para. 11 (Pellet).

Mr MBA ESONO:

FINAL SUBMISSIONS OF THE REPUBLIC OF EQUATORIAL GUINEA

1. Mr President, Equatorial Guinea reiterates that it appears before the Court in a spirit of friendship towards Gabon, with the desire to strengthen the relationship with its sister nation, on the basis of mutual respect and the rule of law. As these proceedings reach their end, my country's faith in the Court's wisdom, and its conviction that the Court's judgment will significantly help our countries to resolve their outstanding dispute over sovereignty and borders, are stronger than ever.

2. On behalf of my country, I wish to express my sincere gratitude to you, to Madam Vice-President and the distinguished Members of the Court, to the distinguished Registrar, the Registry and members of the staff, and also — crucially, in this case — to the interpreters and translators, for your courtesy and patience throughout all stages of this case.

3. I will now present Equatorial Guinea's final submissions pursuant to Article 60, paragraph 2, of the Rules of Court.

> "The Republic of Equatorial Guinea respectfully requests the Court to adjudge and declare:
>
> I. The Special Agreement allows the Court to determine whether the legal titles, treaties and international conventions invoked by the Parties have the force of law in the relations between them in so far as they concern the delimitation of their common maritime and land boundaries and sovereignty over the islands of Mbañe, Cocoteros and Conga.
>
> II. The document first presented by the Gabonese Republic in 2003 has no force of law or any legal consequences in the relations between the Parties.
>
> III. The legal titles, treaties and international conventions that have the force of law in the relations between the Parties in so far as they concern the delimitation of their common land boundary are the succession by the Gabonese Republic and the succession by the Republic of Equatorial Guinea to all titles to territory, held respectively on 17 August 1960 by France and on 12 October 1968 by Spain, on the basis of the 1900 Convention[163], including those titles to territory held on the basis of the modifications made, in the application of that Convention, to the boundary described in Article IV of the Convention.
>
> IV. The legal title that has the force of law in the relations between the Parties in so far as it concerns sovereignty over the islands of Mbanié/Mbañe, Cocotiers/Cocoteros and Conga is the succession by the Republic of Equatorial Guinea to the title held by Spain on 12 October 1968 over Mbanié/Mbañe, Cocotiers/Cocoteros and Conga.

[163] *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.

V. Considering paragraphs (III) and (IV) above, the legal titles, treaties and international conventions that have the force of law in the relations between the Parties in so far as they concern the delimitation of their common maritime boundary are:

1. the 1900 Convention in so far as it established the terminus of the land boundary in Corisco Bay;

2. the United Nations Convention on the Law of the Sea signed on 10 December 1982 at Montego Bay, and

3. customary international law in so far as it establishes that a State's title and entitlement to adjacent maritime areas derives from its title to land territory."

4. Mr President, Madam Vice-President, distinguished Members of the Court, I thank you for your kind attention. This closes Equatorial Guinea's oral pleadings. Thank you very much.

The PRESIDENT: I thank His Excellency Mr Domingo Mba Esono, Agent of Equatorial Guinea. The Court takes note of the final submissions which you have just read out on behalf of Equatorial Guinea. The Court will meet again on Friday 4 October, at 3 p.m., to hear the second round of oral argument of Gabon. The sitting is adjourned.

The Court rose at 6.05 p.m.

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