

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

IMMUNITÉS ET PROCÉDURES PÉNALES

(GUINÉE ÉQUATORIALE c. FRANCE)

DEMANDE EN INDICATION
DE MESURES CONSERVATOIRES

ORDONNANCE DU 7 DÉCEMBRE 2016

2016

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

IMMUNITIES AND CRIMINAL PROCEEDINGS

(EQUATORIAL GUINEA v. FRANCE)

REQUEST FOR THE INDICATION
OF PROVISIONAL MEASURES

ORDER OF 7 DECEMBER 2016

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INTERNATIONAL COURT OF JUSTICE

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7 December 2016

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IMMUNITIES AND CRIMINAL PROCEEDINGS

(EQUATORIAL GUINEA *v.* FRANCE)

REQUEST FOR THE INDICATION
OF PROVISIONAL MEASURES

ORDER

Present: Vice-President YUSUF, Acting President; President ABRAHAM; Judges OWADA, TOMKA, BENNOUNA, CAÑADO TRINDADE, GREENWOOD, XUE, DONOGHUE, GAJA, SEBUTINDE, BHANDARI, ROBINSON, CRAWFORD, GEVORGIAN; Judge ad hoc KATEKA; Registrar COUVREUR.

The International Court of Justice,
Composed as above,
After deliberation,
Having regard to Articles 41 and 48 of the Statute of the Court and Articles 73, 74 and 75 of the Rules of Court,

Makes the following Order:

Whereas:

1. On 13 June 2016, the Government of the Republic of Equatorial Guinea (hereinafter “Equatorial Guinea”) filed in the Registry of the Court an Application instituting proceedings against the French Republic (hereinafter “France”) with regard to a dispute concerning

“the immunity from criminal jurisdiction of the Second Vice-President of the Republic of Equatorial Guinea in charge of Defence

and State Security [Mr. Teodoro Nguema Obiang Mangue], and the legal status of the building which houses the Embassy of Equatorial Guinea, both as premises of the diplomatic mission and as State property”.

2. At the end of its Application, Equatorial Guinea

“respectfully requests the Court:

- (a) With regard to the French Republic’s failure to respect the sovereignty of the Republic of Equatorial Guinea,
 - (i) to adjudge and declare that the French Republic has breached its obligation to respect the principles of the sovereign equality of States and non-interference in the internal affairs of another State, owed to the Republic of Equatorial Guinea in accordance with international law, by permitting its courts to initiate criminal legal proceedings against the Second Vice-President of Equatorial Guinea for alleged offences which, even if they were established, *quod non*, would fall solely within the jurisdiction of the courts of Equatorial Guinea, and by allowing its courts to order the attachment of a building belonging to the Republic of Equatorial Guinea and used for the purposes of that country’s diplomatic mission in France;
- (b) With regard to the Second Vice-President of the Republic of Equatorial Guinea in charge of Defence and State Security,
 - (i) to adjudge and declare that, by initiating criminal proceedings against the Second Vice-President of the Republic of Equatorial Guinea in charge of Defence and State Security, His Excellency Mr. Teodoro Nguema Obiang Mangue, the French Republic has acted and is continuing to act in violation of its obligations under international law, notably the United Nations Convention against Transnational Organized Crime and general international law;
 - (ii) to order the French Republic to take all necessary measures to put an end to any ongoing proceedings against the Second Vice-President of the Republic of Equatorial Guinea in charge of Defence and State Security;
 - (iii) to order the French Republic to take all necessary measures to prevent further violations of the immunity of the Second Vice-President of Equatorial Guinea in charge of Defence and State Security and to ensure, in particular, that its courts do not initiate any criminal proceedings against the Second Vice-President of the Republic of Equatorial Guinea in the future;
- (c) With regard to the building located at 42 Avenue Foch in Paris,
 - (i) to adjudge and declare that, by attaching the building located at 42 Avenue Foch in Paris, the property of the Republic of

Equatorial Guinea and used for the purposes of that country's diplomatic mission in France, the French Republic is in breach of its obligations under international law, notably the Vienna Convention on Diplomatic Relations and the United Nations Convention [against Transnational Organized Crime], as well as general international law;

- (ii) to order the French Republic to recognize the status of the building located at 42 Avenue Foch in Paris as the property of the Republic of Equatorial Guinea, and as the premises of its diplomatic mission in Paris, and, accordingly, to ensure its protection as required by international law;
- (d) In view of all the violations by the French Republic of international obligations owed to the Republic of Equatorial Guinea,
- (i) to adjudge and declare that the responsibility of the French Republic is engaged on account of the harm that the violations of its international obligations have caused and are continuing to cause to the Republic of Equatorial Guinea;
 - (ii) to order the French Republic to make full reparation to the Republic of Equatorial Guinea for the harm suffered, the amount of which shall be determined at a later stage."

3. In its Application, Equatorial Guinea seeks to found the Court's jurisdiction, first, on the Optional Protocol concerning the Compulsory Settlement of Disputes to the Vienna Convention on Diplomatic Relations of 18 April 1961 (hereinafter the "Optional Protocol"), and, second, on Article 35 of the United Nations Convention against Transnational Organized Crime of 15 November 2000 (hereinafter the "Convention against Transnational Organized Crime").

4. In accordance with Article 40, paragraph 2, of the Statute of the Court, the Registrar immediately communicated the Application to the French Government. He also notified the Secretary-General of the United Nations of this filing.

5. Pending the notification provided for by Article 40, paragraph 3, of the Statute by transmission of the printed bilingual text of the Application to the Members of the United Nations through the Secretary-General, the Registrar informed those States of the filing of the Application and its subject.

6. Since the Court included upon the Bench no judge of the nationality of Equatorial Guinea, the latter proceeded to exercise the right conferred upon it by Article 31, paragraph 2, of the Statute to choose a judge *ad hoc* to sit in the case; it chose Mr. James Kateka.

7. By an Order dated 1 July 2016, the Court fixed 3 January 2017 and 3 July 2017 as the respective time-limits for the filing of a Memorial by Equatorial Guinea and a Counter-Memorial by France.

8. On 29 September 2016, Equatorial Guinea submitted a Request for the indication of provisional measures, referring to Article 41 of the Statute and to Articles 73, 74 and 75 of the Rules of Court.

9. At the end of its request for the indication of provisional measures, Equatorial Guinea asks the Court, “pending its judgment on the merits, to indicate the following provisional measures:

- (a) that France suspend all the criminal proceedings brought against the Vice-President of the Republic of Equatorial Guinea, and refrain from launching new proceedings against him, which might aggravate or extend the dispute submitted to the Court;
- (b) that France ensure that the building located at 42 Avenue Foch in Paris is treated as premises of Equatorial Guinea’s diplomatic mission in France and, in particular, assure its inviolability, and that those premises, together with their furnishings and other property thereon, or previously thereon, are protected from any intrusion or damage, any search, requisition, attachment or any other measure of constraint;
- (c) that France refrain from taking any other measure that might cause prejudice to the rights claimed by Equatorial Guinea and/or aggravate or extend the dispute submitted to the Court, or compromise the implementation of any decision which the Court might render.”

10. Equatorial Guinea also requested “the President of the Court, as provided for in Article 74, paragraph 4, of the Rules of Court, to call upon France to act in such a way as will enable any order the Court may make on the request for provisional measures to have its appropriate effect”.

11. The Registrar immediately transmitted a copy of the Request for the indication of provisional measures to the French Government, in accordance with Article 73, paragraph 2, of the Rules of Court. He also notified the Secretary-General of the United Nations of this filing.

12. By a letter dated 3 October 2016, the Vice-President of the Court, acting as President in the case, drew the attention of France, in accordance with Article 74, paragraph 4, of the Rules of Court, “to the need to act in such a way as will enable any order the Court may make on the request for provisional measures to have its appropriate effects”.

13. A copy of that letter was transmitted, for information, to the Government of Equatorial Guinea.

14. By letters dated 3 October 2016, the Registrar informed the Parties that, pursuant to Article 74, paragraph 3, of the Rules, the Court had fixed 17, 18 and 19 October 2016 as the dates for the oral proceedings on the request for the indication of provisional measures.

15. On 14 October 2016, France submitted to the Court several documents related to the case.

16. At the public hearings held on 17, 18 and 19 October 2016, oral observations on the request for the indication of provisional measures were presented by:

On behalf of Equatorial Guinea: H.E. Mr. Carmelo Nvono Nca,
Mr. Jean-Charles Tchikaya,
Sir Michael Wood,
Mr. Maurice Kamto.

On behalf of France: Mr. François Alabrune,
Mr. Alain Pellet,
Mr. Hervé Ascensio.

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

“On the basis of the facts and law set out in our Request of 29 September 2016, and in the course of the present hearing, Equatorial Guinea respectfully asks the Court, pending its judgment on the merits, to indicate the following provisional measures:

- (a) that France suspend all the criminal proceedings brought against the Vice-President of the Republic of Equatorial Guinea, and refrain from launching new proceedings against him, which might aggravate or extend the dispute submitted to the Court;
- (b) that France ensure that the building located at 42 Avenue Foch in Paris is treated as premises of Equatorial Guinea’s diplomatic mission in France and, in particular, assure its inviolability, and that those premises, together with their furnishings and other property thereon, or previously thereon, are protected from any intrusion or damage, any search, requisition, attachment, confiscation or any other measure of constraint;
- (c) that France refrain from taking any other measure that might cause prejudice to the rights claimed by Equatorial Guinea and/or aggravate or extend the dispute submitted to the Court, or compromise the implementation of any decision which the Court might render.”

18. At the end of its second round of oral observations, France made the following statement:

“For the reasons explained by its representatives at the hearings on the request for the indication of provisional measures in the case concerning *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, the French Republic asks the Court:

- (i) to remove the case from its List;
- (ii) or, failing that, to reject all the requests for provisional measures made by Equatorial Guinea.”

19. During the hearings, questions were put by certain Members of the Court to Equatorial Guinea, to which replies were given in writing. Avail-

ing itself of the possibility given to it by the Court, France submitted written comments on Equatorial Guinea's replies to those questions.

* * *

I. FACTUAL BACKGROUND

20. Beginning in 2007, certain associations and private individuals lodged complaints with the Paris public prosecutor against certain African Heads of State and members of their families in respect of allegations of "misappropriation of public funds in their country of origin, the proceeds of which have allegedly been invested in France".

21. One of these complaints, filed on 2 December 2008 by the association Transparency International France, was declared admissible by the French courts, and a judicial investigation was opened in respect of the handling of misappropriated public funds, complicity in the misappropriation of public funds, misuse of corporate assets and complicity in misuse of corporate assets, and concealment of each of these offences. The investigation focused, in particular, on the methods used to finance the acquisition of movable and immovable assets in France by several individuals, including the son of the President of Equatorial Guinea, Mr. Teodoro Nguema Obiang Mangue, who was at the time Minister for Agriculture and Forestry of Equatorial Guinea.

22. The investigations more specifically concerned the way in which Mr. Teodoro Nguema Obiang Mangue acquired various objects of considerable value and a building located at 42 Avenue Foch in Paris. On 28 September 2011, cars belonging to Mr. Teodoro Nguema Obiang Mangue, that were parked at 42 Avenue Foch, were attached and removed by the police. On 14, 15 and 16 February 2012, searches of the building at 42 Avenue Foch were conducted, during which additional items were attached and removed. The investigating judge considered that the investigations had shown, *inter alia*, that the building had been wholly or partly paid for out of the proceeds of the offences under investigation and that its real owner was Mr. Teodoro Nguema Obiang Mangue. He consequently ordered the attachment (*saisie pénale immobilière*) of the building on 19 July 2012. This decision was subsequently upheld by the *Chambre de l'instruction*, before which Mr. Teodoro Nguema Obiang Mangue had lodged an appeal.

23. As part of the investigation, the police questioned a number of individuals. In particular, they sought to question Mr. Teodoro Nguema Obiang Mangue on two occasions in 2012. Mr. Teodoro Nguema Obiang Mangue, who became Second Vice-President of Equatorial Guinea in charge of Defence and State Security on 21 May 2012, maintained that he was immune from the jurisdiction of the French Courts and declined to appear.

24. An arrest warrant was issued against Mr. Teodoro Nguema Obiang Mangue on 13 July 2012. He challenged this measure before the *Chambre de l'instruction*, but that court took the view that he was not entitled to any form of immunity from criminal process in respect of acts allegedly committed by him in France in his private capacity. It further noted that he had refused to appear or to respond to the summonses sent to him.

25. Since they were unable to question him, the French judicial authorities, by a request dated 14 November 2013, sought international mutual assistance in criminal matters from the Equatorial Guinean judicial authorities, under Article 18 of the Convention against Transnational Organized Crime, asking them to transmit a summons to Mr. Teodoro Nguema Obiang Mangue to attend a first appearance.

26. The judicial authorities of Equatorial Guinea accepted the request for mutual assistance on 4 March 2014. They then executed that request and, on 18 March 2014, following a hearing held in Malabo, Equatorial Guinea, in which the French investigating judges participated by video-link, Mr. Teodoro Nguema Obiang Mangue was indicted by the French judiciary

“for having in Paris and on national territory during 1997 and until October 2011 . . . assisted in making hidden investments or in converting the direct or indirect proceeds of a felony or misdemeanour . . . by acquiring a number of movable and immovable assets and paying for a number of services”.

On 19 March 2014, a notice cancelling the summons (*avis de cessation de recherches*) for Mr. Teodoro Nguema Obiang Mangue was issued by the French investigating judge.

27. On 31 July 2014, Mr. Teodoro Nguema Obiang Mangue applied to the *Chambre de l'instruction de la Cour d'appel* to annul the indictment, on the ground that he enjoyed immunity from jurisdiction in his capacity as Second Vice-President of Equatorial Guinea in charge of Defence and State Security. However, the *Cour d'appel* rejected his application by a judgment of 11 August 2015. The *Cour de cassation*, by a judgment of 15 December 2015, rejected the argument that Mr. Teodoro Nguema Obiang Mangue enjoyed immunity and upheld the indictment.

28. The investigation was declared to be completed and, on 23 May 2016, the Financial Prosecutor filed final submissions “seeking separation of the complaints, their dismissal or their referral to the *Tribunal correctionnel*”. On 5 September 2016, the investigating judges of the Paris *Tribunal de grande instance* ordered the referral of Mr. Teodoro Nguema Obiang Mangue — who, by a presidential decree of 21 June 2016, had been appointed as the Vice-President of Equatorial Guinea in charge of Defence and State Security — for trial before the *Tribunal Correctionnel* for alleged offences committed between 1997 and October 2011. On

21 September 2016, the Financial Prosecutor issued a summons ordering Mr. Teodoro Nguema Obiang Mangue to appear before the 32nd *Chambre correctionnelle* of the Paris *Tribunal correctionnel* on 24 October 2016 for a “hearing on the merits”.

29. The Assistant Financial Prosecutor subsequently informed Mr. Teodoro Nguema Obiang Mangue’s counsel, in an e-mail dated 26 September 2016, that the hearing was merely intended to “raise a procedural issue”. He explained that, having noted an irregularity (namely, that the operative part of the referral order did not mention the relevant texts setting out the criminalization and punishment of offences), the Public Prosecutor’s Office was of the view that the *Tribunal correctionnel* should settle that issue before addressing the merits of the case.

30. On 24 October 2016, the *Tribunal correctionnel* sent the proceedings back to the Public Prosecutor’s Office so that it could return the case to the investigating judge for the purpose of regularizing the referral order; it also stated that the trial hearings would be held from 2 to 12 January 2017.

II. PRIMA FACIE JURISDICTION

31. The Court may indicate provisional measures only if the provisions relied on by the Applicant appear, prima facie, to afford a basis on which its jurisdiction could be founded, but need not satisfy itself in a definitive manner that it has jurisdiction as regards the merits of the case (see, for example, *Questions relating to the Seizure and Detention of Certain Documents and Data (Timor-Leste v. Australia)*, *Provisional Measures, Order of 3 March 2014*, *I.C.J. Reports 2014*, p. 151, para. 18).

32. In the present case, Equatorial Guinea seeks to found the jurisdiction of the Court, first, on Article 35 of the Convention against Transnational Organized Crime, and, second, on the Optional Protocol to the Vienna Convention on Diplomatic Relations (see paragraph 3 above). However, at the hearings, Equatorial Guinea relied only upon Article 35 in respect of its claim regarding the immunity of Mr. Teodoro Nguema Obiang Mangue. The Court will therefore proceed on the basis that the Optional Protocol to the Vienna Convention is invoked by Equatorial Guinea only in relation to the claim regarding the alleged inviolability of the premises at 42 Avenue Foch.

33. The Court must therefore first seek to determine whether the jurisdictional clauses contained in these instruments do indeed confer upon it prima facie jurisdiction to rule on the merits, enabling it — if the other necessary conditions are fulfilled — to indicate provisional measures.

34. Equatorial Guinea and France ratified the Convention against Transnational Organized Crime on 7 February 2003 and 29 October 2002, respectively. Neither of them entered reservations to that instru-

ment, which came into force on 29 September 2003. Further, Equatorial Guinea and France have been parties to the Vienna Convention on Diplomatic Relations (hereinafter the “Vienna Convention”) since 29 September 1976 and 30 January 1971 respectively, and to the Optional Protocol since 4 December 2014 and 30 January 1971, respectively. Neither Equatorial Guinea nor France entered reservations to the Protocol.

35. Article 35 of the Convention against Transnational Organized Crime provides that:

“1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Convention through negotiation.

2. Any dispute between two or more States Parties concerning the interpretation or application of this Convention that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.”

36. As regards the Optional Protocol to the Vienna Convention, its first three articles read as follows:

“Article I

Disputes arising out of the interpretation or application of the Convention shall lie within the compulsory jurisdiction of the International Court of Justice and may accordingly be brought before the Court by an application made by any party to the dispute being a Party to the present Protocol.

Article II

The parties may agree, within a period of two months after one party has notified its opinion to the other that a dispute exists, to resort not to the International Court of Justice but to an arbitral tribunal. After the expiry of the said period, either party may bring the dispute before the Court by an application.

Article III

1. Within the same period of two months, the parties may agree to adopt a conciliation procedure before resorting to the International Court of Justice.

2. The conciliation commission shall make its recommendations within five months after its appointment. If its recommendations are

not accepted by the parties to the dispute within two months after they have been delivered, either party may bring the dispute before the Court by an application.”

37. The Court notes that both Article 35, paragraph 2, of the Convention against Transnational Organized Crime and Article I of the Optional Protocol make the Court’s jurisdiction conditional on the existence of a dispute arising out of the interpretation or application of the Convention to which they relate. At this stage of the proceedings, the Court must first establish whether, *prima facie*, such a dispute existed on the date the Application was filed, since, as a general rule, it is on that date, according to the jurisprudence of the Court, that its jurisdiction must be determined (see *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, *Provisional Measures, Order of 28 May 2009, I.C.J. Reports 2009*, p. 148, para. 46).

38. The Court also notes that the Convention against Transnational Organized Crime sets out procedural requirements with which the parties must comply after a dispute arises in order for the Court to have jurisdiction. Under Article 35, paragraph 2, of that instrument, the dispute referred to the Court must be a dispute that “cannot be settled through negotiation within a reasonable time”. That provision also states that the dispute must be submitted to arbitration at the request of one of the parties to the dispute and that it may be referred to the Court only if the parties are unable to agree on the organization of the arbitration within six months of the date of the request.

39. Article I of the Optional Protocol does not impose any procedural requirements. However, Articles II and III of that instrument provide that parties may resort to alternative methods of dispute settlement, namely arbitration and conciliation; in such circumstances, the seisin of the Court is subject to certain preconditions.

40. The Court therefore will have to consider these different procedural aspects of the Convention against Transnational Organized Crime and of the Optional Protocol, if it considers that there exists, *prima facie*, a dispute arising out of “the interpretation or application” of the conventions concerned.

(1) The Convention against Transnational Organized Crime

41. Equatorial Guinea asserts that a dispute exists between the Parties concerning the application of Article 4 of the Convention against Transnational Organized Crime. That provision, entitled “Protection of sovereignty”, reads as follows:

“1. States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

2. Nothing in this Convention entitles a State Party to undertake in the territory of another State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other State by its domestic law.”

42. In its Request for the indication of provisional measures, Equatorial Guinea contends that “[t]he personal immunity of the Vice-President” and “the inviolability of the building” located at 42 Avenue Foch in Paris “derive from the principles of sovereign equality of States and non-interference in States’ internal affairs”, principles to which reference is explicitly made in Article 4, paragraph 1, of the Convention. While it accepts that the claim in respect of the building at 42 Avenue Foch and the one relating to the immunity of the Vice-President are closely linked in the criminal proceedings instituted in France, Equatorial Guinea maintains that jurisdiction in respect of one claim is not dependent upon jurisdiction in respect of the other.

43. According to Equatorial Guinea, Article 4 of the Convention is not merely a “general guideline”, in light of which the other provisions of the Convention should be interpreted. The principles of sovereign equality and non-intervention to which that Article refers encompass important rules of customary or general international law, in particular those relating to the immunities of States and the immunity of certain holders of high-ranking office in the State. In the Applicant’s view, the rules in question are binding on States when they apply the Convention as they are embodied in the above-mentioned principles. Equatorial Guinea thus claims that, when initiating proceedings against the Vice-President of Equatorial Guinea, France was obliged, in applying the Convention — and in particular Articles 6 (Criminalization of the laundering of proceeds of crime), 12 (Confiscation and seizure), 14 (Disposal of confiscated proceeds of crime or property) and 18 (Mutual legal assistance) thereof — to respect the rules relating to the immunity *ratione personae* of the Vice-President of Equatorial Guinea, deriving from Article 4 of that instrument. It adds that the provision on the basis of which France initiated proceedings against the Vice-President of Equatorial Guinea (Article 324-1 of the French Penal Code) represents implementing legislation for the Convention.

*

44. For its part, France denies the existence of a dispute concerning the application of the Convention, and, consequently, that the Court has jurisdiction. In its view, the reference in Article 4 to the principles of sovereign equality and territorial integrity of States, and to that of non-intervention in the domestic affairs of other States, indicates the manner in which the other provisions of the Convention must be applied. France thus maintains that Article 4, paragraph 1, is merely a “general guide-

line . . . which clarifies the manner in which the other provisions of the treaty should be implemented”; it does not give rise to autonomous legal obligations.

45. France adds that the provisions of the Convention which Equatorial Guinea claims were not implemented in accordance with the principles set out in Article 4 of that instrument (Arts. 6, 12, 14 and 18), for the most part (Arts. 6, 12 and 14) do nothing more than oblige States to legislate or regulate. As regards Article 18 of the Convention, France notes that it requested mutual legal assistance from Equatorial Guinea in this case and that the latter raised not the slightest objection on the basis of the rules relating to the immunity *ratione personae* of its Vice-President. France further observes that the proceedings against Mr. Teodoro Nguema Obiang Mangue were instituted not on the basis of the Convention, but under provisions of the French Penal Code, provisions which “were in no way adopted to give effect to the Convention”, since French criminal legislation was already “in complete conformity with the obligations laid down by the . . . Convention”.

46. Consequently, France considers that the Court has no jurisdiction, on the basis of Article 35, paragraph 2, of the said Convention, to entertain Equatorial Guinea’s requests concerning the alleged violation of its sovereignty and the purported interference by France in its domestic affairs. In particular, it asserts that the Court has no jurisdiction to entertain Equatorial Guinea’s requests relating to the immunity *ratione personae* claimed by Mr. Teodoro Nguema Obiang Mangue.

* *

47. It is clear from the case file that the Parties have expressed differing views on Article 4 of the Convention against Transnational Organized Crime. Nonetheless, in order to determine, even *prima facie*, whether a dispute within the meaning of Article 35, paragraph 2, of the Convention exists, the Court cannot limit itself to noting that one of the Parties maintains that the Convention applies, while the other denies it. It must ascertain whether the acts complained of by Equatorial Guinea are *prima facie* capable of falling within the provisions of that instrument and whether, as a consequence, the dispute is one which the Court has jurisdiction *ratione materiae* to entertain pursuant to Article 35, paragraph 2, of the Convention (see *Legality of Use of Force (Yugoslavia v. Belgium), Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999 (I)*, p. 137, para. 38).

48. The Court notes that the obligations under the Convention consist mainly in requiring the States parties to introduce in their domestic legislation provisions criminalizing certain transnational offences — such as participation in an organized criminal group (Art. 5), laundering the proceeds of crime (Art. 6), the active or passive corruption of public officials

(Art. 8) and the obstruction of justice (Art. 23) — and to take measures aimed at combatting these crimes (notably measures to combat money laundering (Art. 7), measures against corruption (Art. 9), measures to enable confiscation and seizure (Art. 12), as well as the disposal of confiscated proceeds of crime or property (Art. 14)). An international co-operation mechanism is also provided for with regard to these crimes (international co-operation for purposes of confiscation (Art. 13), extradition (Art. 16), transfer of sentenced persons (Art. 17), mutual legal assistance (Art. 18) and joint investigations (Art. 19)). Under the terms of the Convention, the States parties must, if they have not already done so, legislate against the transnational offences set out in the said instrument and participate in the international co-operation mechanism referred to therein.

49. The purpose of Article 4 of the Convention is to ensure that the States parties to the Convention perform their obligations in accordance with the principles of sovereign equality, territorial integrity of States and non-intervention in the domestic affairs of other States. The provision does not appear to create new rules concerning the immunities of holders of high-ranking office in the State or incorporate rules of customary international law concerning those immunities. Accordingly, any dispute which might arise with regard to “the interpretation or application” of Article 4 of the Convention could relate only to the manner in which the States parties perform their obligations under that Convention. It appears to the Court, however, that the alleged dispute does not relate to the manner in which France performed its obligations under Articles 6, 12, 14 and 18 of the Convention, invoked by Equatorial Guinea. The alleged dispute, rather, appears to concern a distinct issue, namely whether the Vice-President of Equatorial Guinea enjoys immunity *ratione personae* under customary international law and, if so, whether France has violated that immunity by instituting proceedings against him.

50. Consequently, the Court considers that, *prima facie*, a dispute capable of falling within the provisions of the Convention against Transnational Organized Crime and therefore concerning the interpretation or the application of Article 4 of that Convention does not exist between the Parties. Thus, it does not have *prima facie* jurisdiction under Article 35, paragraph 2, of that instrument to entertain Equatorial Guinea’s request relating to the immunity of Mr. Teodoro Nguema Obiang Mangue. It is therefore not necessary for it to examine whether the procedural conditions set out in that provision are met (see paragraph 38). As the Convention is the only instrument which Equatorial Guinea invoked as a basis for jurisdiction in relation to the claimed immunity of Mr. Teodoro Nguema Obiang Mangue, it follows from the above finding that the Court cannot indicate provisional measures of protection in relation to that claimed immunity.

(2) *The Optional Protocol to the Vienna Convention
on Diplomatic Relations*

51. Equatorial Guinea also claims that a dispute exists between the Parties regarding the application of Article 22 of the Vienna Convention, which reads as follows:

“1. The premises of the mission shall be inviolable. The agents of the receiving State may not enter them, except with the consent of the head of the mission.

2. The receiving State is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.

3. The premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment or execution.”

52. Equatorial Guinea contends that France, in the proceedings against Mr. Teodoro Nguema Obiang Mangue, has disregarded the legal status of the building located at 42 Avenue Foch in Paris “as premises of its diplomatic mission in France”.

53. The Applicant claims that, on 4 October 2011, it informed the French Ministry of Foreign Affairs that for a number of years it had had the building located at 42 Avenue Foch at its disposal and that it used the building “for the performance of the functions of its diplomatic mission without having given [the Ministry’s] services official notification thereof”. It contends that it has since consistently affirmed the diplomatic status of the building through no less than some 30 diplomatic exchanges.

54. Equatorial Guinea maintains that, notwithstanding the immunity that the building on Avenue Foch should enjoy under the Vienna Convention, it was searched on four occasions between 2011 and 2016, and was attached (*saisie pénale immobilière*) on 19 July 2012.

55. The Applicant thus considers that, “by failing to recognize the building as the premises of the diplomatic mission”, France has breached its obligations owed to Equatorial Guinea under the Vienna Convention, in particular Article 22 thereof.

56. Equatorial Guinea stresses that it has protested consistently and that it has, at the same time, sought to settle the dispute through negotiation, conciliation or arbitration. In this regard, it refers to a memorandum dated 26 October 2015, in which it transmitted to France an “offer of conciliation and arbitration”, on the basis, in particular, of Articles I and II of the Optional Protocol to the Vienna Convention. Equatorial Guinea asserts that it reiterated that offer in a Note Verbale dated 6 January 2016, in which it renewed its commitment to finding a diplomatic solution to the dispute arising from the so-called “ill-gotten gains” case. Lastly, Equatorial Guinea recalls that, on 2 February 2016, it transmitted

to France a memorandum setting out its position on the questions forming the subject of the dispute and that, on that occasion, it once again reiterated its offer of settlement through conciliation and arbitration. The Applicant states that, on 17 March 2016, the French Ministry of Foreign Affairs responded that it was “unable to accept the offer of settlement” on the grounds that “the facts mentioned . . . [had] been the subject of court decisions in France and [remained] the subject of ongoing legal proceedings”.

57. Equatorial Guinea considers that, in light of the foregoing, the Court has jurisdiction under the Optional Protocol. In its Application, Equatorial Guinea contended that the Court had jurisdiction under Article I of that instrument and that Articles II and III thereof did not restrict its right to bring these proceedings before the Court.

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58. France, for its part, contends that the building located at 42 Avenue Foch cannot be considered as housing the premises of Equatorial Guinea’s mission in France. It points out that, prior to the Note Verbale from the Embassy of Equatorial Guinea dated 4 October 2011 (see paragraph 53 above), the Protocol Department of the French Ministry of Foreign Affairs had never been informed of the existence of those premises; that not a single piece of correspondence from the Embassy was ever sent to the Ministry from that address; that the Embassy of Equatorial Guinea had not requested any particular measures — concerning protection, in particular — in relation to those premises; and that no requests for tax exemption for them were ever presented, “as [had been done] for the only Embassy premises known to the French authorities, and which are located at another address: 29 Boulevard de Courcelles”. France explains that the French Ministry of Foreign Affairs had therefore replied to Equatorial Guinea, on 11 October 2011, “that it did not consider the building to form part of the premises of the diplomatic mission”.

59. France further states that several items of correspondence show that the manner in which the use of the building was subsequently presented varied. According to France, it was not until 27 July 2012 that Equatorial Guinea described the premises of 42 Avenue Foch as housing, as from that date, the diplomatic mission itself. At the hearings, France acknowledged that the Embassy offices of Equatorial Guinea seemed to have been transferred to that address at that time. It nonetheless stated, in its comments on Equatorial Guinea’s replies to the questions put by judges at the hearings, that the French Ministry of Foreign Affairs had “consistently” recalled that it did not consider the building to form part of the premises of Equatorial Guinea’s diplomatic mission “even when the French authorities consented to occasional protection measures for that building”.

60. As regards the searches carried out in the building in question, France states that they were conducted at the request of the French judi-

cial authorities, in the context of a lawful procedure, and that they took place only in 2011 and 2012. It maintains that, since that time, there have been no measures of constraint in connection with the building, nor any intrusion therein. Regarding the attachment (*saisie pénale immobilière*) of the building, France asserts that it has “only a provisional effect” and that it was justified by the fact that the investigations had revealed that the building at 42 Avenue Foch had, in all likelihood, been wholly or partly acquired with the proceeds from the offences falling within the scope of the judicial investigation into Mr. Teodoro Nguema Obiang Mangué.

61. The Respondent considers, moreover, that the “finding that the Court lacks prima facie jurisdiction” to rule, on the basis of the Convention against Transnational Organized Crime, on Equatorial Guinea’s requests with regard to the alleged immunities of Mr. Teodoro Nguema Obiang Mangué “impacts” on the fate of its requests in respect of the building at 42 Avenue Foch. It explains that there is “no risk of the building being confiscated or sold until Mr. [Teodoro Nguema] Obiang [Mangué] has been definitively convicted of money laundering”. Since the Court, in France’s view, does not have prima facie jurisdiction over the requests relating to the alleged immunities of the Vice-President of Equatorial Guinea, it also lacks jurisdiction over the requests relating to the building located on 42 Avenue Foch.

62. Lastly, as regards Equatorial Guinea’s offer of conciliation and arbitration, France confirms that it could not pursue it because, under the principle of the independence of the judiciary, and owing to the fact that French criminal law does not allow for proceedings to be stopped by way of a compromise, the French Government had no means of putting an end to the criminal proceedings against Mr. Teodoro Nguema Obiang Mangué.

* *

63. The Court recalls that Article I of the Optional Protocol provides that the Court has jurisdiction over disputes relating to the interpretation or application of the Vienna Convention (see paragraph 36 above).

64. It further recalls that Articles II and III of the Optional Protocol provide that the parties may agree, within a period of two months after one party has notified its opinion to the other that a dispute exists, to resort to arbitration or conciliation. After the expiry of that period, either party may bring the dispute before the Court by an application. However, as the Court had occasion to note in the case concerning *United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran)*, the terms of the said Articles II and III,

“when read in conjunction with those of Article I and with the Preamble to the Protocol[], make it crystal clear that they are not to be

understood as laying down a precondition of the applicability of the precise and categorical provision contained in Article I establishing the compulsory jurisdiction of the Court in respect of disputes arising out of the interpretation or application of the Vienna Convention” (*Judgment, I.C.J. Reports 1980*, pp. 25-26, para. 48).

The Court then specified as follows:

“Articles II and III provide only that, as a substitute for recourse to the Court, the parties *may agree* upon resort either to arbitration or to conciliation. It follows, first, that Articles II and III have no application unless recourse to arbitration or conciliation has been proposed by one of the parties to the dispute and the other has expressed its readiness to consider the proposal. Secondly, it follows that only then may the provisions in those articles regarding a two months’ period come into play, and function as a time-limit upon the conclusion of the agreement as to the organization of the alternative procedure.” (*Ibid.*, p. 26, para. 48 (emphasis in the original).)

In the present case, the Court notes that, while Equatorial Guinea did indeed propose to France recourse to conciliation or arbitration, France did not express its readiness to consider that proposal; the Respondent even expressly stated that it could not pursue it. Articles II and III of the Protocol thus in no way affect any jurisdiction the Court might have under Article I.

65. In light of the foregoing, the Court will examine only Article I of the Protocol in determining whether it has *prima facie* jurisdiction to entertain the merits of Equatorial Guinea’s claim relating to the building located at 42 Avenue Foch. It will accordingly ascertain whether, on the date the Application was filed, a dispute arising out of the interpretation or application of the Vienna Convention appeared to exist between the Parties.

66. In this regard, the Court notes that the Parties do indeed appear to have differed, and still differ today, on the question of the legal status of the building located at 42 Avenue Foch in Paris. While Equatorial Guinea has maintained at various times that the building houses the premises of its diplomatic mission and must therefore enjoy the immunities afforded under Article 22 of the Vienna Convention, France has consistently refused to recognize that this is the case, and claims that the property has never legally acquired the status of “premises of the mission”. In the view of the Court, there is therefore every indication that, on the date the Application was filed, a dispute existed between the Parties as to the legal status of the building concerned.

67. In order to determine whether it has jurisdiction — even *prima facie* — the Court must also ascertain whether such a dispute is one over which it might have jurisdiction *ratione materiae* on the basis of Article I of the Optional Protocol. In this regard, the Court notes that the rights apparently

at issue may fall within the scope of Article 22 of the Vienna Convention, which guarantees the inviolability of diplomatic premises, and that the acts alleged by the Applicant in respect of the building on Avenue Foch appear to be capable of contravening such rights. Indeed, the premises which, according to Equatorial Guinea, house its diplomatic mission in France were searched on several occasions and were attached (*saisie pénale immobilière*); they could also be subject to other measures of a similar nature.

68. The aforementioned elements sufficiently establish, at this stage, the existence between the Parties of a dispute capable of falling within the provisions of the Vienna Convention and concerning the interpretation or application of Article 22 thereof.

69. Consequently, the Court considers that it has *prima facie* jurisdiction under Article I of the Optional Protocol to the Vienna Convention to entertain this dispute. It is of the view that it may, on this basis, examine Equatorial Guinea's request for the indication of provisional measures, in so far as it concerns the inviolability of the building located at 42 Avenue Foch in Paris.

* * *

70. The Court has held in the past that where there is a manifest lack of jurisdiction, it can remove the case from the List at the provisional measures stage (*Legality of Use of Force (Yugoslavia v. Spain)*, *Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999 (II)*, p. 773, para. 35; *Legality of Use of Force (Yugoslavia v. United States of America)*, *Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999 (II)*, p. 925, para. 29). Conversely, where there is no such manifest lack of jurisdiction, the Court cannot remove the case at that stage (*Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda)*, *Provisional Measures, Order of 10 July 2002, I.C.J. Reports 2002*, p. 249, para. 91). In the present case, there being no manifest lack of jurisdiction, the Court cannot accede to France's request that the case be removed from the List.

III. THE RIGHTS WHOSE PROTECTION IS SOUGHT AND THE MEASURES REQUESTED

71. The power of the Court to indicate provisional measures under Article 41 of the Statute has as its object the preservation of the respective rights claimed by the parties in a case, pending its decision on the merits thereof. It follows that the Court must be concerned to preserve by such measures the rights which may subsequently be adjudged by it to belong to either party. Therefore, the Court may exercise this power only if it is satisfied that the rights asserted by the party requesting such measures are at least plausible (see, for example, *Questions relating to the Seizure and*

Detention of Certain Documents and Data (Timor-Leste v. Australia), Provisional Measures, Order of 3 March 2014, I.C.J. Reports 2014, p. 152, para. 22).

72. Moreover, a link must exist between the rights which form the subject of the proceedings before the Court on the merits of the case and the provisional measures being sought (*ibid.*, para. 23).

* *

73. Equatorial Guinea maintains that the rights that it is seeking to protect are: (i) the right to respect for the principles of sovereign equality and non-intervention, as provided for by Article 4 of the Convention against Transnational Organized Crime; (ii) the right to respect for the rules of immunity that derive from fundamental principles of the international legal order, in particular the immunity *ratione personae* of certain holders of high-ranking office in a State, and the immunity from enforcement enjoyed by States in regard to their property; and (iii) the right to respect for the inviolability of the premises of its diplomatic mission, as provided for by the Vienna Convention.

74. Having found that it does not have *prima facie* jurisdiction to entertain the alleged violations of the Convention against Transnational Organized Crime, the Court will address only Equatorial Guinea's alleged right to "the inviolability of the premises of its diplomatic mission", in respect of which Article 22 of the Vienna Convention is invoked.

75. In this regard, France contends that the building on Avenue Foch does not fall within the category of "premises of the [diplomatic] mission" of Equatorial Guinea in Paris and that it was "disguised", in haste and with a certain amount of improvisation, either as the Embassy of Equatorial Guinea in France, or as the residence of the Permanent Delegate to UNESCO. In this regard, France refers in particular to a letter dated 14 February 2012 addressed to the President of the French Republic by the President of the Republic of Equatorial Guinea, in which the latter indicated that the Permanent Representative to UNESCO resided at that time in the building in question. According to the Respondent, Equatorial Guinea's allegations cannot hide the fact that the building never legally acquired the status of "premises of the mission". Therefore, claiming that this amounts to "legal window-dressing", France argues that to recognize the building as an "office of the mission" would be "to sanction a *fait accompli* resulting from a[n] . . . abuse of right".

76. Moreover, with regard to Equatorial Guinea's request for provisional measures concerning furnishings and other property which were in the building and which were seized and removed from it (see paragraph 22 above), this has no relation, according to France, with the use of the building for the purposes of the diplomatic mission and "is unrelated to the subject-matter of the dispute".

* *

77. The Court notes that Equatorial Guinea maintains that it acquired the building located at 42 Avenue Foch on 15 September 2011 and has used it for its diplomatic mission in France as from 4 October 2011, which the Applicant claims to have indicated to the Respondent on several occasions. The Court further notes that Equatorial Guinea contends that, since that date, the building in question has been searched a number of times and has been attached (*saisie pénale immobilière*) — acts which, in the view of the Applicant, infringe the inviolability of those premises.

78. At this stage of the proceedings, the Court is not called upon to determine definitively whether the right which Equatorial Guinea wishes to see protected exists; it need only decide whether the right claimed by Equatorial Guinea on the merits, and for which it is seeking protection, is plausible (See *Questions relating to the Seizure and Detention of Certain Documents and Data (Timor-Leste v. Australia)*, *Provisional Measures, Order of 3 March 2014*, *I.C.J. Reports 2014*, p. 153, para. 26).

79. Given that the right to the inviolability of diplomatic premises is a right contained in Article 22 of the Vienna Convention, that Equatorial Guinea claims that it has used the building in question as premises of its diplomatic mission in France since 4 October 2011, and that France acknowledges that, from the summer of 2012, certain services of the Embassy of Equatorial Guinea appear to have been transferred to 42 Avenue Foch (see paragraph 59 above), it appears that Equatorial Guinea has a plausible right to ensure that the premises which it claims are used for the purposes of its mission are accorded the protections required by Article 22 of the Vienna Convention.

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80. The Court now turns to the issue of the link between the rights claimed and the provisional measures requested.

81. The purpose of the provisional measures sought by Equatorial Guinea in point (*b*) of the submissions which it presented at the end of the oral proceedings is:

“that France ensure that the building located at 42 Avenue Foch in Paris is treated as premises of Equatorial Guinea’s diplomatic mission in France and, in particular, assure its inviolability, and that those premises, together with their furnishings and other property thereon, or previously thereon, are protected from any intrusion or damage, any search, requisition, attachment, confiscation or any other measure of constraint” (see paragraph 17 above).

The Court considers that, by their very nature, these measures are aimed at protecting the right to the inviolability of the building which Equatorial Guinea presents as housing the premises of its diplomatic mission in France. It concludes that a link exists between the right claimed by Equatorial Guinea and the provisional measures being sought.

IV. RISK OF IRREPARABLE PREJUDICE AND URGENCY

82. The Court, pursuant to Article 41 of its Statute, has the power to indicate provisional measures when irreparable prejudice could be caused to rights which are the subject of judicial proceedings (see, for example, *Questions relating to the Seizure and Detention of Certain Documents and Data (Timor-Leste v. Australia)*, *Provisional Measures, Order of 3 March 2014*, *I.C.J. Reports 2014*, p. 154, para. 31).

83. However, the power of the Court to indicate provisional measures will be exercised only if there is urgency, in the sense that there is a real and imminent risk that irreparable prejudice will be caused to the rights in dispute before the Court gives its final decision (*ibid.*, para. 32). The Court must therefore consider whether such a risk exists at this stage of the proceedings.

* *

84. Equatorial Guinea maintains that there is a “serious risk of irreparable prejudice to [its] rights . . . with regard to the building located at 42 Avenue Foch in Paris”. It contends, first, that because Mr. Teodoro Nguema Obiang Mangue has been referred before the *Tribunal correctionnel*, the building is now exposed, as a result of the order of attachment (*saisie pénale immobilière*), to a risk of judicial confiscation which could occur at any moment. It follows, according to Equatorial Guinea, that the building could be sold at auction and the diplomatic mission could be evicted. Equatorial Guinea also submits that there is a permanent risk of intrusion, either by the police and the French judicial authorities, or by private individuals, which affects its Embassy’s capacity to conduct its daily activities.

85. Equatorial Guinea considers that there is urgency in so far as, notwithstanding the raising of a “procedural issue” at the hearing on 24 October 2016 (see paragraph 29), the referral to the *Tribunal correctionnel* is “irrevocable”. Since a trial is, in its view, “inevitab[le]”, the confiscation of the property could occur at any moment.

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86. France, for its part, contends that there is no risk of imminent confiscation of the building located at 42 Avenue Foch. It points out that under French law attachment of property (*saisie pénale immobilière*) has only a provisional effect: the owner of the building cannot sell it, but he may continue to use it freely until the courts have issued a final ruling on the merits of the case. France explains that, under French criminal law, confiscation is an additional penalty which could only potentially be ordered, in the light of the circumstances of the case, if Mr. Teodoro Nguema Obiang Mangue was sentenced to at least one year’s imprisonment. In other words, it could not be ordered by the *Tribunal*

correctionnel without the defendant first having been found guilty, and it could not be put into effect until all avenues of appeal have been exhausted. Accordingly, any final decision on confiscation would not be rendered for several years.

87. In response to the arguments advanced by Equatorial Guinea with regard to the hearing on 24 October 2016, France asserts that the sole purpose of that hearing was to remedy the fact that there was no reference to the texts setting out the criminalization and punishment of offences in the referral order, and that the scheduling of the hearing does not create any urgency or engender any prejudice of any kind.

* *

88. As the Court has previously observed (see paragraph 66 above), the record before the Court shows that France does not accept that the building forms part of the premises of Equatorial Guinea's diplomatic mission in France, and refuses to grant it the immunity — and thus the corresponding protection — afforded to such premises under the Vienna Convention. Consequently, there is a continuous risk of intrusion.

89. The Court has noted above (see paragraph 77) that the building located at 42 Avenue Foch has already been searched a number of times in the context of the proceedings brought against Mr. Teodoro Nguema Obiang Mangue. While the Parties disagree as to whether any searches have been conducted recently, they recognize that such acts did indeed occur in 2011 and 2012. Given that it is possible — as France has moreover indicated — that, during the hearing on the merits, the *Tribunal correctionnel* may, of its own initiative or at the request of a party, request further investigation or an expert opinion, it is not inconceivable that the building on Avenue Foch will be searched again. If that were to happen, and if it were established that the building houses the premises of Equatorial Guinea's diplomatic mission, the daily activities of that mission — the representation of a sovereign State — would risk being seriously impeded, as a result, for example, of the presence of police officers or the seizure of documents, some of which might be highly confidential.

90. It follows from the foregoing that there is a real risk of irreparable prejudice to the right to inviolability of the premises that Equatorial Guinea presents as being used as the premises of its diplomatic mission in France. Indeed, any infringement of the inviolability of the premises may not be capable of remedy, since it might not be possible to restore the situation to the *status quo ante*. Furthermore, that risk is imminent, in so far as the acts likely to cause such a prejudice to the rights claimed by Equatorial Guinea could occur at any moment. The criterion of urgency is therefore also satisfied in the present case.

91. The Court recalls that Equatorial Guinea also asks the Court to indicate provisional measures in respect of items previously located on the premises of 42 Avenue Foch (see paragraph 17 above), some of which

have been removed by French authorities (see paragraph 22 above). As to these items, the Court observes that Equatorial Guinea failed to demonstrate the risk of irreparable prejudice and the urgency that the Court has identified in respect of the premises at 42 Avenue Foch (see paragraph 90 above). Accordingly, it finds no basis to indicate provisional measures in respect of these items.

V. CONCLUSION AND MEASURES TO BE ADOPTED

92. The Court concludes from all the above considerations that the conditions required by its Statute for it to indicate provisional measures in respect of the building located at 42 Avenue Foch in Paris have been met. It is therefore appropriate for the Court to indicate certain measures in order to protect the rights claimed by Equatorial Guinea in this regard pending its final decision.

93. The Court recalls that it has the power, under its Statute, when a request for provisional measures has been made, to indicate measures that are in whole or in part other than those requested. Article 75, paragraph 2, of the Rules of Court specifically refers to this power of the Court. The Court has already exercised this power on several occasions in the past (see, for example, *Questions relating to the Seizure and Detention of Certain Documents and Data (Timor-Leste v. Australia)*, *Provisional Measures, Order of 3 March 2014*, *I.C.J. Reports 2014*, p. 159, para. 49).

94. In the present case, having considered the terms of the provisional measures requested by Equatorial Guinea, the Court finds that the measures to be indicated need not be identical to those requested. The Court is of the view that, pending a final decision in the case, the premises presented as housing the diplomatic mission of Equatorial Guinea at 42 Avenue Foch in Paris should enjoy treatment equivalent to that required by Article 22 of the Vienna Convention, in order to ensure their inviolability.

95. With regard to the attachment (*saisie pénale immobilière*) of the building at 42 Avenue Foch and the risk of confiscation, the Court notes that there is a risk that such confiscation may occur before the date on which the Court reaches its final decision. In order to preserve the respective rights of either Party, the execution of any measure of confiscation is to be stayed until the Court takes that decision.

96. The Court recalls that Equatorial Guinea has requested it to indicate measures aimed at ensuring the non-aggravation of the dispute. When it is indicating provisional measures for the purpose of preserving specific rights, the Court also possesses the power to indicate provisional measures with a view to preventing the aggravation or extension of the dispute whenever it considers that the circumstances so require (*Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Tem-*

ple of Preah Vihear (Cambodia v. Thailand) (*Cambodia v. Thailand*), *Provisional Measures, Order of 18 July 2011, I.C.J. Reports 2011 (II)*, pp. 551-552, para. 59). In this case, however, given the measures it has decided to take, the Court does not deem it necessary to indicate additional measures aimed at ensuring the non-aggravation of the dispute.

* * *

97. The Court reaffirms that its “orders on provisional measures under Article 41 [of the Statute] have binding effect” (*LaGrand (Germany v. United States of America)*, *Judgment, I.C.J. Reports 2001*, p. 506, para. 109) and thus create international legal obligations for any party to whom the provisional measures are addressed.

* * *

98. The decision given in the present proceedings in no way prejudices the question of the jurisdiction of the Court to deal with the merits of the case or any questions relating to the admissibility of the Application or to the merits themselves. It leaves unaffected the right of the Governments of Equatorial Guinea and France to submit arguments in respect of those questions.

* * *

99. For these reasons,

THE COURT,

I. Unanimously,

Indicates the following provisional measures:

France shall, pending a final decision in the case, take all measures at its disposal to ensure that the premises presented as housing the diplomatic mission of Equatorial Guinea at 42 Avenue Foch in Paris enjoy treatment equivalent to that required by Article 22 of the Vienna Convention on Diplomatic Relations, in order to ensure their inviolability;

II. Unanimously,

Rejects the request of France to remove the case from the General List.

Done in French and in English, the French text being authoritative, at the Peace Palace, The Hague, this seventh day of December two thousand

and sixteen, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Republic of Equatorial Guinea and the Government of the French Republic.

(Signed) Abdulqawi A. YUSUF,
Vice-President.

(Signed) Philippe COUVREUR,
Registrar.

Judge XUE appends a separate opinion to the Order of the Court; Judges GAJA and GEVORGIAN append declarations to the Order of the Court; Judge ad hoc KATEKA appends a separate opinion to the Order of the Court.

(Initialed) A.A.Y.

(Initialed) Ph.C.
