

IMMUNITIES AND CRIMINAL PROCEEDINGS (EQ. GUINEA *v.* FRANCE) 1  
 202 ILR 1

**Diplomatic relations — Vienna Convention on Diplomatic Relations, 1961 (“VCDR”) — Article 1(i) — Definition of “premises of the mission” — Circumstances under which a building may acquire status of “premises of the mission” under Article 1(i) of VCDR — Whether consent of receiving State necessary for a property to become “premises of the mission” pursuant to Article 1(i) of VCDR**

**Treaties — Interpretation — Vienna Convention on Diplomatic Relations, 1961 — Article 1(i) — Vienna Convention on the Law of Treaties, 1969 (“VCLT”) — Customary rules of treaty interpretation — Ordinary meaning — Context — Comparison with VCDR provisions concerning the treatment of diplomatic personnel — Object and purpose — Relevance of VCDR’s preamble to determining its object and purpose — VCDR founded on mutuality and respect between sovereign equals — Whether State practice in relation to the recognition of diplomatic status of premises amounting to subsequent practice within meaning of Article 31(3)(b) of VCLT — Article 1(i) of VCDR requiring the actual use of a building for it to qualify as “premises of the mission” — A receiving State may object to the sending State’s designation of “premises of the mission” — Objection had to be timely, non-arbitrary and non-discriminatory**

IMMUNITIES AND CRIMINAL PROCEEDINGS  
 (EQUATORIAL GUINEA *v.* FRANCE)<sup>1</sup>

*International Court of Justice*

*Merits.* 11 December 2020

(Yusuf, *President*; Xue, *Vice-President*; Tomka, Abraham, Bennouna, Cançado Trindade, Donoghue, Gaja, Sebutinde, Bhandari, Robinson, Crawford, Gevorgian, Salam, Iwasawa, Judges; Kateka, *Judge ad hoc*)

<sup>1</sup> Counsel for the Parties are listed in para. 21 of the Court’s judgment.

The Court’s Order on Provisional Measures of 7 December 2016 and judgment on Preliminary Objections of 6 June 2018 are reported at 191 ILR 219.

SUMMARY:<sup>2</sup> *The facts*:—On 13 June 2016, Equatorial Guinea filed with the International Court of Justice (“the Court”) an application instituting proceedings against France in a dispute concerning alleged breaches of the immunity from criminal jurisdiction claimed in respect of the Vice-President of Equatorial Guinea, Mr Teodoro Nguema Obiang Mangue (“Mr Obiang”) and a building at 42 avenue Foch which was said to form part of the premises of the Embassy of Equatorial Guinea.

Equatorial Guinea’s application stemmed from certain measures taken and judicial decisions made by the French authorities since 2 December 2008,<sup>3</sup> namely: (i) the search of the building at 42 avenue Foch on 14-16 February 2012; (ii) the issuing of an arrest warrant against Mr Obiang on 13 July 2012; (iii) the attachment of the building at 42 avenue Foch on 19 July 2012; (iv) the rejection by the Paris *Cour d’appel*, on 11 August 2015, of Mr Obiang’s appeal against his indictment on the basis that he did not enjoy immunity from criminal jurisdiction in relation to the charges against him; and (v) the confirmation of the *Cour d’appel*’s decision by the *Cour de Cassation* on 15 December 2015.<sup>4</sup>

Equatorial Guinea sought to found the Court’s jurisdiction: (i) in relation to Mr Obiang’s immunity *ratione personae*, on Article 35(2), of the United Nations Convention on Transnational Organized Crime, 2000 (“the Palermo Convention”); and (ii) in relation to the immunity of the building at 42 avenue Foch, on Article I of the Optional Protocol to the Vienna Convention on Diplomatic Relations, 1961.

The Court indicated provisional measures on 7 December 2016, ordering France to take all measures at its disposal to ensure that the premises at 42 avenue Foch in Paris enjoyed treatment equivalent to that required by Article 22 of the Vienna Convention on Diplomatic Relations, 1961 (“VCDR”)<sup>5</sup> pending a final decision (191 ILR 219 at 232).

On 27 October 2017, the *Tribunal correctionnel* found Mr Obiang guilty of money laundering, sentenced him to a suspended custodial sentence and ordered the confiscation of, *inter alia*, 42 avenue Foch. Mr Obiang appealed this decision. The appeal having suspensive effect, the measures ordered by the *Tribunal correctionnel* were not enforced.

In its judgment on preliminary objections of 6 June 2018, the Court found that it lacked jurisdiction to entertain the merits of the case under the

<sup>2</sup> Prepared by Dr M. Lando.

<sup>3</sup> On 2 December 2008, the French courts declared admissible a complaint filed by Transparency International France against, *inter alia*, Mr Obiang, then Minister of Agriculture and Forestry of Equatorial Guinea, and concerning the alleged misappropriation and misuse of public funds, as well as their use to purchase property in France. Such property was said to include 42 avenue Foch and objects located therein. Mr Obiang was appointed Second Vice-President of Equatorial Guinea, in charge of Defence and State Security, on 21 May 2012, and Vice-President of Equatorial Guinea, in charge of Defence and State Security, on 21 June 2016.

<sup>4</sup> See *Transparency International France v. Mr X* (195 ILR 219).

<sup>5</sup> For the text of Article 22 of the Vienna Convention on Diplomatic Relations, 1961, see para. 39 of the judgment.

IMMUNITIES AND CRIMINAL PROCEEDINGS (EQ. GUINEA *v.* FRANCE) 3  
202 ILR 1

Palermo Convention, it had jurisdiction to entertain the merits of the case under the VCDR and that Equatorial Guinea's claims under the VCDR were admissible (191 ILR 219 at 272).

On 10 February 2020, the Paris *Cour d'appel* upheld the decision of the *Tribunal correctionnel*. At the time of the hearings on the merits before the Court, a *pourvoi en Cassation* was pending against the decision of the *Cour d'appel*. The *pourvoi en Cassation* having suspensive effect, the measures ordered by the *Tribunal correctionnel* and upheld by the *Cour d'appel* were not enforced.

Equatorial Guinea maintained that it had declared the building in the avenue Foch to be part of the premises of its diplomatic mission before it had been subjected to measures by the French authorities. According to Equatorial Guinea, in order for a building to acquire the status of "premises of the mission", it was sufficient that the sending State had assigned it for the purposes of being part of the premises of the diplomatic mission and notified the receiving State. The text, context and object and purpose of the VCDR supported this view. Equatorial Guinea stated that a sending State's contentions concerning the diplomatic status of a building had to be presumed valid. The VCDR did not subject the acquisition of diplomatic status to any consent by the receiving State. Therefore, measures by receiving States had to be notified in advance to all sending States and apply to all of them in a reasonable and non-discriminatory manner. According to Equatorial Guinea, even if there were a requirement that a building be used "effectively" for diplomatic purposes, it would be satisfied by purchasing or renting such a building, and designating it as one housing the diplomatic mission.

France contended that sending States could not unilaterally impose their choices of premises for their diplomatic missions. Two cumulative conditions had to be met for buildings to acquire diplomatic status: lack of objection by the receiving States and actual assignment of the buildings for the purposes of diplomatic missions. France supported these contentions by reference to the text, context and object and purpose of the VCDR, as well as the practice of several States. Concerning the suggestion by Equatorial Guinea that the sending State's designation of "premises of the mission" should be presumed valid, France objected that, should the presumption even exist, it would not be irrebuttable. France further contended that buildings may acquire diplomatic status only if actually used for diplomatic purposes.

Equatorial Guinea argued that France's refusal to recognize the diplomatic status of the building at 42 avenue Foch was arbitrary and discriminatory. According to Equatorial Guinea, France's refusal was based on manifest errors of fact and law. Moreover, it maintained that France failed to observe the typical procedures France itself would have followed in such cases and that, in any event, France should have co-ordinated with Equatorial Guinea before unilaterally refusing the designation of 42 avenue Foch as the premises of the latter's diplomatic mission. Equatorial Guinea also submitted that France's position with respect to the status of 42 avenue Foch had been inconsistent

over time. France rejected such contentions by Equatorial Guinea, arguing that its position had been consistent over time and that it had engaged promptly with Equatorial Guinea on the matter of 42 avenue Foch, without discriminating against it.

*Held:*—(1) (by nine votes to seven, President Yusuf, Vice-President Xue, Judges Gaja, Sebutinde, Bhandari and Robinson and Judge ad hoc Kateka dissenting) The building at 42 avenue Foch never acquired the status of “premises of the mission” of Equatorial Guinea in France within the meaning of Article 1(i) of the VCDR.

(a) The Court first had to determine the circumstances in which a property acquired diplomatic status under Article 1(i) of the VCDR. The VCDR had to be interpreted according to the customary rules of international law on treaty interpretation, reflected in Articles 31 and 32 of the Vienna Convention on the Law of Treaties, 1969 (“VCLT”). The text of Article 1(i) of the VCDR was not helpful in determining the circumstances in which buildings acquired diplomatic status. Concerning the context of that provision, Article 2 of the VCDR emphasized that diplomatic relations were established by “mutual consent”, while Article 4 provided that the sending State’s choice of head of mission was subject to the *agrément* of the receiving State; moreover, under Article 9 the receiving State might declare certain members of diplomatic missions *personae non gratae*. If sending States could unilaterally designate buildings as having diplomatic status, receiving States would have no choice but to accept this designation. Concerning the VCDR’s object and purpose, the preamble indicated that the VCDR aimed to contribute to the development of friendly relations among nations and that privileges and immunities were not to benefit individuals. The VCDR could not be interpreted as allowing sending States unilaterally to impose their choices of “premises of the mission” on receiving States (paras. 61-7).

(b) State practice supported this conclusion, as several receiving States required sending States to notify them of the designation of buildings for diplomatic purposes, without this practice being contested by sending States; however, this practice fell short of establishing the “agreement of the parties” within the meaning of Article 31(3)(b) of the VCLT. The preparatory works of the VCDR did not give clear indications as to the circumstances in which properties might acquire diplomatic status. The VCDR did not contain either requirement to which Equatorial Guinea referred, namely that the receiving States’ control measures had to be notified to sending States in advance and that, lacking formalities in this regard, the designation of diplomatic premises by sending States would be conclusive (paras. 69-72).

(c) However, the receiving States’ power to object to designations of diplomatic premises by the sending States was not unlimited. As discretionary powers conferred on States under treaties had to be exercised reasonably and in good faith, the receiving States’ objection could not be discriminatory in character. In conclusion, a property would not acquire diplomatic status under

IMMUNITIES AND CRIMINAL PROCEEDINGS (EQ. GUINEA *v.* FRANCE) 5  
202 ILR 1

Article 1(i) of the VCDR if receiving States objected to the sending States' designations in a timely fashion, and if that objection was neither arbitrary nor discriminatory (paras. 73-4).

(2) (by twelve votes to four, Vice-President Xue, Judges Bhandari and Robinson and Judge ad hoc Kateka dissenting) France did not breach its obligations under the VCDR.

(a) The Court had to consider whether France's objection to Equatorial Guinea's designation of 42 avenue Foch as "premises of the mission" fulfilled the above criteria. In the period between 11 October 2011 and 6 August 2012, France objected to the designation of 42 avenue Foch as the "premises of the mission" of Equatorial Guinea, including by means of: communications from the Protocol Department of its Ministry of Foreign Affairs; searches of the property, including seizure of certain items found therein, by its law enforcement officials; and orders by French judicial organs to attach the building in the context of the proceedings against Mr Obiang. France had communicated its objection to Equatorial Guinea promptly on 11 October 2011, only one week after Equatorial Guinea had first asserted that 42 avenue Foch was part of its diplomatic mission on 4 October 2011. France was similarly prompt in objecting in all the subsequent exchanges in which Equatorial Guinea had reaffirmed its designation of 42 avenue Foch as the premises of its diplomatic mission. Therefore, France's objections were consistent and timely (paras. 79-92).

(b) France's view, expressed in its *note verbale* of 11 October 2011, that 42 avenue Foch fell within the private domain was not without justification, because French authorities had visited the property before that date and had found nothing indicating that it was being used for diplomatic purposes. Equatorial Guinea was unable to establish that 42 avenue Foch had been used as its "premises of the mission" between 4 October 2011 and 27 July 2012: first, none of the property seized by French officials between 14 and 23 February 2012 belonged to Equatorial Guinea's diplomatic mission; secondly, Equatorial Guinea's *note verbale* of 27 July 2012 stated that 42 avenue Foch would be used as premises of its mission "henceforth". At the time of Equatorial Guinea's first assertion of diplomatic status on 4 October 2011, France had sufficient information reasonably to conclude that 42 avenue Foch was not being used, and was not prepared to be used, as Equatorial Guinea's diplomatic mission, including knowing that acknowledging the diplomatic status of the building would have hindered the proper functioning of its criminal justice system, specifically the investigation against Mr Obiang. As a result, France's objection to the designation of 42 avenue Foch as "premises of the mission" was not arbitrary. France was not required to co-ordinate with Equatorial Guinea in relation to the status of 42 avenue Foch, given that there was no obligation to do so under the VCDR. Furthermore, Equatorial Guinea was not able to prove that France had acted differently in respect of other buildings housing diplomatic missions in comparable circumstances; therefore, France's objection relating to 42 avenue Foch was not discriminatory,

nor did France, by objecting, deprive Equatorial Guinea of diplomatic premises, as the latter already had an embassy located at 29 boulevard de Courcelles. It followed that the building at 42 avenue Foch had never acquired the status of “premises of the mission” under Article 1(i) of the VCDR (paras. 107-18).

(c) Accordingly, the acts of which Equatorial Guinea complained did not constitute breaches of France’s obligations under the VCDR; France had not incurred international responsibility for such acts. Moreover, as it had objected to the designation of 42 avenue Foch as “premises of the mission” in a timely manner, non-arbitrarily and non-discriminatorily, France was not obliged to recognize the status of 42 avenue Foch as the diplomatic premises of Equatorial Guinea (paras. 121-5).

(3) (by twelve votes to four, Vice-President Xue, Judges Bhandari and Robinson and Judge ad hoc Kateka dissenting) All other submissions of Equatorial Guinea were rejected.

*Separate Opinion of President Yusuf:* (1) The Court was wrong to hold that the prior approval of the receiving State, or at least its absence of objection, was needed for buildings to acquire diplomatic status. This requirement was not based on any source of international law. The Court ignored the criterion of “use” of buildings for diplomatic purposes, recognized by both domestic and international courts (paras. 1-4).

(2) Nothing in the text of Article 1(i) of the VCDR helped to determine what constituted the “premises of the mission”, but stated that a property had to be “used” as a diplomatic mission in order for it to fall within the definition under that provision. “Used” meant that the building had already been put to use as a diplomatic mission. The criterion of actual use had been recognized in the decisions of national courts, including in Egypt, France, Germany and the United Kingdom. The Court should have considered that Article 1(i) of the VCDR, as a definitional provision, contributed to defining the scope of application of the Convention itself, as it had done in respect of other definitional provisions in earlier judgments (paras. 5-22).

(3) The prior consent requirement was nowhere to be found in the VCDR and could not stem from an interpretation of Article 1(i) in the light of its context or object and purpose. However, the Court endorsed such a requirement without considering that the law on diplomatic relations, as codified in the VCDR and interpreted by national courts, did not impose any such requirement. The Court focused on the practice of a limited number of States, which did not justify its conclusion that there was a “power to object” to the designation of buildings as “premises of the mission”. This requirement was further complicated by its unqualified character and lack of foundation in customary international law (paras. 23-36).

(4) The exchanges between Equatorial Guinea and France indicated that 42 avenue Foch had become part of the diplomatic mission of the latter on 27 July 2012, which was also tacitly accepted by France when it stopped

IMMUNITIES AND CRIMINAL PROCEEDINGS (EQ. GUINEA *v.* FRANCE) 7  
202 ILR 1

entering and searching the building at that time. As to the searches by French officials between September 2011 and February 2012, they could not engage France's international responsibility because they did not adversely impact the use of 42 avenue Foch as part of the diplomatic mission of Equatorial Guinea (paras. 37-58).

*Dissenting Opinion of Vice-President Xue.* (1) The evidence before the Court established that the dispute between the Parties went well beyond whether 42 avenue Foch was part of the "premises of the mission" of Equatorial Guinea. The dispute between the Parties over the status of 42 avenue Foch hinged on the ownership of the building, which had consequential effects on the conduct of France in relation to the seizure and confiscation of that building. However, by narrowing down the dispute between the Parties at the preliminary objections stage, the Court avoided addressing such underlying matters, which could not be considered as only being matters of French domestic law (paras. 2-12).

(2) It was incorrect for the Court to find that the persistent objection by a receiving State of the designation by a sending State of certain premises as having diplomatic status could dictate the outcome of disputes as to the acquisition of that status. The relations between sending and receiving States were governed by principles of sovereign equality and mutual respect, which should have guided the Court in interpreting Article 1(i) of the VCDR. Lacking established practice among all Parties to the VCDR, France's practice in relation to the recognition of diplomatic status to premises governed. By focusing on the circumstances in which 42 avenue Foch acquired diplomatic status, the Court avoided the main issue in the case, namely whether France wrongfully exercised its jurisdiction in respect of that building by attaching it and imposing measures of constraint (paras. 13-18).

(3) The Court's criteria of timeliness, non-arbitrariness and non-discrimination raised no issue in principle. However, the Court's application of those criteria was entirely one-sided because it did not consider that France's real reason for denying diplomatic status to 42 avenue Foch was that there were ongoing criminal proceedings against Mr Obiang. On the Court's reasoning, there were at least four years between 27 July 2012 and Equatorial Guinea's application instituting proceedings against France on 13 June 2016 during which Equatorial Guinea's diplomatic mission was without protection under the VCDR; this situation was not normal in diplomatic relations and did not resemble a relationship between two sovereign equals (paras. 19-28).

*Declaration of Judge Gaja.* By objecting to the notification by Equatorial Guinea dated 4 October 2011, France did not prevent 42 avenue Foch from acquiring the status of "premises of the mission". The issue was whether the consent of the receiving State was a precondition for the sending State to be able to use a building as its diplomatic premises. No such precondition could

be found in the text and context of Article 1(i) of the VCDR. To suggest that receiving States could preclude the use of buildings as diplomatic premises if their objections passed the tests of timeliness, non-arbitrariness and non-discrimination was tantamount to imposing a general consent requirement on the receiving State. France was only obliged to respect the inviolability of 42 avenue Foch as of the date of its effective use as premises of the mission, on 27 July 2012 (paras. 1-14).

*Separate Opinion of Judge Sebutinde:* (1) To determine whether 42 avenue Foch was part of Equatorial Guinea's "premises of the mission" under Article 1(i) of the VCDR, the Court had to inquire into the actual use of that property and whether that use was subject to any prior consent by France. Equatorial Guinea did not adduce sufficient evidence to show that 42 avenue Foch had been actually used as the premises of its diplomatic mission from 4 October 2011 or 17 October 2011, the latter being the date when Equatorial Guinea informed France that Ms Bindang Obiang would head its Embassy as *Chargée d'affaires ad interim*. Equatorial Guinea provided sufficient evidence to show that the building had been in actual use as the premises of its mission since 27 July 2012 (paras. 7-22).

(2) The VCDR was silent on whether there was a requirement of prior consent on the part of the receiving State for a building to acquire the status of "premises of the [sending State's] mission". No answer was found in the VCDR's drafting history; France's diplomatic practice showed that it had a "no-objection" regime, under which buildings would acquire diplomatic status upon France not objecting to it; the only ground for objecting was that a building was not in fact used as part of the "premises of the mission". Since 42 avenue Foch had been used as premises of the mission since 27 July 2012, it had become part of those premises starting on that date. All searches and seizures by French authorities before 27 July 2012 could not have breached the VCDR. The confiscation order of 27 October 2017, confirmed on 10 February 2020 by the *Cour d'appel*, did not impede the use of the building as a diplomatic mission, only affecting its ownership. Therefore, that order did not breach France's obligations under the VCDR (paras. 23-31).

(3) Abuse of rights was a controversial claim which should be made only in exceptional circumstances. Mr Obiang, in divesting himself of the ownership of 42 avenue Foch, acted under pressure of the criminal proceedings against him in France. However, the transparent admission by Equatorial Guinea of the reason why it was moving its diplomatic mission to 42 avenue Foch was indicative of intention to maintain a fraternal relationship with France, rather than of bad faith (paras. 32-9).

*Dissenting Opinion of Judge Bhandari:* (1) The Court's judgment led to the conclusion that buildings could not acquire the status of "premises of the mission" without the prior consent of the receiving States. The historical



IMMUNITIES AND CRIMINAL PROCEEDINGS (EQ. GUINEA *v.* FRANCE) 9  
202 ILR 1

background of the law of diplomatic privileges and immunities indicated that the VCDR had to be interpreted so as to offer significant leeway to the facilitation of the efficient performance of diplomatic relations. Moreover, the Court had to be guided by the object and purpose of the VCDR, which was to facilitate co-operation among States, on bases of mutual consent and respect for each other's sovereign equality. This was reflected in Article 2 of the VCDR, which clearly stated that diplomatic relations took place by mutual consent; but, apart from this provision on mutual consent, nothing in the VCDR stated that the establishment of "premises of the mission" required the consent of the receiving State (paras. 1-22).

(2) The ordinary meaning of Article 1(i) did not specify how property acquired the status of "premises of the mission", but it indicated that the crucial criterion was one of actual use of a property for the purposes of a diplomatic mission. This interpretation was confirmed by the context of Article 1(i), especially Articles 4 and 5 of the VCDR, as well as by its object and purpose. It seemed not conducive to the efficient establishment of diplomatic relations that the receiving State did not know the location of the premises of a diplomatic mission; in the interest of certainty, receiving States had to be notified of that location at least. The State practice to which the Parties referred fell short of being subsequent practice within the meaning of Article 31(3)(b) of the VCLT; the drafting history of the VCDR confirmed the interpretation pursuant to the ordinary meaning, the context and the object and purpose (paras. 33-58).

(3) No act by France carried out until 27 July 2012 was a breach of France's international obligations under the VCDR, but France's persistent refusal to recognize the status of 42 avenue Foch as "premises of the mission" since that date appeared to be unjustifiable. It was inconsistent with the VCDR if France could unilaterally block the acquisition of diplomatic status by 42 avenue Foch, also because it was not in line with the principle of sovereign equality of States (paras. 62-77).

*Dissenting Opinion of Judge Robinson:* (1) There was no clear legal basis for the Court's finding that the VCDR did not allow sending States unilaterally to impose on receiving States their choices of "premises of the mission". The Court took a flawed approach to the interpretation of the VCDR, insofar as it overlooked some important elements of the context of Article 1(i) and chose to understand the Convention's preamble in an extraordinary manner. The most problematic point in the Court's reasoning was its treatment of State practice in the context of diplomatic relations, as it neither established a rule of customary international law, nor amounted to subsequent practice within the meaning of Article 31(3)(b) of the VCLT (paras. 7-37).

(2) The ordinary meaning of Article 1(i) of the VCDR, considered in the light of its context, indicated that buildings can be "premises of the mission" when sending States intended to use such premises for the purposes of their diplomatic missions, so long as this intended use was followed by actual use.

State practice, especially in the form of judicial decisions, confirmed the interpretation of Article 1(i) of the VCDR that gave pre-eminence to the criterion of intended use of a certain building over that of actual use. As a result, 42 avenue Foch became the “premises of the mission” of Equatorial Guinea on 4 October 2011, when Equatorial Guinea communicated to France that it would use that building as its diplomatic mission (paras. 39-57).

(3) By searching the building in February 2012, making an order for its attachment on 19 July 2012, and ordering its confiscation in the criminal proceedings against Mr Obiang, France breached the inviolability of 42 avenue Foch under Article 22 of the VCDR. In terms of remedies, Equatorial Guinea was entitled to an order for cessation of France’s internationally wrongful act, as well as one for assurances and guarantees of non-repetition, satisfaction and compensation of losses suffered. Concerning France’s abuse of rights argument, the Court was not in a position necessarily to deal with it, since the VCDR, as a self-contained regime, already included an appropriate remedy in case of abuse of rights, namely the expulsion of the mission and termination of diplomatic relations (paras. 58-75).

*Dissenting Opinion of Judge ad hoc Kateka:* (1) The Court was incorrect when it stated that the consent or non-objection of the receiving State must be obtained in order for a building to become part of the “premises of the mission” of the sending State: the VCDR was silent on this requirement and, where consent was required, stated so expressly. Moreover, that conclusion was supported by an *a contrario* reading of Article 12 of the VCDR. The Court’s analogy between the VCDR provisions on the “premises of the mission” and *personae non gratae* was misplaced: receiving States could use the same sanctions available in relation to *personae non gratae* to deal with building-related issues, namely the breaking off of diplomatic relations. The mutuality of the VCDR’s regime entailed that, before acting in respect of 42 avenue Foch, France should have consulted with Equatorial Guinea. France did not have any consistent practice in relation to how it treated diplomatic premises, which indicated that its approach to 42 avenue Foch was arbitrary and discriminatory with respect to Equatorial Guinea. As to the criterion of “use”, it covered not only actual use, but also the preparatory steps to that actual use, given that moving diplomatic missions from one building to another could take a long time (paras. 9-25).

(2) 4 October 2011 was the date from which 42 avenue Foch had the status of “premises of the mission” under the VCDR, while the time between that date and 27 July 2012 was used logistically to transfer the mission from its previous building to the new location. As a result, France was in breach of its obligations under the VCDR by not recognizing the inviolability of 42 avenue Foch starting on 4 October 2011, including by ordering the confiscation of the building in the criminal proceedings against Mr Obiang (paras. 26-35).