

PCA Case No. 2025-45

IN THE MATTER OF AN ARBITRATION PURSUANT TO THE
AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC
OF RWANDA AND THE GOVERNMENT OF THE UNITED KINGDOM
OF GREAT BRITAIN AND NORTHERN IRELAND FOR THE
PROVISION OF AN ASYLUM PARTNERSHIP TO STRENGTHEN
SHARED INTERNATIONAL COMMITMENTS ON THE PROTECTION
OF REFUGEES AND MIGRANTS

- and -

THE PCA ARBITRATION RULES 2012

- b e t w e e n -

THE REPUBLIC OF RWANDA

and

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN
IRELAND

THE ARBITRAL TRIBUNAL

H.E. JUDGE PETER TOMKA - CHAIRMAN
PROF. DR. MOHAMED ABDEL WAHAB - CO-ARBITRATOR
JUDGE JOAN DONOGHUE - CO-ARBITRATOR

Friday, 20 March 2026
The Hague, The Netherlands

AGREED FINAL

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THE ARBITRAL TRIBUNAL

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Dr Doris Picard Uwicyeza, Chief Executive
Officer of the Rwanda Governance Board

Ambassador Lambert, Dushimimana,
Ambassador of the Republic of Rwanda to
the Kingdom of the Netherlands

Mr Jean Hugues Mukama, Embassy of the
Republic of Rwanda in the Kingdom of the
Netherlands

09:35

Mr Emile Ntwari, Principal State Attorney
and Head of the Legal Services
Department, Ministry of Justice.

Mr Michael Butera, Chief Technical
Adviser to the Minister of Justice and
Attorney General to the Republic of
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I N D E X

	PAGE
Reply Submission on Behalf of Rwanda	278
Lord Verdirame	278
Ms McRAE	314
Reply Submission on Behalf of the United Kingdom of Great Britain and Northern Ireland	333
Mr Juratowitch	333
Ms Hart	347

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1 THE CHAIRMAN: Good morning. Please be
2 seated.

3 This sitting is open. We meet this
4 morning to give opportunity to the Republic of
5 Rwanda to present its rebuttal, the second round 09:30
6 of argument.

7 I invite counsel, Lord Verdirame, to
8 open. As you know, you have some 60 minutes for
9 rebuttal.

10 REPLY SUBMISSION ON BEHALF OF RWANDA 09:30

11 LORD VERDIRAME: Yes. Thank you,
12 Mr President, members of the Tribunal.

13 Ms McRae and I will divide our oral
14 submissions in reply on the same basis, as in the
15 first round. And after her submissions, Rwanda's 09:31
16 agent, Dr Ugirashebuja, will read Rwanda's final
17 submission and make a short final speech.

18 Mr President, members of the Tribunal,
19 counsel for the United Kingdom yesterday said, and
20 I quote, it was: 09:31

21 "... a matter of simple common sense
22 that, either by way of unilateral termination or
23 some other agreement, those further payments were
24 not going to be falling due".

25 That's day 2, page 165, lines 5 and 09:31

1 following.

2 On the United Kingdom's account of simple
3 common sense, if a State is bound to make a
4 payment under an agreement and has a unilateral
5 right of termination which it chooses not to 09:31
6 exercise, then it must somehow have secured the
7 same outcome through some other route, and however
8 formidable the difficulties may be with the
9 alternative route, the answer is that the
10 underlying common sense can overcome them. 09:32

11 With respect, this is not common sense at
12 all. It is an assumption doing all the work. The
13 real commonsense account of what happened in this
14 case is different, and, indeed, it is not that
15 complicated. Rwanda and the United Kingdom 09:32
16 entered into a binding partnership; each party had
17 a right of unilateral termination subject to a
18 three-month notice period. A few weeks into the
19 binding partnership, the United Kingdom decided
20 the partnership no longer suited its interests; 09:32
21 but instead of terminating the treaty, it engaged
22 in lengthy discussions with Rwanda to seek to
23 agree a binding amendment of the agreement.
24 Rwanda could not have stopped the United Kingdom
25 from terminating the treaty, but it was not 09:32

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1 obliged to agree to any amendment with binding
2 effect. In the end, Rwanda did not agree to any
3 such amendment, and we say the United Kingdom
4 would have been fully aware of it.

5 Here I can come to the question posed 09:33
6 yesterday by Professor Abdel Wahab at the end of
7 hearing, which in essence was why did the United
8 Kingdom take so long to terminate? Why didn't
9 they terminate the treaty straightaway? It's a
10 very fair question. 09:33

11 The short answer is that the political
12 gains of delaying termination were assessed to
13 outweigh the legal risks. That's the assessment
14 that they made, and it was their assessment.

15 I can make this submission without having 09:33
16 to stray into detailed British parliamentary
17 procedure or British politics. All I need to do
18 is to refer to two clear facts that are
19 established in the documents on which the United
20 Kingdom relies. 09:33

21 The first clear fact is that the British
22 Government spent very considerable effort in
23 trying to achieve that which it could have
24 achieved and indeed did achieve 18 months later,
25 with a short Note Verbale notifying termination. 09:34

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1 There were ministerial level calls, meetings
2 between officials, trips to Rwanda, and a lot of
3 diplomatic engagement. Why all this effort
4 involving senior ministers of a new government?
5 Why all this political capital for something you 09:34
6 can do anyway?

7 That takes me to the second clear fact.
8 You saw that the United Kingdom kept bringing up
9 the question of legislative procedures. British
10 ministers did not want a short stand-alone bill 09:34
11 just dealing with the termination of the agreement
12 which could have been done very simply and very
13 expeditiously. What they wanted, instead, was to
14 deal with termination as part of a much larger
15 piece of legislation on immigration. 09:35

16 We know this from a number of documents
17 starting with the British internal read-out of the
18 morning of meetings on October 3. That's
19 Exhibit R-15. But references to British
20 legislative issues are found throughout the 09:35
21 correspondence.

22 So why was it so important for the
23 British Government to avoid the short stand-alone
24 bill to deal with termination? The reason is
25 simple. A short stand-alone bill to deal with 09:35

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1 termination would have exposed the government to
2 criticism for appearing insufficiently tough on
3 migration. For terminating a migration control
4 scheme that the entire country was aware of
5 without offering anything in its place. 09:35

6 It is a well-known fact that immigration
7 is perhaps the dominant theme in the politics of
8 some Western countries, and no politician these
9 days wishes to be portrayed as soft on

10 immigration. For a new Home Secretary, that 09:35
11 portrayal would have been potentially career

12 ending. She did not want to start her term in
13 office by terminating something. She wanted to
14 start her term in office with tough measures on
15 immigration, and that's why she spent all that 09:36
16 time through her officials on this matter.

17 Ultimately, whatever political calculus
18 laid behind the United Kingdom's decision not to
19 terminate, the choice was entirely its own. It
20 fell to the United Kingdom to weigh the political 09:36
21 benefits of delay against the legal risks that
22 delay entailed.

23 Rwanda held rights under a treaty to
24 which it had devoted considerable political
25 capital. Although the United Kingdom professed 09:36

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1 disinterest in continuing the scheme, it was
2 plainly, for its own reasons, unwilling to
3 exercise its right of termination. And there is
4 no version of common sense, save for the United
5 Kingdom's very self-serving one, that could 09:36
6 require a state to relinquish something valuable
7 without receiving anything in return.

8 And that's another important point
9 throughout this case. The official who wrote the
10 internal British read-out of the first meeting 09:37
11 with the Rwandan side, again, Exhibit R-15, saw
12 things very clearly from the beginning. He said
13 the United Kingdom needed, and I quote, to "reach
14 a position on what we're offering the [Government
15 of Rwanda] [...]."

16 And then he says -- you will recall it's
17 the second page of Exhibit R-15:

18 "Once we have a clear position we can
19 [...] seek to get certainty on whether it is
20 agreeable to [the Government of Rwanda]."

21 He proposes two suggestions for
22 consideration internally -- the diplomatic visa
23 agreement and the transit visa waiver.

24 So this was the common sense of the
25 British officials, as they began to work on this 09:37

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1 dossier. They understood this was going to be a
2 transactional process, and why shouldn't it be?
3 The United Kingdom had to offer something if it
4 had any chance of getting the Rwandans to agree.

5 Counsel for the United Kingdom admits, 09:38
6 and the reference is day 2, page 168, line 12, and
7 I quote:

8 "... there was not, at this stage, a
9 clear position concerning diplomatic visa
10 positions or any other offer. All that was 09:38
11 certain was the ETIF payments would be
12 terminated."

13 The fact that internally the United
14 Kingdom was certain about what it wanted but
15 uncertain about what it was prepared to offer 09:38
16 demonstrate that the outcome was highly uncertain.

17 The United Kingdom has not even tried to
18 explain how, on its own version of events, in the
19 end it managed to get Rwandans to agree to what
20 the United Kingdom wanted for nothing in return. 09:38
21 The United Kingdom seems to think that the fact
22 that the DVA offer disappears is a point in its
23 favour, but the opposite is the case.

24 Counsel for the United Kingdom conceded
25 yesterday that it was not at all clear that even a 09:39

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1 diplomatic visa agreement was going to get Rwanda
2 over the line. Day 2, page 181, line 11. He said
3 it was clear that the Rwandan Foreign Minister was
4 anyway more interested in a broader suite of
5 cooperative endeavours. 09:39

6 But beyond the initial DVA offer, Rwanda
7 was not offered anything. The United Kingdom knew
8 this then and it knows this now.

9 Why did the United Kingdom assume that
10 Rwanda could not see what the United Kingdom could 09:39
11 clearly see, namely that Rwanda had to be offered
12 something? And having offered nothing to Rwanda,
13 why did the United Kingdom think that it still
14 managed to have its way? There are no answers to
15 these questions from the Respondent. 09:40

16 I now turn to the November Notes Verbales
17 and make a few points in reply. I believe our
18 case in opening addresses pretty much everything
19 that has been said but I'll try to tease out a few
20 key points. 09:40

21 Rwanda's case is the November Notes
22 Verbales plainly do not constitute an agreement
23 under Article 13(a) of the VCLT, nor do they
24 satisfy the conditions under Article 13(b). I'll
25 begin with Article 13(a). 09:40

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1 Rwanda understands the United Kingdom's
2 position to be that the Notes Verbales would, on
3 their face, satisfy the conditions in
4 Article 13(a). Although it did not repeat the
5 language of superfluous in describing its 09:40
6 position, as far as Rwanda's reply was concerned,
7 similar descriptions were used.

8 This argument is, with respect,
9 untenable, and it is surprising that an
10 Article 13(a) an argument is even being run. The 09:41
11 consequences of such an approach to the
12 construction of diplomatic exchanges between
13 States would be very significant. So I'll make a
14 few points on 13(a).

15 First, the United Kingdom's case is 09:41
16 plainly inconsistent with the words of
17 Article 13(a). Article 13(a) says:

18 "The consent of States to be bound by a
19 treaty constituted by instruments between them is
20 expressed by that exchange when: 09:41

21 "(a) the instruments provide that their
22 exchange shall have that effect."

23 The "instruments", in the plural, must
24 provide that their exchange shall have that
25 effect, and the effect is the effect described in 09:41

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1 the chapeau, namely consent to be bound. They
2 have to provide for that effect.

3 It is not sufficient for one instrument,
4 the initiating instrument, whether a letter or
5 Note Verbale, to provide for the effect of 09:42
6 consent, both of them must do that.

7 The second point is that United Kingdom
8 can point, identify, no authority or practice in
9 support of its position. In opening, I referred
10 to a number of authorities and examples from state 09:42
11 practice that set out ways in which states express
12 consent to be bound in an exchange of instrument.

13 And I would like to go back to the book
14 that counsel for the United Kingdom suggested was
15 being misquoted. This is the fourth edition of 09:42
16 Aust's Modern Treaty Law by Jeremy Hill, which is
17 at CLA-21. There's an example there, which is one
18 of the standard examples. You can take a look at
19 that, but I'm sure the formulations I'll be
20 referring to will be familiar to you. 09:42

21 And the example from Aust's book is --
22 there is one aspect that is clear from the example
23 given by Aust, and it is clear from all of the
24 examples in these documents, all of the examples
25 that Aust gives of exchanges of notes or letters, 09:43

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1 the examples that Dr Jill Barrett gives, and the
2 examples in the Guidance on Practice and
3 Procedures on Treaties prepared by the Treaty Unit
4 of the Legal Directorate of the Foreign Office, of
5 which counsel from the United Kingdom was somewhat 09:43
6 dismissive yesterday. All of those examples are
7 consistent.

8 The initiating Note Verbale and the Reply
9 Note Verbale contain a paragraph that has three
10 elements. 09:43

11 The first element is that certain
12 proposals or certain arrangements are described
13 with words like "acceptable" or "agreeable". The
14 initiating Note Verbale will say, for example, if
15 the proposals are acceptable to the Government of 09:43
16 the "Ruritania," etcetera, etcetera. The Reply
17 Note Verbale will say 'I have the honour to
18 confirm that the proposals are acceptable.'

19 No one ever suggested, incidentally, that
20 the use of the word "acceptable" is unprecedented. 09:44
21 On the contrary, it is one of the words like
22 "agreeable" that would be used in this first
23 element. But the point is that, as the ordinary
24 meaning of these words suggest, words like
25 "acceptable" or "agreeable" with nothing else are 09:44

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1 not enough. That's the key point.

2 The next two elements are key.

3 The second element is the one where the
4 two states say to each other "Your Excellency's
5 note in this reply shall constitute an agreement", 09:44
6 or "Your Excellency's note in this reply places on
7 the record the joint understanding of the parties
8 on this matter". Multiple times yesterday, in
9 describing Rwanda's position on what was missing
10 from the Rwandan reply note, the United Kingdom 09:45
11 omitted to mention the second element completely.

12 The third element is separate from the
13 second element, and it is the indication which
14 must appear in both instruments of the coming into
15 force or effect of that agreement. The language 09:45
16 may differ as to the ways in which the second and
17 third elements are put by states, but states that
18 intend to conclude a binding treaty through an
19 exchange of Notes Verbales or letters that is
20 designed to provide for that effect must say these 09:45
21 three things to each other.

22 Rwanda's Reply Note Verbale contains no
23 language that evidences, first, Rwanda's agreement
24 to conclude either a binding or a non-binding
25 instrument, and, second, that a date for the entry 09:45

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1 into force or coming into effect of the instrument
2 was agreed upon by the parties.

3 Other than the United Kingdom's written
4 and oral pleadings in this case, there is no state
5 practice that supports the proposition that, for 09:46
6 purposes of concluding a treaty through an
7 exchange of instruments under Article 13(a) of the
8 Vienna Convention, these two key elements are
9 superfluous.

10 Yesterday, we also heard the following 09:46
11 argument, and I quote, this is Day 2, page 206,
12 line 9:

13 "... it was also in the Technical Annex
14 that the United Kingdom had invited Rwanda to
15 confirm that the United Kingdom's proposals were 09:46
16 acceptable to it, and further to propose that by
17 doing so, Rwanda would bring their common
18 understanding into effect. Rwanda then used
19 precisely the word that in the Technical Annex the
20 United Kingdom had invited it to", the word, 09:46
21 "acceptable".

22 Now, words on which the United Kingdom
23 relies, or similar words, ordinarily feature in
24 the initiating Note Verbale. The State that sends
25 the initiating Note Verbale will invite the other 09:47

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1 state to confirm that certain proposals or
2 arrangements are acceptable and that the two notes
3 taken together will bring into effect -- will
4 place on the record the understanding and bring
5 into effect -- the exchange will come into effect. 09:47

6 The United Kingdom's case is that the use
7 of those words in the annex of an initiating Note
8 Verbale is sufficient to bring into effect a
9 binding international agreement if the Reply Note
10 Verbale just uses the word "acceptable", with 09:47
11 nothing else. Again, if the United Kingdom wishes
12 to express its consent to be bound in its reply
13 instrument and for a treaty to come into force
14 through so thin a formulation in response to a
15 Technical Annex in an initiating Note Verbale, it 09:48
16 may do so. What it cannot do is to impose the
17 same threshold on other States and on Rwanda. Nor
18 can it treat Rwanda as having agreed on the basis
19 of language that manifestly falls short of
20 well-settled practice in connection with the 09:48
21 conclusion of treaty through an exchange of
22 instruments.

23 Third, it is not true that Rwanda is
24 seeking to apply a higher standard to the November
25 notes than the June notes, as was suggested. 09:48

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1 I believe I made this point in response to a
2 question put to me by Judge Donoghue on Day 1.
3 The clearest way for States to express consent is
4 to say "shall constitute an agreement", and both
5 of them have to say that. 09:49

6 Now, we know in the June finance note,
7 that's not the second element. It's formulated
8 differently. Instead, they place on the record
9 the understanding.

10 If that language had been used 09:49
11 in November, it might have been difficult -- the
12 language of placing on the record an understanding
13 rather than "shall constitute an agreement" which
14 is more precise language -- if that language had
15 been used in November, it might have been 09:49
16 difficult for Rwanda to argue that language that
17 had been enough in June was now not enough
18 in November, and we accept that point. But the
19 issue does not arise because Rwanda did not use
20 that language or any other similar language 09:49
21 in November.

22 The fourth point, which is relevant both
23 to Article 13(a) and 13(b), is that the exchange
24 must reflect an identical position, that is the
25 *Bolivia v Chile* test in paragraph 117. Either the 09:49

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1 text is reproduced, which some states consider to
2 be the best practice because it's the clearest.
3 If the text is not reproduced, the text of what is
4 being agreed is not reproduced in the main text of
5 the Reply Note Verbale, it must still be clear 09:50
6 from the exchange that it reflects an identical
7 position.

8 Now, that takes me to the line of
9 discussions that we had following another question
10 from Professor Abdel Wahab, namely on the term 09:50
11 "arrangements" in the Reply Note Verbale. Counsel
12 for the United Kingdom dealt with that point, but
13 he didn't deal with what was my first point in
14 answer to Professor Abdel Wahab and remains my
15 first point. 09:50

16 The first point is it is not clear from
17 the November exchange what the parties' position
18 was, including as regards the key question of what
19 arrangements means. None of the other exchanges
20 in this case suffers from the same uncertainty. 09:50
21 This fundamental uncertainty, which is evidenced
22 by all these arguments we're having about
23 arrangements, is fatal to the United Kingdom's
24 case.

25 For purposes of its case, Rwanda does not 09:51

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1 need to provide or commit itself to any particular
2 construction of the term "arrangements" in
3 the November exchange because it is not Rwanda
4 that is contending that the November exchange was
5 binding. So that's our first point, the complete 09:51
6 lack of clarity.

7 It is with that in mind that I made the
8 second point in answer to Professor Abdel Wahab,
9 which is that he is right to say that textually
10 the clearest connection between the two Notes 09:51
11 Verbales is with the use of arrangements in
12 paragraph 2 of the Technical Annex. That's the
13 clearest textual connection we can make.

14 If one wanted to find some way of
15 ascribing a meaning to arrangements, textually 09:51
16 that argument is better than the United Kingdom's
17 strained interpretation.

18 This takes me to the February Note
19 Verbale. I'll go through it, this is C-31, in
20 some detail. 09:52

21 Now, the February Note Verbale is
22 relevant both to Article 13(a) and Article 13(b).
23 I'll deal with it now and then I'll move to 13(b).
24 Relevant as in the United Kingdom's case, in our
25 case it isn't relevant, really, to either. 09:52

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1 Now, this is Exhibit C-31. The relevance
2 to Article 13(a) is that the United Kingdom
3 contends that this Note Verbale resolves the
4 uncertainty about the meaning of arrangements in
5 the November Notes and thus goes to show that 09:52
6 the November Notes reflected an identical
7 position, the point I was making before.

8 Now, arrangements in this Note Verbale
9 are described in three different ways. In the
10 first paragraph, Rwanda -- it's Exhibit C-31 -- so 09:53
11 in the first paragraph, it's line 5, Rwanda refers
12 to its Note Verbale on 14 November and describes
13 that Note Verbale as the Note Verbale which
14 conveyed that the proposed arrangements from the
15 United Kingdom to forgo additional payments, 09:53
16 etcetera, were acceptable to the Government of
17 Rwanda.

18 In the second paragraph, in the second
19 line, the arrangements are described as "outlined
20 in the Technical Annex to the Note Verbale", and 09:53
21 then also in the second paragraph, we have a
22 further description of the previous arrangements
23 outlined in the aforementioned Note Verbale. So
24 not the Technical Annex now, but the Note Verbale.

25 And I'll make three points on the use of 09:53

1 the word "arrangements" in the February Note
2 Verbale. First, none of these formulations gives
3 the term "arrangements" a clear and consistent
4 meaning. So the problem in terms of the absence
5 of a clear position, of an identical position, is 09:54
6 not resolved by the February Note Verbale.

7 The second point is that the various
8 formulations used in the February Note Verbale are
9 potentially consistent with the textual reading of
10 arrangements in the November Note Verbale that 09:54
11 we discussed before.

12 The reference to "arrangements to forgo"
13 in paragraph 1 may describe the outcome, rather
14 than the content of the arrangements, just as in
15 the expression which we have been discussing 09:54
16 separately -- arrangements to resettle a portion
17 of refugees, where the resettlement is the result
18 that the arrangements would have enabled. And,
19 similarly, it is perfectly possible -- plausible,
20 even -- that the financial arrangements in 09:55
21 paragraph 2 of the Technical Annex would have
22 enabled the forgoing of the payments.

23 So that's a reading that is consistent
24 with my second point in answer to Professor Abdel
25 Wahab. 09:55

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1 Now, the third point is that the
2 arrangements are twice described as outlined.
3 That confirms that the reference was not to a
4 specific commitment but something that lacked
5 specificity. We see in the second paragraph "the 09:55
6 proposed arrangements as outlined in the Technical
7 Annex" and then "the proposed arrangements
8 outlined in the Note Verbale".

9 So that's the answer to the question
10 whether the February Note Verbale can resolve the 09:55
11 difficulties that the United Kingdom has with
12 being able to show that there was an identical
13 position emerging from the November Notes
14 Verbales.

15 I now turn to Article 13(b). Here, as 09:55
16 we know, the United Kingdom relies on the use of
17 the word "rescind". That's essentially their
18 case. They say this is the subsequent conduct
19 that confirms that Rwanda considered the
20 arrangements to be binding. I will make a few 09:56
21 points on this.

22 As I said in opening, the use of the word
23 "rescind" does not support this reading. Both
24 parties agree that if the November exchange had
25 been binding, Rwanda could not have unilaterally 09:56

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1 rescinded it by sending a Note Verbale saying:
2 We rescind it. The United Kingdom's case is,
3 therefore, that Rwanda demonstrated that it was
4 bound subsequently by the November exchange by
5 attempting to do that which it manifestly could 09:56
6 not do. That's their case. We submit this is not
7 a credible way of evidencing consent to be bound
8 through subsequent conduct. In fact, it is
9 evidence to the contrary.

10 The evidence is that Rwanda was reversing 09:57
11 that which it knew it could reverse. This reading
12 is confirmed by other textual features of
13 the February Note Verbale.

14 First, as we saw in the first paragraph,
15 Rwanda describes its November Note Verbale as the 09:57
16 note which conveyed that the proposed arrangements
17 were acceptable to Rwanda. Rwanda does not refer
18 in the opening paragraph of the February Note
19 Verbale to the exchange, or to the two Notes
20 Verbales. It does not refer to an exchange 09:57
21 relating to arrangements or to an exchange that
22 had made arrangements. It merely refers to its
23 Note Verbale which had conveyed something.

24 Second, the description of what
25 the November Note Verbale conveyed in the February 09:57

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1 Note Verbale is entirely consistent with Rwanda's
2 position throughout. Rwanda's Reply Note Verbale
3 in November had conveyed that the arrangements
4 were acceptable; it did not convey anything else.

5 Third, as I said before, the arrangements 09:58
6 are described as outlined, not as made, not as set
7 out or contained, but merely outlined. By
8 contrast, when the February Note Verbale refers to
9 binding arrangements in the last sentence of the
10 second paragraph, it describes them as 09:58
11 "contained".

12 "Rwanda and the United Kingdom remain
13 bound by the arrangements as contained...."

14 So again, this language is consistent
15 with the proposition that Rwanda was referring to 09:58
16 something that had been outlined and that was on
17 the table, and to a willingness that it had
18 previously indicated to discuss that outline. But
19 there is no evidence in this February Note Verbale
20 that supports the contention that Rwanda had 09:59
21 before agreed to be bound.

22 I now turn to Article 13(b). I will make
23 three brief points on the legal test and deal with
24 the circumstances as well.

25 The first point, quite briefly, is that 09:59

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1 you don't need to go to Article 13(b) in
2 circumstances where it is clear that this exchange
3 could have only worked as an Article 13(a)
4 exchange. Rwanda was invited to provide a
5 confirmation it did not provide in the terms in 09:59
6 which the settled practise required.

7 The second point is a point I made
8 before. The impossibility to identify an
9 identical position is fatal to the case
10 under Articles 13(a) and 13(b). And the third 09:59
11 point is in the answer to Judge Donoghue's
12 question on the *Gabon/Equatorial Guinea* test, and
13 the question was whether the test in paragraph 74
14 is the correct one. And I would say it is one of
15 the places where the judgment of the test is 10:00
16 found, but I'll just give references to three
17 other important passages in *Gabon/Equatorial*
18 *Guinea*.

19 The final sentence in paragraph 73:

20 "Moreover, the Court notes that 10:00
21 subsequent conduct by both parties, if clear and
22 consistent over a sustained period of time, may be
23 accorded greater weight than the subsequent
24 conduct of one of the parties individually."

25 I would also point to paragraph 82, 10:00

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1 requiring that one must be able to discern from
2 the circumstances a clear intention to be legally
3 bound, and paragraph 91 where reference is made to
4 clear and mutually consistent conduct.

5 I think the other point I would make on 10:00
6 *Gabon/Equatorial Guinea* is the facts of the case
7 were really quite different from the facts here.
8 There was a document which appeared to be a
9 treaty; Gabon had done various things that
10 purportedly would have to be under that treaty or 10:00
11 by reference to that treaty, but for decades, it
12 had not referred to it. And so in light of the
13 question marks above the status of the document,
14 the Court concluded that the subsequent conducted
15 weighed heavily against Gabon. 10:01

16 A case that perhaps is more interesting
17 in this context is the case where this line of
18 decisions began, which is the *Aegean Continental*
19 *Shelf* case. And the references there are
20 paragraphs 94 to 107. And that's usually the 10:01
21 first authority that is cited by the Court,
22 including in its paragraph 74.

23 So that's what I would say on the legal
24 test under Article 13(b).

25 Now, as far as the factual circumstances 10:01

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1 are concerned, I think I've dealt with them in
2 opening comprehensively, but I'll just make a few
3 headline points.

4 First, key circumstance is that the Note
5 Verbale was described by the United Kingdom as a 10:01
6 political Note Verbale.

7 Second, the United Kingdom suggests that
8 an initiating Note Verbale with language that said
9 "It is hereby agreed" and that referred to a
10 diplomatic agreement, Rwanda rejected that 10:02
11 language.

12 Third, counsel for the United Kingdom
13 said Rwanda is yet to explain if it was the party
14 that introduced these terms, it then supposedly
15 refused to accept them when equivalent terms 10:02
16 appeared in the Technical Annex. I think I had
17 explained that point but I will explain it again
18 briefly.

19 The discussions between officials in
20 October on the basis of the '24 Finance Note tell 10:02
21 us nothing. These were officials developing
22 drafts, and this is not the drafting exercise that
23 then led to the November exercise.

24 As the United Kingdom accepts, there were
25 other things at that point that Rwanda was 10:02

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1 interested in and other things that the United
2 Kingdom was putting on the table. The Rwandan
3 Director General who drafted potential amendments
4 to the '24 Finance Note was doing so within that
5 context. The mere fact that she prepared a draft 10:02
6 envisaging the suspension of payment is not an
7 indication that she understood, let alone that she
8 had been instructed, that her government would
9 agree to that suspension without receiving
10 anything in return or without other things being 10:03
11 agreed.

12 In the course of this kind of discussions
13 between officials, the mere drafting of a
14 provision that reflects the ask of another side by
15 an official is not an indication of acceptance by 10:03
16 that state of that ask.

17 The United Kingdom says that as the
18 exercise continued, there were tracked changes on
19 other points, but the ETIF point wasn't changed.
20 So it describes that fundamental point as settled. 10:03
21 In these exercises, everyone knows that nothing is
22 agreed until everything was agreed. Nothing was
23 settled at that point. In fact, this is the sort
24 of point that can be illustrated by the *Aegean*
25 *Continental Shelf* case. 10:03

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1 Turkey had said that it considered
2 favourably the Greek proposal to submit to the
3 court their dispute, and then it invited
4 discussions. A Turkish official may have prepared
5 a draft of a compromissory agreement as part of 10:04
6 those discussions. But if Turkey did not give
7 consent to the compromissory agreement, the
8 preparation of the draft by that official could
9 not have been given the same weight as consent by
10 the State. 10:04

11 I should have given the reference to the
12 *Aegean Continental Shelf* case, because we have it
13 on the record. It is RLA-6.

14 Fourth, the fact that the official does
15 not seek to introduce provisions about the DVA in 10:04
16 this draft is irrelevant. As we saw, she was
17 seeking to prepare a new Finance Note on a certain
18 basis and one that could in principle have
19 replaced the June Finance Note if the negotiations
20 had made a certain progress. So this wasn't a 10:04
21 text where you would put something about the DVA.
22 But, in any event, this is not what happened.

23 Fifth, there is no joint document, no
24 joint communiqué that expresses at any time
25 Rwanda's agreement to the UK's proposal. All the 10:04

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1 key documents are internal, and they all contain
2 caveats in key places. They cannot be taken as
3 evidence of Rwanda's consent to be legally bound.

4 If we look at the Rwandan read-out of the
5 call with the British Home Secretary -- between 10:05
6 the Rwanda foreign minister and the Home
7 Secretary, that is very clear. That read-out is
8 C-42. You have been taken through it in some
9 detail by both parties. I will highlight again
10 that the Rwanda minister said Rwanda will, in 10:05
11 principle, not pursue that payment provided that
12 the UK follows the right procedure. That's
13 paragraph 4 of Exhibit C-42.

14 Following on from that, it is said, as a
15 response Yvette Cooper expressed the UK's interest 10:05
16 in signing a Note Verbale, requesting Rwanda to
17 forgo the payment to which we will respond by Note
18 Verbale accepting this.

19 Then there is the discussion of what the
20 UK might offer to Rwanda, and we see, as I pointed 10:06
21 out in opening, that the minister is not impressed
22 with just a diplomatic offer. But, anyway, that
23 discussion does not progress.

24 In the final paragraph, 8, the Rwandan
25 note identifies as next steps for the UK to share 10:06

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1 a draft, and if the draft is approved, it would be
2 legally binding on both sides. But it's the UK
3 sharing the draft.

4 The next step on the Rwandan side is
5 "we will consult MinJust on the draft to provide 10:06
6 comments". They were just thinking let's see --
7 the Ministry of Justice being also the Attorney
8 General's Office in Rwanda -- what legal comments
9 we get. So this is not a document that evidences
10 consent, agreement, by Rwanda to accept this 10:06
11 proposal. It has all the right caveats.

12 We have those caveats all the way until
13 the end, including in the UK documents. The
14 document that I will just mention, give you a
15 reference for, is Exhibit 34. I think this is 10:07
16 R-34. This is the document from November 7 where
17 the read-out of the UK describes the Rwandan
18 minister's position as of November 7, even when he
19 received the UK draft of what was then a political
20 Note Verbale as noncommittal. So that's 10:07
21 Exhibit R-34. So, it was understood that there
22 was, even at that stage, noncommitment.

23 My sixth point the lack of progress on
24 any offer, which the United Kingdom seems to think
25 is a point in its favour, is a point against the 10:07

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1 United Kingdom, because it is not able to show on
2 this process that it understood to be
3 transactional from the outset what the transaction
4 was.

5 The seventh point is the United Kingdom 10:08
6 suggested at one point in its remarks yesterday
7 that Rwanda is imputing to itself underhanded
8 conduct in its approach to these exchanges
9 in November. I think the United Kingdom should
10 reflect very carefully on that submission. It was 10:08
11 the United Kingdom that proposed to Rwanda an
12 approach that was based on what it described as a
13 short political Note Verbale, and a Technical
14 Annex which it described as "things we need
15 covered for our legislative process". That's how 10:08
16 it described it. It now says it is central to its
17 case. This is the party that is alleging
18 underhanded conduct.

19 It was the United Kingdom that, having
20 described the new proposed document as a short 10:08
21 political Note Verbale, then sent a draft that
22 contained the words "It is hereby agreed" in
23 diplomatic agreement. Rwanda rejected those
24 words. Nothing underhanded. They did not want
25 that language even in a political Note Verbale. 10:09

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1 For the United Kingdom to suggest that it
2 thought at the time that the disappearance of the
3 words "It is hereby agreed" from the Note Verbale
4 made no difference is, with respect, a submission
5 without credibility. 10:09

6 As for the emails in R-33, where the
7 Foreign Office official is asking the Rwandan
8 director whether she has any edits or comments on
9 the Technical Annex, her answers prove nothing.
10 This was a Technical Annex in a request, and 10:09
11 Rwanda did not agree to be bound by it. It cannot
12 be seriously suggested that an official's
13 indication of having no edits or no comments on a
14 text can cure the absence of actual agreement --
15 actual agreement -- the day after or two days 10:09
16 later.

17 My eighth point is one that I made
18 before, namely, the one on subsequent conduct
19 where, essentially, the case turns on the February
20 Note Verbale, and I've been through that in 10:10
21 detail.

22 Now, I don't think I have time to go
23 through the eight final submissions of the United
24 Kingdom, but I think, if you go through those
25 submissions and what I've said in reply, you will 10:10

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1 see that I've answered each of those points.

2 What I will say instead in the brief time
3 that I have is just to make a few brief points on
4 preclusion and on the Year 3 question.

5 Now, on preclusion, just some brief 10:10
6 points. The United Kingdom cannot point to
7 anything that amounts to a clear and unequivocal
8 representation. All the statements, even in the
9 internal notes, they are all heavily caveated.

10 Second, the representation conveying in a 10:10
11 Note Verbale that the proposal is acceptable
12 without anything further is not a representation
13 in which the United Kingdom, in the circumstances
14 of this case, could have properly relied,
15 especially given how clear the United Kingdom's 10:11
16 own practice on these questions is.

17 And third, the United Kingdom cannot
18 prove reasonable reliance in circumstances where
19 its main case in these proceedings is that it
20 understood a Reply Note Verbale that contained no 10:11
21 expression of consent to be sufficient.

22 When they received the Note Verbale, they
23 could have gone back to Rwanda and asked for more,
24 or they could have terminated. But there is no
25 way they can show reliance. 10:11

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1 Now, my final section is on Year 3, and
2 I can be quite brief here.

3 The first point is that the word
4 "calendar" must be given a meaning. The only
5 meaning that the word can have is the year that 10:11
6 begins 1 January and ends on 31 December. I don't
7 think the parties were proceeding on the basis of
8 a calendar other than the Gregorian calendar in
9 this treaty.

10 The second point is, to repeat the point 10:12
11 I made in opening, that if you apply calendar year
12 throughout 5.2 and 5.3 and the different rules
13 that the parties agreed on the effect of
14 termination of payments, those provisions work
15 perfectly. They are different rules because the 10:12
16 effect of the United Kingdom termination would
17 have been different. United Kingdom termination
18 is dealt with in paragraph 5.2, Rwandan
19 termination in paragraph 5.3.

20 Then the third point is that reference 10:12
21 was made to paragraph 9.3.1 of the Finance Note,
22 which speaks of five continuous years from the
23 date of their arrival. It was suggested that the
24 use of the word "years" must have a different
25 meaning from calendar year. Well, the difference 10:12

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1 here, of course, is that in this provision, there
2 is a reference to a different starting point. So
3 one could look at it and say it may mean a period
4 of 12 months from the date of the arrival because
5 the date of the arrival is specified. It is a 10:13
6 contextual element that supports that reading, it
7 doesn't contradict it.

8 I will not need to say anything on the
9 Article 70 VCLT point, we dealt with that in
10 paragraph 40 of our Reply. 10:13

11 Finally, just one point of clarification
12 on the £20 million. At one point it was suggested
13 that they were in connection with the four
14 individuals. The £20 million payment was to set
15 up operational processes for asylum in 10:13
16 anticipation of the arrivals. So it wasn't a
17 payment just for the four individuals, it was part
18 of the preparation of the asylum system for the
19 arrivals.

20 With that, and I think I have overrun by 10:13
21 a few minutes and I hope you can be a bit
22 indulgent with Ms McRae, I would like to ask you
23 to please give the floor to her. Unless I can be
24 of further assistance, of course.

25 THE CHAIRMAN: I will not yet release 10:14

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1 you. We have a question and you can answer on the
2 Tribunal's time. The question is from Judge
3 Donoghue.

4 ARBITRATOR DONOGHUE: Thank you,
5 Mr Chairman. 10:14

6 And my question for Rwanda is as follows:
7 It is understandable that the bulk of Rwanda's
8 arguments to the Tribunal focus on responding to
9 the UK's contention that the two notes
10 from November, C-29, C-30 -- that those two notes 10:14
11 are legally binding. So we've heard quite a bit
12 from you on that.

13 The two notes are final -- they have
14 stamps on them, etcetera -- and that makes them
15 different from the drafts we saw before that. 10:14

16 What I don't feel I have a clear
17 appreciation of is what does Rwanda want the
18 Tribunal to understand is the substance of those
19 notes? What are those notes? If they're not
20 legally binding amendments, what are they? So if 10:14
21 you could clarify that, that would be helpful.
22 Thank you.

23 LORD VERDIRAME: Yes. So the best
24 characterisation of these Notes Verbales, on their
25 face and also confirmed by what preceded them and 10:15

1 what followed, is that the United Kingdom was
2 coming under -- was putting a lot of pressure to
3 have something. It wanted some degree of comfort
4 on the decision that it had probably already taken
5 on how to proceed in this matter. We saw earlier 10:15
6 that the decision on the Rwandan bill was already
7 something for even early October. But that was
8 the context.

9 And in that context Rwanda, having
10 progressed the discussion as far as it could go, 10:15
11 it was happy to continue to indicate that it was
12 willing, at a political level, to consider an
13 outline of a -- of potential arrangements. That's
14 what Rwanda did with its Reply Note Verbale. This
15 was a political Note Verbale. It was sent by the 10:16
16 United Kingdom on that basis. Rwanda did not
17 agree to be legally bound by it, but it gave a
18 political indication that the outlined
19 arrangements could continue to be discussed.
20 That's as far as the Rwandan Reply Note Verbale 10:16
21 takes this exchange.

22 And that's our main case how it should be
23 characterised. And then, Judge Donoghue, the
24 Tribunal will be familiar with the alternative
25 cases, which I don't think I need to run through 10:16

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1 again.

2 THE CHAIRMAN: I thank you. I now give
3 the floor to Ms McRae.

4 You can continue in the presentation of
5 Rwanda's side. You have the floor, madam. 10:16

6 MS McRAE: Thank you very much,
7 Mr President.

8 Yesterday the United Kingdom painted a
9 picture of itself as a party willing and eager to
10 negotiate on resettlement arrangements in 10:16
11 April 2025. As the United Kingdom put it, "the
12 United Kingdom expressly agreed to negotiate".

13 In reality, by the time of the parties'
14 exchange of correspondence in March and
15 April 2025, the United Kingdom had long declared 10:17
16 the MEDP dead and buried, and the United Kingdom
17 had taken no steps whatsoever to perform any
18 obligations under Article 19, even though that
19 provision had been in effect for three years.

20 The United Kingdom's April letter was not 10:17
21 a change in course but rather a continuation of
22 the same direction of travel. The United Kingdom
23 did not acknowledge that it had an obligation to
24 negotiate, or that it agreed to make arrangements
25 for the resettlement of refugees. Instead, it 10:17

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1 relied on its intended termination of the
2 agreement and its decision not to relocate any
3 refugees to Rwanda to justify its inaction. It
4 then took no further step.

5 This morning I will make very brief 10:17
6 submissions on the key points arising from the
7 United Kingdom's submissions yesterday, first on
8 interpretation, second on breach, and third, very
9 briefly on compensation.

10 Let me start with interpretation, the 10:18
11 United Kingdom's third point. This was to
12 describe Rwanda's submission that the United
13 Kingdom failed to operationalise Article 19 as
14 both curious and entirely obscure. Let me
15 clarify. 10:18

16 By this rather straightforward
17 submission, Rwanda simply meant that the United
18 Kingdom had failed to take any steps to give
19 Article 19 any operation. That necessarily
20 included the first and most obvious step to make 10:18
21 it operational, that is to initiate bilateral
22 discussions.

23 In this context, the United Kingdom
24 placed much weight on Rwandans's straightforward
25 acceptance that the United Kingdom was only 10:18

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1 obliged to perform the arrangements once they had
2 actually been agreed. But the United Kingdom
3 overlooked the submission that followed
4 immediately after. Let me repeat it verbatim.

5 "However, it must be borne in mind that 10:18
6 the United Kingdom had already accepted that it
7 would resettle a portion of Rwanda's vulnerable
8 refugees".

9 That was the specific result to which the
10 parties' arrangements were directed. This goes to 10:19
11 Professor Abdel Wahab's question.

12 The United Kingdom's fourth point was the
13 parties were not obliged to reach agreement.
14 Rwanda disagrees, and this further responds to
15 Prof. Abdel Wahab's question. 10:19

16 As Rwanda indicated in paragraph 95(c) of
17 its Statement of Claim, it accepts the general
18 position that an obligation to negotiate does not
19 imply an obligation to reach agreement, but as
20 also indicated in that paragraph, the parties are 10:19
21 agreeable of agreeing heightened treaty
22 obligations. They may choose to establish an
23 obligation to agree a precise result, to use the
24 language of the *Nuclear Weapons* advisory opinion.
25 And that is what they did here. The parties 10:19

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1 agreed to make arrangements, that is, to conclude
2 an agreement. And the precise result that they
3 wished to achieve in that agreement was clear.
4 The United Kingdom was to resettle a portion of
5 Rwanda's most vulnerable refugees in the United 10:20
6 Kingdom. The parties' agreement could not have
7 been plainer.

8 That brings me to the fifth point, which
9 is related to the fourth. This is where the
10 Article 19 constitutes an obligation of result. 10:20

11 The United Kingdom relied on two
12 distinguishable cases, *Tacna y Arica* and
13 *Bolivia-Chile*. In the former case, there was
14 insufficient certainty in the content of the
15 special protocol. In the latter case, there was 10:20
16 similar uncertainty. The alleged obligation was
17 one to negotiate to agree on granting sovereign
18 access to the ocean. However, in this case, the
19 very language of Article 19 obliges the parties to
20 reach agreement and makes the specific result of 10:20
21 that agreement plain.

22 A clear parallel can be drawn with the
23 treaty at issue in the *Nuclear Weapons* advisory
24 opinion, where the parties agreed to pursue
25 negotiations in good faith, including on a treaty. 10:20

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1 To borrow the expression of the International
2 Court of Justice in that opinion, Article 19 was
3 similarly a twofold obligation to pursue and
4 conclude negotiations. That's paragraph 100 of
5 CLA-13. 10:21

6 Contrary to the United Kingdom's
7 submission yesterday, and I quote:

8 "The parties precisely committed in
9 advance to what the specific outcome of their
10 agreement needed to be." 10:21

11 The United Kingdom's sixth point was
12 about what constitutes the breach of an obligation
13 to negotiate. United Kingdom chose to pick out
14 some highlights from the cases it had quoted in
15 the Statement of Defence, each of which uses 10:21
16 different language to describe conduct that would
17 give rise to the breach of an obligation to
18 negotiate.

19 Again, it is difficult to see how these
20 cases on different facts really assist the 10:21
21 Tribunal. In Rwanda's submission, what amounts to
22 a breach of an obligation to negotiate is
23 straightforward: A refusal to negotiate or an
24 obstruction of negotiations. That is what Rwanda
25 is alleging in this case and which is established 10:21

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1 in the relevant documents.

2 In this context, the United Kingdom
3 referred to the *Tacna y Arica* award, and the
4 standard of clear and convincing evidence.

5 Unsurprisingly, if one looks at the passage, it 10:22
6 was stated in the specific context of making a
7 finding of bad faith. Rwanda does not accept that
8 it needs to prove that the United Kingdom acted in
9 bad faith to find a breach of the obligation to
10 negotiate, if that is what is being suggested by 10:22
11 the United Kingdom.

12 While the obligation carries the duty to
13 act in good faith, it does not follow that one
14 must prove bad faith to establish a breach. As
15 the parties are agreed, the United Kingdom will 10:22
16 have failed to meet its obligations if it did not
17 make genuine efforts to advance discussions.

18 That brings me to the correspondence and
19 the case on breach. It would be useful if the
20 Tribunal could have both C-33 and C-34 to hand. 10:22

21 Let me start with the 24 March letter at
22 C-33. The United Kingdom's first point was that
23 Rwanda's statement that the 'UK has failed to take
24 any concrete action to fulfil its obligations was
25 confined to the United Kingdom's failure to accept 10:23

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1 refugees'. There is no basis for that. The
2 language is clear, it refers to any concrete
3 action, and that is right. The United Kingdom has
4 taken no steps under Article 19 at all. The
5 United Kingdom notably does not deny that. 10:23

6 The United Kingdom's next point was that
7 Rwanda's demand that the Joint Committee finalise
8 resettlement arrangements, and I quote, "form part
9 of a protest, a disputation, or an accusation".

10 If Rwanda simply wanted to protest it would not 10:23
11 have invited the parties to take any steps at all,
12 it would have said nothing further, yet it

13 demanded the Joint Committee to finalise

14 resettlement arrangements, and it demanded the

15 United Kingdom to comply with its legal 10:23

16 obligations. That was not a protest, it was a

17 call to action.

18 Finally, the United Kingdom emphasised
19 that Rwanda invoked Article 22.1 of the Agreement

20 in this letter. The United Kingdom seems to 10:24

21 consider that a document must either be a protest
22 or a refusal to negotiate, it cannot be both.

23 That analysis lacks any nuance. A document can
24 have multiple purposes, such as this one does.

25 I turn then to Exhibit C-34. As to the 10:24

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1 first sentence of the third paragraph, the United
2 Kingdom takes the view that it was responding to
3 Rwanda's allegation of breach.

4 Even if that were right, it does not
5 address the fact that nowhere in this paragraph 10:24
6 does the United Kingdom acknowledge or even
7 address its existing obligations under Article 19,
8 namely, to negotiate. Surely a party that
9 recognised an extant duty to negotiate acting in
10 good faith would have made that plain. 10:24

11 We then turn to the key language about
12 the intention to terminate and not to relocate
13 individuals under the MEDP. This, the United
14 Kingdom suggested, has just nothing to do with
15 Article 19. But if that language were irrelevant, 10:25
16 why was it inserted at all, the Tribunal might
17 ask.

18 In Rwanda's submission, the reason for
19 its inclusion is clear. The United Kingdom sought
20 to justify its unwillingness to take steps under 10:25
21 Article 19 on the grounds of its intended
22 termination of the agreement and its decision not
23 to relocate any more individuals. This was both
24 an explanation for and a confirmation of its
25 refusal to act. 10:25

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1 That then brings me to the paragraph on
2 which the United Kingdom placed so much emphasis
3 yesterday. It is this, the United Kingdom says,
4 which constitutes its formal offer to negotiate.
5 By this, it is referring to the offer to convene a 10:25
6 virtual meeting of the Joint Committee. That was
7 the meeting that took place on 16 April that
8 attracted so much attention in the parties'
9 correspondence overnight.

10 There are three answers to this point. 10:25

11 First of all, this paragraph simply
12 concerned the scheduling of a Joint Committee
13 meeting under Article 22.1 of the Agreement,
14 following Rwanda's request that it be convened.
15 It was not an offer to negotiate to resettle 10:26
16 Rwandan refugees. The United Kingdom said nothing
17 of the sort. Instead, the United Kingdom had just
18 denied that it had any obligation at all to
19 resettle refugees as such arrangements had not
20 been made, and referred to the Agreement's 10:26
21 termination.

22 In those circumstances, there can be no
23 credible suggestion that the United Kingdom was
24 seeking to make arrangements for the first time by
25 indicating a willingness to discuss issues. 10:26

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1 Second, even assuming that the United
2 Kingdom were right, that its offer did concern
3 Article 19 discussions, if one wanted to consider
4 whether the United Kingdom had made any genuine
5 attempt to advance discussions, as both parties 10:26
6 accept must be proved, one would have to have a
7 look at the record of the 16 April meeting itself.

8 However, the United Kingdom has been
9 desperate in its attempt to prevent the Tribunal
10 from seeing Rwanda's minutes of that meeting. The 10:26
11 Tribunal must ask itself why, particularly in
12 circumstances where the United Kingdom, for the
13 first time yesterday, put the content of that
14 meeting in issue by specifically relying upon what
15 allegedly transpired during it. 10:27

16 Third, and most tellingly, the United
17 Kingdom's reliance on this Joint Committee meeting
18 is directly inconsistent with its own case, that,
19 and I quote:

20 "Thus, when one party seeks a meeting 10:27
21 under Article 22.1 of the agreement, it is not for
22 the purposes of seeking to make arrangements."

23 That's at Day 2, page 252, line 23 of the
24 transcript, to line 25.

25 In this connection, I can answer 10:27

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1 Judge Tomka's question about whether Rwanda
2 submitted a resettlement proposal to the United
3 Kingdom. I'm instructed that Rwanda did indeed
4 raise a resettlement proposal with the United
5 Kingdom at the meeting of 16 April, and for that 10:27
6 purpose, had put together a proposal and an
7 accompanying list. As the Tribunal will
8 appreciate, there would have been no point in
9 progressing that proposal in circumstances where
10 the United Kingdom was refusing, in principle, to 10:27
11 take any refugees.

12 That is what the United Kingdom meant
13 when it referenced the intended termination of the
14 agreement and the decision not to relocate
15 refugees. It did not want to relocate them, nor 10:28
16 can the Tribunal infer would it take them.

17 In this regard, the United Kingdom has at
18 no stage claimed that it was willing to accept
19 refugees from Rwanda when it was asked to do so in
20 March 2025. This, we submit, is striking. So that 10:28
21 the position is put beyond any doubt, Rwanda
22 invites the United Kingdom to confirm whether it
23 will represent to this international Tribunal that
24 the British Government was willing to resettle a
25 portion of refugees from Rwanda in the United 10:28

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1 Kingdom after its policy shift. If it does not,
2 the Tribunal should proceed on the basis that,
3 while Article 19 was in force, the United Kingdom
4 had no intention of taking any steps to comply
5 with it. 10:28

6 This, Rwanda submits, would be enough to
7 find a breach of Article 19. A failure to take
8 action because of an unwillingness to resettle
9 refugees would amount to an obstruction of
10 negotiations or a demonstrated intention to 10:29
11 frustrate them. The United Kingdom yesterday
12 expressly accepted that such conduct would
13 constitute a breach. But the Tribunal, I should
14 emphasise, has enough to find a breach on the
15 basis of a fair reading of the April letter alone. 10:29

16 That then brings me to reparation, about
17 which I can be very brief. The United Kingdom
18 indicated that there is a question of principle
19 which divides the parties as to logic of Rwanda's
20 approach. The United Kingdom accepts that there 10:29
21 is what it calls an approximation technique. Its
22 only point is this does not avoid the
23 establishment of causation or the fact of injury.
24 This is obvious and uncontroversial.

25 What is controversial is the United 10:29

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1 Kingdom's suggestion that Rwanda cannot establish
2 these requirements. The United Kingdom's point
3 here is the Tribunal cannot assume that an
4 agreement would have been reached. In Rwanda's
5 submission, the duty to make arrangements cannot 10:30
6 be clearer. As I have already explained, the
7 parties were obliged to reach agreement on the
8 United Kingdom's resettlement of refugees, the
9 only question is how many they would have taken.

10 But as to causation and injury more 10:30
11 broadly, it is, with respect, obvious that the
12 United Kingdom's breach caused Rwanda loss. The
13 consequences of the United Kingdom's refusal to
14 negotiate the resettlement arrangements is that
15 Rwanda was left with a population of vulnerable 10:30
16 refugees for which it continued to be responsible.
17 This clearly caused Rwanda to bear expenses.
18 Rwanda merely seeks basic compensation for this
19 obvious reality. The United Kingdom has not
20 addressed this reality at all. Instead, it 10:30
21 focused its submission on the number of 300
22 refugees, ignoring entirely Rwanda's point that
23 its figure of 20,000 was far less than the figure
24 of 150,000 per refugee identified elsewhere in the
25 Finance Note. 10:31

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1 On that figure of 300, if I could just
2 clarify Rwanda does not seek a one-to-one ratio of
3 refugees transferred. Rwanda says only that there
4 would be an equivalence between the number of
5 refugees that would be intended to be transferred 10:31
6 initially in year 1, and the overall number of
7 vulnerable refugees relocated throughout the
8 five-year partnership.

9 A very final word, then on Rwanda's
10 alternative claim for an apology. The United 10:31
11 Kingdom's point was that it had unearthed six
12 cases in which a court or tribunal had declined to
13 order an apology; whereas, Rwanda, it said, had
14 identified no case in which one had ever been
15 ordered. This is to dismiss the well-known 10:31
16 *Rainbow Warrior* case on which Rwanda expressly
17 relied in its Statement of Claim.

18 But this is rather beside the point.
19 Again, a list of cases that arose in different
20 circumstances, however long, will not assist this 10:31
21 Tribunal. As Rwanda said in opening, what matters
22 is whether an apology is appropriate in this very
23 case. Rwanda's position is that the United
24 Kingdom's steadfast refusal to comply with the
25 part of the bargain that benefited Rwanda, a 10:32

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1 developing country doing the utmost to comply with
2 its treaty obligations, warrants an appropriate
3 sanction from this Tribunal.

4 Mr President, members of the Tribunal, if
5 I may then conclude. This is a case about the 10:32
6 United Kingdom's strained attempts to mitigate
7 consequences of a unilateral decision to withdraw
8 from the partnership to which Rwanda had
9 contributed so much. On the one hand, the United
10 Kingdom sought to do all it could to avoid paying 10:32
11 Rwanda the money that it accepts it was legally
12 bound to pay. On the other hand, the United
13 Kingdom sought to avoid making any deal with
14 Rwanda that would result in refugees from Rwanda
15 on British soil, despite the promise enshrined in 10:32
16 Article 19.

17 But as the Rwandan Foreign Ministry so
18 powerfully said in its Note Verbale of 8 July at
19 Exhibit C-26:

20 "The Ministry reminds the UK that the 10:32
21 MEDP was initiated at the request of the UK to
22 address a UK problem, and this was a
23 state-to-state agreement passed by both our
24 parliaments. Rwanda is a country, not the name of
25 a 'scheme' [...]". 10:33

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1 Rwanda sought to vindicate its legal
2 rights in two ways: First, Rwanda did not agree
3 to the United Kingdom's request that Rwanda forgo
4 the ETIF payments. Second, Rwanda demanded that
5 the joint committee, of which the United Kingdom 10:33
6 was a member, act to finalise resettlement
7 arrangements and demanded that the United Kingdom
8 comply with legal its responsibilities. However,
9 the United Kingdom refused to pay Rwanda what was
10 legally due to it, and refused to take any steps 10:33
11 to bring any resettlement arrangements into
12 operation.

13 Rwanda respectfully invites the Tribunal
14 to apply the appropriate sanction.

15 With that, I invite the President to call 10:33
16 upon Rwanda's agent to read Rwanda's final
17 submissions.

18 THE CHAIRMAN: Thank you very much.

19 Now I invite the agent of the Republic
20 of Rwanda, Dr Ugirashebuja, to present their final 10:34
21 submissions. It would be the practice of the
22 Permanent Court of Arbitration, inspired by the
23 practice of the International Court of Justice
24 reading final submissions so we know exactly what
25 we are asked to rule on. 10:34

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1 You have the floor, sir.

2 DR UGIRASHEBUJA: Thank you,
3 Mr President. I shall now read the final
4 submissions of the Republic of Rwanda.

5 For the reasons explained by the Republic 10:34
6 of Rwanda in its Statement of Claim, its Reply and
7 during the oral hearings, the Reply of Rwanda
8 requests this Tribunal to first, or A, declare
9 that 50 million for year 2 remains due and payable
10 to Rwanda under paragraph 2.3.2 of the 2024 10:34
11 Finance Note.

12 B. Declare that the UK is in breach of
13 paragraph 2.3.2 of the 2024 Finance Note for
14 failing to pay £50 million for year 2 within
15 10 days of 13 April 2025. 10:35

16 C. Declare that the UK is obliged to
17 make payment for year 3 of the Agreement in the
18 amount of 50 million; alternatively adjust *pro*
19 *rata* to 10.4 million to reflect the Agreement's
20 termination on 16 March 2026. 10:35

21 D. Declare that the UK is in breach of
22 Article 18 of the Agreement.

23 E. Order that the UK pay Rwanda all
24 outstanding sums.

25 F. Declare that the UK is in breach of 10:35

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1 Article 19 of the Agreement.

2 G. Order the UK to pay Rwanda
3 compensation for its breach of Article 19 of the
4 Agreement in the sum of £6 million.

5 Alternatively, order the UK to provide Rwanda with 10:36
6 an apology for such breach.

7 H. Order pre- and post-award interest on
8 any sums that are due to Rwanda.

9 Finally, I. Award Rwanda any further and
10 other relief that the Tribunal considers 10:36
11 appropriate, such as an order that the parties
12 negotiate the modalities of compensation due under
13 Article 19 as set out in paragraph 63 of the
14 Reply.

15 Mr President, with your permission, on 10:36
16 behalf of the Republic of Rwanda, I would like to
17 thank all those who have assisted in these
18 proceedings. I wish to thank the PCA's senior
19 legal counsel in these proceedings, Ms Ashwita
20 Ambast, and everyone else at the PCA for their 10:36
21 cooperation and their professionalism.

22 I would also like to thank the court
23 reporter for producing the transcript of the
24 public sessions.

25 We also want to thank our friends and 10:37

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1 colleagues from the United Kingdom for their
2 cooperation in the course of the proceedings.

3 Before concluding, I would also like to
4 thank you, Mr President, and members of this
5 distinguished Tribunal, for your patient attention 10:37
6 and for agreeing to find the time in your busy
7 schedules to sit in this case at a very short
8 notice. So we appreciate this, Mr President.
9 Thank you very much.

10 THE CHAIRMAN: Thank you very much, 10:37
11 Honourable Minister. We take note of the
12 submission you have made on behalf of your
13 government.

14 This completes this morning's sitting.
15 We will meet this afternoon at 2 o'clock for the 10:37
16 United Kingdom to present its second round of
17 argument at the end, which it will also represent
18 their final submissions.

19 PCA will inform both parties about the
20 amount of time which was given to Rwanda. As 10:38
21 we have passed slightly over 10.30, the Tribunal
22 would be ready to give additional time,
23 approximately the same, to the delegation of the
24 United Kingdom, if necessary.

25 This sitting is adjourned. 10:38

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1 (Short adjournment - 10.39 a.m. to 2.00 p.m.)

2 THE CHAIRMAN: Good afternoon. Please be
3 seated.

4 This sitting is open. The Tribunal is
5 ready to listen to the presentation by the 14:03
6 delegation of the United Kingdom. I invite the
7 counsel to start. You have the floor, sir.

8 REPLY SUBMISSION ON BEHALF OF THE UNITED KINGDOM
9 OF GREAT BRITAIN AND NORTHERN IRELAND

10 MR JURATOWITCH: Thank you, President, 14:03
11 and members of the Tribunal.

12 I will begin with a series of discrete
13 points in Reply on financial arrangements; Ms Hart
14 will then make submissions on Article 19, and then
15 you will hear from the agent, including to read 14:03
16 the formal submissions.

17 Professor Abdel Wahab posed a question
18 about the time period between the United Kingdom
19 announcing that it would terminate the Asylum
20 Partnership Agreement and actually doing so. He 14:04
21 asked whether it was because of the legislative
22 process that was referred to or if there was
23 another reason.

24 The answer to that is it was the
25 legislative process. The piece of legislation 14:04

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1 known as the Border Security Asylum and
2 Immigration Act of 2025 came into force on
3 2 December 2025. That's at R-50 in the record.
4 The entry into force date is on the first page of
5 the exhibit. The relevant section is Section 40 14:04
6 on page 36. That's the one that repealed the
7 Safety of Rwanda Act, which was being seen as the
8 domestic impediment to termination of the treaty
9 on the international plane.

10 Fourteen days after that statute came 14:05
11 into force, the United Kingdom issued notice to
12 Rwanda of termination of the treaty.

13 The Tribunal will see that the
14 December 2025 legislation covered a wide range of
15 matters. The Tribunal is aware from the 14:05
16 discussions between the parties in 2024, in the
17 late part of 2024, that the United Kingdom had
18 made Rwanda aware of the choice between
19 legislation in the near term dealing solely with
20 the repeal of the Safety of Rwanda Act, together 14:05
21 with prompt notice of termination of the treaty.
22 That was the first option.

23 Or the second option was the Safety of
24 Rwanda Act being repealed as one small part of
25 broader legislation but on the slower timetable of 14:05

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1 that broader legislation, with delayed formal
2 termination notification pursuant to the treaty,
3 and at the same time, because of that delay, an
4 agreement in the interim that Rwanda would forgo
5 any further ETIF payments. The parties together 14:06
6 chose that second option.

7 I'll move now, members of the Tribunal,
8 unless there's any other aspect on that point on
9 which I can assist, to the points made by Rwanda
10 this morning on the financial arrangements, and 14:06
11 I'll start with the law.

12 Exchanges of Notes, as is well known to
13 the Tribunal, of course, developed as a mechanism
14 by which States could bind themselves without the
15 formality and logistical complications of a treaty 14:06
16 in the traditional sense.

17 As we keep being reminded by Rwanda, the
18 Vienna Convention deals with such exchanges in its
19 Article 13. It is Claimant's legal authority 3 at
20 page 6. 14:07

21 Article 13 of the Vienna Convention does
22 so in quite general terms. 13(a) is when the
23 instruments provide that the States exchanging
24 them shall be bound, and 13(b) concerns when
25 consent to be bound is to be found other than in 14:07

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1 the instruments.

2 Rwanda, this morning, appeared to be
3 seeking to confine the Court's judgment in
4 *Gabon/Equatorial Guinea* to the latter category, to
5 the 13(b) category. Now that case, of course, did 14:07
6 not concern an exchange. There was just one
7 instrument and the debate was whether that one
8 instrument was a treaty in the traditional sense.
9 The Court held that what was relevant to
10 determining if the States had, in that instrument, 14:08
11 manifested their consent to be bound was the text,
12 the circumstances in which it had been drawn up
13 and subsequent conduct.

14 That is all applicable to analysing the
15 intent of the States when using the words that 14:08
16 they did in an exchange of notes being analysed
17 under Article 13(a) of the Vienna Convention.

18 What Rwanda seeks to do is depart from
19 the generality of the principle in *Aegean Sea* as
20 expanded by *Gabon/Equatorial Guinea* and for a 14:08
21 method of agreement that developed as a flexible
22 one impose on all States what Rwanda this morning
23 described as the three elements which it says are
24 to be found in British textbooks and handbooks.

25 The first point on that is that those 14:09

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1 textbooks and handbooks are not so restrictive.
2 You had my submissions on that yesterday. As
3 Rwanda said this morning, they provide examples.

4 The second point is that, as Rwanda now
5 acknowledges, many of those examples use the word 14:09
6 "acceptable".

7 The third point is that Rwanda also now
8 acknowledges that the June Notes depart from those
9 guidelines or best practices.

10 The fourth and most important point is 14:09
11 that the question for the Tribunal is not whether
12 the November Notes conformed with some
13 commentators' views on best practice or, with
14 respect, with the Tribunal's views about best
15 practice, the question is whether these two 14:10
16 states, in these circumstances, reached agreement.
17 That, members of the Tribunal, brings us to
18 the November Notes in this case.

19 Rwanda acknowledged this morning that the
20 conclusion of the Technical Annex used words which 14:10
21 ordinarily feature by the standard of Rwanda's
22 three elements.

23 Rwanda also acknowledged this morning
24 that it is appropriate to consider the June Notes
25 in reaching a decision about the November Notes. 14:10

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1 The crucial plank, then, of Rwanda's case
2 is that Rwanda did not include in its November
3 responsive Note all of the same words that the
4 United Kingdom had included in the final paragraph
5 of the Technical Annex forming part of the United 14:11
6 Kingdom's initiating note of the day before.

7 That being the crucial plank of Rwanda's
8 case, the crucial question for the Tribunal is
9 then simply whether one of the proposals that
10 Rwanda was accepting in its responsive note was 14:11
11 that its Reply to the effect that the proposals
12 made by the United Kingdom were acceptable to it
13 would place on record the understanding of the two
14 governments in the matter which will come into
15 effect on the date of its Reply. 14:11

16 The Tribunal already has the United
17 Kingdom's submissions on that key question and
18 I won't, of course, repeat them. I will, however,
19 just reply to Rwanda's submission this morning
20 that there was a complete lack of clarity as to 14:12
21 what the proposed arrangements were that Rwanda
22 confirmed were acceptable to it.

23 In the British note, which is Annex C-30,
24 the last unnumbered paragraph proposes the
25 following. It is C-30 in the Technical Annex, the 14:12

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1 last unnumbered paragraph. The very last
2 paragraph of the Technical Annex. I'm very sorry,
3 the mistake is mine for saying C-30, it's C-29.

4 I also made another error. The paragraph
5 to which I wish to refer is the last unnumbered 14:13
6 paragraph before the numbered paragraphs. In that
7 one, it says that "The United Kingdom proposes the
8 following". There are then the three proposals in
9 three numbered paragraphs. The final paragraph
10 then says -- this is the unnumbered paragraph at 14:13
11 the end to which I referred too early -- it says
12 that if the proposals set out above, that's the
13 three numbered paragraphs, are acceptable, "I have
14 the honour to propose", and then there is the
15 proposal about coming into effect, which Rwanda 14:14
16 now accepts is ordinary. That's C-29.

17 We now come to Rwanda's Note at C-30. It
18 refers to the United Kingdom's Note. It states
19 that the United Kingdom's Note requests Rwanda to
20 forgo any additional payments under the ETIF, and 14:14
21 then it says that the proposed arrangements,
22 plural, are acceptable to it.

23 On the specific word "arrangements"
24 I just recall for the Tribunal that it is the word
25 in Article 18 of the treaty pursuant to which 14:14

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1 the June Finance Agreement was made, and that the
2 United Kingdom was proposing an amendment to
3 that June agreement which constituted the
4 arrangements for the purposes of Article 18 of the
5 treaty. 14:15

6 The correct reading of these notes,
7 the November notes, is that Rwanda was accepting
8 the three numbered proposals made in the Technical
9 Annex of the United Kingdom's note and accepting
10 the further proposal in the last paragraph of the 14:15
11 Technical Annex that the reply by Rwanda bring the
12 understanding of the two governments into effect
13 on the date of that reply.

14 That's the correct reading. Rwanda's
15 suggestion that it is plausible that Rwanda was 14:15
16 accepting only numbered paragraph 2 of the
17 Technical Annex has, with respect, no basis at
18 all. It also runs straight into the words at the
19 end of the first paragraph of Rwanda's own
20 responsive note about forgoing any additional 14:16
21 payments under the ETIF.

22 Conscious of that, Rwanda this morning
23 appeared to postulate that it might mean that, at
24 the end of the discussions envisaged in numbered
25 paragraph 2 of the UK Note, Rwanda might then, 14:16

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1 after those discussions, agree to terminate the
2 further ETIF obligations. By that stage, with
3 respect, we were into the territory of it means
4 what I now say it means. And that continued in
5 response to Judge Donoghue's question. 14:17

6 Rwanda said that these notes are Rwanda
7 indicating, I quote, that it was "willing, at the
8 political level, to consider an outline of
9 potential arrangements." That's the end of the
10 quote. 14:17

11 The Tribunal will not need any assistance
12 from me in comparing that to what the Notes
13 actually say.

14 Now, that is all before we even reach the
15 circumstances in which the Notes were drawn up and 14:17
16 the subsequent conduct. But unless I can assist
17 the Tribunal further, that's all I propose to say
18 about the text.

19 I'll deal first with the rescission
20 letter as subsequent conduct, as Rwanda spent some 14:17
21 time on that this morning. It's at C-31.

22 Rwanda said this morning, in the first
23 paragraph of its rescission letter at C-31, it was
24 not referring to the Technical Annex because the
25 reference to the Note Verbale is in the singular. 14:18

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1 The reference number in the fourth line of the
2 Rwandan note and the date of 14 November, make it
3 clear that this is talking about Rwanda's own
4 responsive Note, and that note, of course, had no
5 annex. But that matters more substantively 14:18
6 because it was that Rwandan Note that Rwanda in
7 this Note, three months later, in February 2025,
8 it was describing the November Note as having
9 conveyed that the proposed "arrangements", plural,
10 "[...] were to forgo any additional payments under 14:19
11 the [ETIF]", and that these were acceptable to
12 Rwanda. That's all in the last half of the first
13 paragraph of C-31.

14 The Tribunal will have observed that no
15 matter how many times Rwanda says that our case 14:19
16 depends only on the word "rescind", this letter is
17 of rather greater relevance.

18 I will, however, say just one more thing
19 on the word "rescind", which is to address
20 Rwanda's point made both this morning and on 14:19
21 Wednesday, that Rwanda could not possibly have
22 been purporting to do that which it would not have
23 been entitled to do.

24 The Tribunal has the point that this
25 letter was sent the same day that the United 14:20

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1 Kingdom announced diplomatic measures on Rwanda in
2 connection with the conflict in the Democratic
3 Republic of the Congo. Rwanda's political
4 approach to the issues in this case have been on
5 display before the Tribunal. 14:20

6 I will simply say that it would not be
7 surprising that if in the political
8 decision-making leading to this letter of
9 25 February 2025, international law on the
10 termination of treaty obligations was not 14:20
11 forefront among the relevant considerations of the
12 relevant decision makers.

13 That's all I was proposing to say about
14 subsequent conduct, unless I can assist the
15 Tribunal further on it. 14:20

16 On the circumstances in which the Notes
17 were drawn up, it was said this morning that the
18 officials exchanging on 15 October might somehow
19 have been doing so without instructions. That was
20 five days after the ministerial call of 14:21
21 10 October, of which you have the notes of both
22 sides.

23 It was also said that the circumstances
24 that the United Kingdom is relying on cannot be
25 taken as evidence of consent. The United Kingdom, 14:21

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1 of course, does not say that the circumstances are
2 themselves consent. What the United Kingdom says
3 is that they are relevant circumstances for the
4 Tribunal to look at in determining whether, in the
5 Notes Verbales, the two states provided their 14:22
6 consent. So the fact there wasn't consent before
7 13 and 14 November doesn't really take Rwanda very
8 far at all.

9 The final point on the circumstances of
10 conclusion -- this goes, again, to an exchange 14:22
11 that I had with Professor Abdel Wahab yesterday --
12 was on the disappearance of the words "hereby
13 agreed" when Rwanda responded to a draft. It was
14 said by Rwanda this morning that that was very
15 significant. I've already made my submissions on 14:22
16 that yesterday in response to the question.
17 I will only add in response to what was said this
18 morning that it's not surprising in circumstances
19 where it was an initiating Note Verbale that was
20 being negotiated, that that language was removed 14:23
21 and the language of request was added. All the
22 more so given the political circumstances that
23 Rwanda has been at pains to emphasise, that it was
24 the UK asking for something and the question was
25 whether it would be acceptable to Rwanda. So, the 14:23

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1 change to the word "request" might reflect that
2 political circumstance, but it doesn't change the
3 legal conclusion reached either at that point in
4 the circumstances or in the final text.

5 Members of the Tribunal, that was all 14:23
6 I was proposing to say on circumstances of
7 conclusion and on the main claim. I will say
8 something short on the Year 3 point, if I can put
9 it that way, unless I can assist the Tribunal
10 further on anything I've covered thus far. 14:24

11 On the Year 3 point, then, it was said by
12 Rwanda this morning that where the year is used in
13 the provisions on which the United Kingdom
14 relied -- it's in Number 9 -- that there was a
15 reference to a starting point, and that 14:24
16 distinguished it from paragraph 5. And it was
17 said that the calendar year, which is said to be
18 only 1 January to 31 December, would work in 5.2
19 and 5.3.

20 What that rather misses out is two 14:25
21 things: One, Rwanda does not say that a 1 January
22 to 31 December year would work in 2.3. In fact it
23 accepts that that's not the way "year" is used in
24 2.3. And specifically in response to what was
25 said this morning, there is also for those 14:25

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1 purposes a starting point in paragraph 5.

2 Paragraph 5 must be using the same starting point
3 as 2.3. It would make no sense for 2.3 and
4 paragraph 5 to be using different starting points.

5 And in those circumstances, the natural reading is 14:25

6 that, for all the reasons I gave yesterday, when
7 "calendar year" is being used in these provisions
8 in this context, it's meaning a full year, leap
9 year or not, from 13 April onwards, and that's the

10 coherent reading of the use of the word "year" 14:26

11 in 2.3, in 5, in 9, and indeed throughout the
12 agreement.

13 Now, I'd make the same point with respect
14 to month. It is also -- "month" is also defined
15 as the calendar month, and there's no dispute 14:26

16 between the parties that a calendar month -- for
17 example, in the case of termination, as has
18 occurred in this particular case -- runs from the
19 day in the month on which the notification was
20 given to the equivalent day in the month three 14:26

21 months later. And that's why it's agreed between
22 the parties that the treaty terminated on 16 March
23 2026.

24 Members of the Tribunal, those are the
25 United Kingdom's submissions in Reply on the 14:27

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1 financial arrangements. I'm at the Tribunal's
2 disposal if I can assist it further; otherwise
3 I would ask you, Mr President, to please call on
4 Ms Hart.

5 THE CHAIRMAN: Thank you very much. 14:27

6 I invite counsel for the United Kingdom
7 to address other matters they would like. Thank
8 you.

9 MS HART: Members of the Tribunal, good
10 afternoon. I will deal with four matters relating 14:27
11 to Article 19 in reply. First, Professor Abdel
12 Wahab's question of yesterday; second, certain
13 points of interpretation of Article 19; third, the
14 breach alleged in this case and, as part of that,
15 I will address Rwanda's attempts to circumvent the 14:28
16 Tribunal's ruling of last night denying it leave
17 to add certain documents to the record. Fourth,
18 some brief points on reparation.

19 First to Professor Abdel Wahab's question
20 of yesterday. Professor Abdel Wahab asked whether 14:28
21 Article 19, and I quote, "... captures an
22 obligation to negotiate in good faith or whether
23 the negotiation in good faith is a means to
24 achieve an end which relates to a different
25 obligation that is making arrangements to resettle 14:28

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1 a portion of vulnerable refugees?"

2 The starting point, as Professor Abdel
3 Wahab acknowledged, is that both parties have
4 independently characterised Article 19 as a
5 provision requiring them to negotiate in good 14:28
6 faith rather than negotiations simply being a
7 means to an end. If both parties to a bilateral
8 treaty have a common view of what the correct
9 interpretation of a provision is, that is very
10 strong evidence that that view reflects their 14:29
11 mutual intention in concluding that treaty.

12 Admittedly, the word "negotiate" does not
13 appear in Article 19, and instead, Article 19
14 points to an outcome, the making of arrangements.
15 However, in the United Kingdom's submission, an 14:29
16 interpretation that suggested there was some
17 different overarching obligation beyond the duty
18 to negotiate with a view to making arrangements
19 would not be correct. This is because neither
20 party, nor even both parties, could guarantee that 14:29
21 arrangements for resettlement would, in fact, be
22 agreed upon.

23 As Rwanda has accepted, there is no
24 certainty over how many refugees would be settled.
25 Contrary to Rwanda's submission, that is far from 14:30

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1 the only question which fell to be resolved. As
2 referred to in the Statement of Defence at
3 paragraph 211(c), disagreement could have arisen
4 over any number of other aspects of the
5 arrangements. 14:30

6 For example, at what time or times would
7 refugees be resettled? What characteristics would
8 mean that someone would be considered to be among
9 Rwanda's most vulnerable refugees? Thinking about
10 humanitarian considerations, what assurances may 14:30
11 the United Kingdom require from Rwanda that the
12 vulnerable refugees were being resettled
13 consensually? And what assurances may Rwanda have
14 required from the United Kingdom regarding the
15 treatment of vulnerable refugees who were 14:31
16 resettled?

17 The question of treatment of individuals
18 relocated from the United Kingdom to Rwanda was
19 addressed in, among others, Articles 7 to 10 of
20 the Asylum Partnership Agreement, as well as the 14:31
21 very detailed Annexes A and B, and the parties
22 could be expected to be equally exacting in
23 relation to refugees resettled under Article 19,
24 given, by definition, they would be vulnerable.

25 What would happen if a given vulnerable 14:31

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1 refugee asked to be returned to Rwanda? For
2 example, would the United Kingdom and/or Rwanda be
3 obliged to facilitate that removal, and at cost to
4 which party?

5 This is also not a hypothetical issue. 14:31
6 In relation to relocation of individuals from the
7 United Kingdom to Rwanda, the parties explicitly
8 included a provision, Article 11, on possible
9 returns to the United Kingdom.

10 What continuing obligations would the 14:32
11 parties bear in relation to resettled vulnerable
12 refugees after any arrangements ceased to be in
13 effect? That was a matter addressed in Article 21
14 of the Asylum Partnership Agreement in relation to
15 individuals relocated from the United Kingdom to 14:32
16 Rwanda.

17 And, as in the 2024 Finance Agreement,
18 what, if any, provision may have been included in
19 the arrangements for resettlement for the parties
20 to agree to amendments to the arrangements, and 14:32
21 what, if any, provision may have been made for
22 dispute settlement and termination?

23 The two states would have wished to give
24 careful attention to both humanitarian
25 considerations and obtaining clarity as to the 14:32

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1 commitments that they were assuming. Given the
2 possibility for disagreement on any or all of
3 these matters, the obligation in Article 19 could
4 not, in fact, be a concrete obligation actually to
5 conclude arrangements. As the parties had not 14:33
6 prescribed the terms of their potential
7 arrangements, it could only be an obligation for
8 the parties to endeavour to make arrangements.

9 And, given that arrangements could only
10 be made jointly and not unilaterally, those 14:33
11 endeavours, necessarily, would take the form of
12 negotiations between the parties.

13 And that, to answer the question
14 directly, is why the United Kingdom's position is
15 that negotiations are not just a means to an end. 14:33
16 There is no overarching obligation to achieve a
17 result that is separate from the duty to negotiate
18 in good faith with a view to achieving that
19 result.

20 If the Tribunal needed an analogue in the 14:34
21 jurisprudence, it could find it in the cases
22 concerning the delineation of maritime boundaries
23 under UNCLOS. Article 83 says that the
24 delimitation of the Continental Shelf shall be
25 effected by agreement on the basis of 14:34

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1 international law in order to achieve an equitable
2 solution. The cases, including those on the
3 record, such as *Somalia v Kenya*, CLA-6, have
4 consistently characterised this as a duty to
5 negotiate. Negotiations are not just a means to 14:34
6 achieving some separate substantive obligation.
7 The duty to negotiate constitutes the content of
8 the obligation.

9 That brings me to the second part of my
10 reply submissions, which are about points of 14:34
11 interpretation concerning Article 19.

12 There are two points arising from
13 Rwanda's submissions this morning. First, Rwanda
14 sought to revive its argument that Article 19 is
15 an obligation of result, and it did so with 14:35
16 reference to the nuclear weapons advisory opinion.
17 I made detailed submissions yesterday on the
18 differences between Article VI of the Nuclear
19 Nonproliferation Treaty and Article 19 of the
20 Asylum Partnership Agreement. My answer to 14:35
21 Professor Abdel Wahab's question just now also
22 addressed the suggestion that the parties were
23 obliged to achieve a particular result as opposed
24 to endeavoring through negotiations to arrive at
25 that result. And, contrary to what we heard this 14:35

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1 morning, there is no greater specificity in
2 Article 19 than there was in the relevant
3 obligation in each of *Tacna-Arica* or *Bolivia v*
4 *Chile*.

5 Second, I need to clear up what is meant 14:35
6 by the term "operationalise". There are two
7 possible meanings which are being canvassed in
8 these proceedings, and I addressed both of them
9 yesterday.

10 One meaning is a duty to put resettlement 14:36
11 into operation, that is, actually to resettle
12 individuals. But the parties both stated in their
13 opening submissions that the United Kingdom was
14 not obliged to do this until arrangements were
15 made, and Rwanda did not resile from that this 14:36
16 morning.

17 A second meaning on which Rwanda relied
18 exclusively this morning was that the
19 United Kingdom was under a duty to initiate
20 bilateral discussions. Counsel later submitted 14:36
21 that the United Kingdom will have failed to meet
22 its obligations if it did not make genuine efforts
23 to advance discussions.

24 Now, I put aside here the question of
25 whether the United Kingdom, as alleged, positively 14:36

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1 obstructed negotiations or refused to negotiate
2 once Rwanda had sought to commence negotiations,
3 because this appears to be a different point,
4 which is that, even if Rwanda had taken no action,
5 the United Kingdom would have breached Article 19 14:37
6 if it did not itself initiate discussions.

7 Now, yesterday I addressed that argument
8 and pointed out the problems with it, and there
9 was no response to those points this morning. So
10 just to revisit them briefly. 14:37

11 I pointed out that that argument does not
12 work in cases where the obligation to make
13 arrangements is not time limited, as Rwanda has
14 expressly accepted multiple times is so for
15 Article 19. 14:37

16 Now, Rwanda's counsel said this morning
17 that Article 19 had been in force for three years
18 by March 2025. In fact, although it had a
19 nonbinding precursor, Article 19 had been in force
20 for less than one year of what was intended to be 14:37
21 a treaty term of just under three years. The
22 parties were not required to have taken any action
23 by that time.

24 I also drew attention to the fact that
25 Article 19 imposes a duty on the parties jointly, 14:38

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1 and Rwanda's own express submission that the
2 parties equally bore the duty to negotiate. In
3 those circumstances, there is simply no basis to
4 argue that, by March 2025, the United Kingdom was
5 in breach of Article 19 because it had failed to 14:38
6 initiate negotiations in circumstances where
7 Rwanda also had not sought to do so. And after
8 that time, we know that the United Kingdom did in
9 fact engage in negotiations with Rwanda, as I will
10 come to in a moment. 14:38

11 But at the end of the day, and again as
12 I highlighted yesterday, Rwanda's complaints about
13 a failure to operationalise Article 19, whatever
14 that means, appear to be immaterial. Its case is
15 based solely on the United Kingdom's alleged 14:39
16 frustration of negotiations based on the two
17 letters of March and April 2025. Rwanda's counsel
18 put that in very plain terms again this morning.
19 I quote from this morning's transcript, page 313,
20 lines 20 to 25: 14:39

21 "In Rwanda's submission, what amounts to
22 a breach of obligation to negotiate is
23 straightforward: A refusal to negotiate or an
24 obstruction of negotiations. That is what Rwanda
25 is alleging in this case and which is established 14:39

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1 in the relevant documents."

2 So while it has been an interesting
3 diversion, it appears the Tribunal need not
4 attempt to make sense of Rwanda's alleged duty to
5 operationalise. It can confine its analysis to 14:39
6 Rwanda's actual case, which is about whether the
7 United Kingdom obstructed negotiations once Rwanda
8 sought to initiate them.

9 That brings me very neatly to the third
10 part of my case which is about the alleged breach 14:40
11 of Article 19 that Rwanda has advanced.

12 This morning Rwanda revisited with the
13 Tribunal the key passages of C-33 and C-34, the
14 two letters in question. My submissions yesterday
15 covered the points on the text that were raised 14:40
16 this morning and I don't need to repeat them.

17 One granular point that I will revisit is
18 that I said to the Tribunal yesterday that even
19 taking Rwanda's case at its highest, that its
20 letter of 25 March 2025 was an attempt to initiate 14:40
21 negotiations under Article 19, even taking that
22 case at its highest the terms of the United
23 Kingdom's response show that it did not refuse to
24 negotiate.

25 The main focus of my submissions on 14:40

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1 breach today is about Rwanda's new and, dare
2 I say, extraordinary submissions about the
3 discussions that took place after the 25 March and
4 1 April letters. These submissions focused on the
5 16 April 2025 meeting of the Joint Committee, 14:41
6 which Rwanda's counsel described as having
7 attracted so much attention in the party's
8 correspondence overnight, rather overlooking that
9 that correspondence led to a binding ruling by the
10 Tribunal about certain documents on which Rwanda 14:41
11 is not entitled to rely in these proceedings.

12 I make four points.

13 First, Rwanda suggested that in its
14 letter of 1 April, the United Kingdom agreed only
15 to the scheduling of a meeting under Article 22.1 14:41
16 of the Agreement and did not agree to negotiate on
17 the resettlement of vulnerable refugees. That
18 submission defies the plain language of the text
19 of the United Kingdom's letter. It proposed a
20 meeting of the Joint Committee to "discuss the 14:42
21 issues raised in your letter", that is Rwanda's
22 letter; the issues raised in Rwanda's letter
23 without discrimination as to which issues those
24 were.

25 So either the issues raised in Rwanda's 14:42

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1 letters only concerned the dispute which had
2 arisen between the parties, in which case Rwanda
3 had not made a genuine attempt to initiate
4 negotiations under Article 19 in the first place,
5 or, as we understand Rwanda's case to be, the 14:42
6 issues raised in Rwanda's letter encompassed both
7 the dispute and negotiations under Article 19, in
8 which case the United Kingdom expressly agreed to
9 discuss both at the meeting of the Joint
10 Committee. 14:42

11 My second point. Rwanda suggested that
12 it was incumbent on the Tribunal to look at the
13 records of the joint committee meeting in order to
14 ascertain whether the parties did in fact
15 negotiate in good faith at that meeting. I have a 14:43
16 number of responses, none of which will have been
17 lost on the Tribunal.

18 First, Rwanda's case on Article 19 has
19 always been and remains explicitly limited to the
20 parties' exchanges in two documents. What 14:43
21 happened in the subsequent joint committee meeting
22 has never been part of its case.

23 Second, in any event, the Tribunal
24 already has Rwanda's representations about that
25 meeting, which is that discussions were extensive 14:43

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1 but that agreement could not be reached. That was
2 Rwanda's own pleaded case in its Notice of
3 Arbitration. It was also the position taken in a
4 letter of 30 April 2025, exhibited at R-45. That
5 is, of course, a letter from Rwanda itself, 14:44
6 describing the joint committee meeting; and,
7 further, it was Rwanda which introduced that
8 letter into these proceedings as Annex 12 to its
9 Notice of Arbitration. Those representations can
10 be taken as Rwanda's position on that meeting. 14:44

11 As to the suggestion this morning that
12 the United Kingdom's submissions yesterday put the
13 content of the Joint Committee meeting in issue,
14 that is obviously not correct. All that my
15 submissions consisted of on that front was a 14:44
16 recitation of Rwanda's own descriptions of the
17 meeting.

18 Third, and most glaringly, Rwanda already
19 made an application to be allowed to add its
20 internal summary of that meeting to the record, 14:44
21 and it was denied leave to do so. Nothing can or
22 should be inferred from the fact that the United
23 Kingdom resisted that application. It was
24 entitled to do so on the grounds that it did,
25 including that Rwanda had presented no 14:45

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1 justification for seeking to adduce that evidence
2 so late, and it being allowed to do so would be
3 seriously procedurally unfair to the United
4 Kingdom.

5 The third point is that Rwanda's counsel 14:45
6 stated on instructions that Rwanda raised a
7 resettlement proposal in the Joint Committee
8 meeting. Now statements of fact made by counsel
9 on instructions are not evidence and are never
10 entitled to any real weight, and that is all the 14:45
11 more so here in light of the Tribunal's ruling
12 last night.

13 Fourth, Rwanda's counsel took the liberty
14 of inviting the United Kingdom to confirm to the
15 Tribunal whether it would have been willing to 14:45
16 resettle refugees and submitted that "If it [did]
17 not", then, I quote, "the Tribunal should proceed
18 on the basis that, while Article 19 was in force,
19 the United Kingdom had no intention of taking any
20 steps to comply with that". 14:46

21 That's at transcript of this morning,
22 page 320, lines 2 to 5.

23 As Respondent, United Kingdom is obliged
24 to meet the case raised against it on the basis of
25 the evidence before the Tribunal. Rwanda's case, 14:46

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1 based on two letters, is that the United Kingdom
2 expressed a refusal to negotiate in its letter
3 of 1 April 2025. The United Kingdom has met that
4 case. The United Kingdom is not required in reply
5 submissions on the final day of the hearing to 14:46
6 make any broader statement about what its position
7 may have been if a proposal for resettlement had
8 been presented to it.

9 If Rwanda had raised a case in that
10 regard, which it has not, and the United Kingdom 14:46
11 had therefore wished to respond to such a
12 hypothetical case, it would have needed to do so
13 with reference to evidence. We recognise that
14 that sort of evidence could not be delivered from
15 the bar on instructions. 14:47

16 That brings me to my fourth and final
17 topic, which is reparations.

18 Rwanda's first submission was that
19 causation and the establishment of injury is
20 obvious and uncontroversial. The Tribunal has my 14:47
21 detailed submissions from yesterday as to why that
22 is not the case, and I won't repeat them now.

23 As to an apology, my submissions
24 yesterday already addressed the submission that an
25 apology would be inappropriate in this case. So 14:47

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1 all I want to do now is address Rwanda's
2 submission this morning that we had overlooked the
3 *Rainbow Warrior* case.

4 My precise submission yesterday, at
5 transcript for day 2, page 265, lines 20 to 22 was 14:47
6 as follows:

7 "Rwanda has not cited a single judicial
8 or arbitral case in which an international court
9 or tribunal ordered a state to make an apology..."

10 In the *Rainbow Warrior* case, the 14:48
11 Secretary-General of the United Nations gave a
12 ruling between the parties. Of course, he was not
13 a court or tribunal. Instead he was ruling in an
14 equitable and principled way as set out in
15 paragraph 22 of the separate opinion of 14:48

16 Sir Kenneth Keith. That's page 280 to 281 of the
17 report at CLA-18. It was the Secretary-General in
18 his ruling, quoted at paragraph 12, pages 224-225
19 of the report, who stated as follows:

20 "New Zealand seeks an apology. France is 14:48
21 prepared to give one. My ruling is that the Prime
22 Minister of France should convey to the Prime
23 Minister of New Zealand a formal and unqualified
24 apology for the attack [...]."

25 The arbitral tribunal, in its award four 14:49

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1 years later, referred to the ruling of the
2 Secretary-General but did not order an apology
3 itself. In any event, the Secretary-General only
4 decided, again on an equitable and principled
5 basis, that an apology should be granted after 14:49
6 France had already indicated that it was willing
7 to give one. Thus, the Secretary-General's ruling
8 in respect of an apology by France provides no
9 relevant precedent for Rwanda's request in this
10 case that this Arbitral Tribunal order the United 14:49
11 Kingdom to apologise.

12 Of course, I'm able to assist the
13 Tribunal if there are any questions that I can
14 answer. If not, I would now invite the Tribunal
15 to give the floor to Dr Stubbing, the United 14:50
16 Kingdom's Agent, to deliver the United Kingdom's
17 final submissions.

18 THE CHAIRMAN: Thank you very much,
19 Madam. I invite now the agent for the government
20 of the United Kingdom to present the final 14:50
21 submissions on behalf of her government. You have
22 the floor, madam.

23 DR STUBBING: President, members of the
24 Tribunal. As this hearing draws to a close,
25 I have the honour of addressing you again as the 14:50

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1 Agent of the United Kingdom.

2 May I take this opportunity to express
3 our gratitude to you, members of the Tribunal, for
4 your diligent and kind attention throughout this
5 hearing. I wish to thank the team from the 14:50
6 Permanent Court of Arbitration for their
7 cooperation and professionalism that have ensured
8 the smooth running of this hearing. Thank you
9 also to the court reporter for efficiently
10 producing verbatim records. 14:50

11 I also wish to convey to the Agent of
12 Rwanda the United Kingdom's appreciation for the
13 cordial and cooperative atmosphere between the two
14 teams in these proceedings, reflecting the
15 friendly and constructive relations between our 14:51
16 two countries.

17 The Tribunal has directed that, at the
18 close of the Reply oral statement made by a party
19 at the hearing, its Agent shall read that party's
20 final submissions. For the reasons provided in 14:51
21 the Statement of Defence and its oral submissions,
22 the United Kingdom respectfully requests that the
23 Tribunal dismiss each of Rwanda's claims set out
24 at paragraph 47 of its Notice of Arbitration,
25 paragraph 111 of its Statement of Claim, and in 14:51

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1 its Reply submissions.

2 I thank you for your kind attention.
3 This brings the United Kingdom's oral submissions
4 to their conclusion.

5 THE CHAIRMAN: I thank you very much, 14:52
6 madam.

7 The Tribunal takes note of the final
8 submissions of the United Kingdom you have just
9 read.

10 Before adjourning the sitting, if you 14:52
11 follow the steps, first, I would like to ask the
12 parties what time, reasonable time, it may require
13 for corrections to be suggested to the transcripts
14 of oral proceedings, and also proposal for any
15 redaction from the transcript, if necessary; 14:52
16 redactions for the purpose of putting this
17 transcript on the website of the Permanent Court
18 of Arbitration, and also whether they wish to
19 redact any portion of the video recording, because
20 the PCA has the intention to put that on the 14:53
21 website, the video recording. That's my
22 understanding.

23 So I wish to ask how much time you need,
24 whether you will be able to propose corrections or
25 redactions by Wednesday or Thursday next week or 14:53

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1 any other reasonable time not far away so we can
2 work as members of the Tribunal with final
3 transcript, as corrected.

4 So maybe I invite counsel for the
5 applicant, Lord Verdirame. You have the floor. 14:53

6 LORD VERDIRAME: Thank you, Mr President.
7 We haven't had a chance to discuss with our
8 friends on the other side. The timetable that
9 you've suggested would work at our end, and
10 probably the parties should coordinate first. If 14:54
11 there are amendments that they both find
12 acceptable, that will be it; and if there is any
13 dispute, which is unlikely, then we will come with
14 that to you in due course.

15 We think getting it to you within a week 14:54
16 seems very reasonable in circumstances where you
17 have this deadline of 15 May for the award. So
18 that's on the corrections.

19 I think on the redactions, we can
20 probably get back quite quickly. I'm not sure 14:54
21 we will have any, but we'll reflect. And same on
22 the video. I think all those three matters, we
23 would be able to complete within a week.

24 But I understand that on corrections, of
25 course, we have to cooperate with the other side. 14:54

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1 THE CHAIRMAN: Thank you.

2 I invite counsel for the United Kingdom.

3 MR JURATOWITCH: Thank you, Mr President.

4 The United Kingdom would be content with Wednesday
5 or Thursday next week, as suits the Tribunal best, 14:55
6 for corrections, and the United Kingdom is in a
7 position to confirm it will not be proposing any
8 redactions to the transcript or the video. Thank
9 you.

10 THE CHAIRMAN: Thank you very much. 14:55

11 So may I take it Thursday, or is anyone
12 asking until Friday?

13 LORD VERDIRAME: We are fine with
14 Thursday.

15 THE CHAIRMAN: Thursday would be fine, 14:55
16 yes. Thursday close of business hours for the
17 redactions or corrections, but also redactions
18 because there is no point of making redactions
19 before corrections, and the PCA will only publish
20 on the website the transcripts as corrected. 14:55

21 If you have any comment on the video,
22 then you can make that.

23 Otherwise, we do not have any other issue
24 to discuss?

25 In that case, I wish to thank both 14:56

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1 parties for their presentation, for presenting
2 their arguments. The Tribunal will withdraw to
3 start the deliberations. When we are ready, you
4 will receive the award from the Permanent Court of
5 Arbitration acting as registry. We are not going 14:56
6 to reconvene you for the reading of the Award.
7 This will be a more economical way.

8 So I thank you once again. I wish you
9 safe return back home. Thank you. The sitting is
10 adjourned. 14:56

11 And I wish to thank the court reporter
12 for the work, and of course the secretariat of the
13 PCA for organising this hearing so efficiently.
14 Thank you.

15 (The hearing concluded at 2.57 p.m.) 15:12

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<p>'24 [2] - 302:20, 303:4 'scheme' [1] - 328:25 'UK [1] - 319:23</p>	<p>355:20, 362:5 20,000 [1] - 326:23 2005 [1] - 273:10 2012 [1] - 272:8 2024 [5] - 330:10, 330:13, 334:16, 334:17, 350:17 2025 [16] - 314:11, 314:15, 324:20, 330:15, 334:2, 334:3, 334:14, 342:7, 343:9, 354:18, 355:4, 355:17, 356:20, 357:5, 359:4, 361:3 2025-45 [1] - 272:1 2026 [3] - 272:22, 330:20, 346:23 206 [1] - 290:11 21 [1] - 350:13 211(c) [1] - 349:3 22 [2] - 362:5, 362:15 22.1 [4] - 320:19, 322:13, 323:21, 357:15 224-225 [1] - 362:18 23 [1] - 323:23 24 [2] - 275:4, 319:21 25 [5] - 323:24, 343:9, 355:20, 356:20, 357:3 2517 [2] - 273:5, 276:5 252 [1] - 323:23 265 [1] - 362:5 278 [2] - 277:4, 277:4 280 [1] - 362:16 281 [1] - 362:16</p>	<p>6 6 [1] - 335:20 60 [1] - 278:8 63 [1] - 331:13</p>
<p>1</p>		<p>7</p>
<p>1 [9] - 292:2, 296:13, 310:6, 327:6, 345:18, 345:21, 357:4, 357:14, 361:3 10 [3] - 330:15, 343:21, 349:19 10.30 [1] - 332:21 10.39 [1] - 333:1 10.4 [1] - 330:19 100 [1] - 318:4 107 [1] - 301:20 11 [2] - 285:2, 350:8 111 [1] - 364:25 11221 [1] - 273:10 117 [1] - 292:25 12 [4] - 284:6, 311:4, 359:8, 362:18 13 [5] - 330:15, 335:19, 335:21, 344:7, 346:9 13(a) [11] - 285:23, 286:10, 286:17, 290:7, 292:23, 294:22, 295:2, 300:3, 300:10, 335:22, 336:17 13(a) [4] - 285:25, 286:4, 286:14, 286:17 13(b) [4] - 292:23, 300:1, 335:24, 336:5 13(b) [7] - 285:24, 294:22, 294:23, 297:15, 299:22, 300:10, 301:24 14 [3] - 295:12, 342:2, 344:7 15 [2] - 343:18, 366:17 150,000 [1] - 326:24 16 [6] - 322:7, 323:7, 324:5, 330:20, 346:22, 357:5 160 [1] - 274:9 165 [1] - 278:25 168 [1] - 284:6 18 [4] - 280:24, 330:22, 339:25, 340:4 181 [1] - 285:2 19 [43] - 314:18, 315:13, 315:19, 317:10, 317:19, 318:2, 320:4, 321:7, 321:15, 321:21, 323:3, 325:3, 325:7, 328:16, 331:1, 331:3, 331:13, 333:14, 347:11, 347:13, 347:21, 348:4, 348:13, 349:23, 351:3, 352:11, 352:14, 352:19, 353:2, 354:5, 354:15, 354:17, 354:19, 354:25, 355:5, 355:13, 356:11, 356:21, 358:4, 358:7, 358:18, 360:18</p>	<p>3 3 [7] - 281:18, 309:4, 310:1, 330:17, 335:19, 345:8, 345:11 30 [1] - 359:4 300 [2] - 326:21, 327:1 31 [3] - 310:6, 345:18, 345:22 313 [1] - 355:19 314 [1] - 277:5 320 [1] - 360:22 333 [2] - 277:7, 277:8 34 [1] - 306:15 347 [1] - 277:8 36 [1] - 334:6 3AL [3] - 273:15, 274:4, 275:10 3EG [1] - 275:5</p>	<p>7 [3] - 306:16, 306:18, 349:19 70 [1] - 311:9 73 [1] - 300:19 74 [2] - 300:13, 301:22</p> <p>8 8 [2] - 305:24, 328:18 82 [1] - 300:25 83 [1] - 351:23 8th [1] - 273:9</p> <p>9 9 [3] - 290:12, 345:14, 346:11 9.3.1 [1] - 310:21 91 [1] - 301:3 94 [1] - 301:20 95(c) [1] - 316:16</p>
<p>2</p>	<p>4 4 [1] - 305:13 40 [2] - 311:10, 334:5 47 [1] - 364:24 4DF [1] - 275:19</p>	<p>A</p>
<p>2 [18] - 273:5, 275:18, 276:4, 278:25, 284:6, 285:2, 290:11, 294:12, 296:21, 323:23, 330:9, 330:14, 332:15, 334:3, 340:16, 340:25, 360:22, 362:5 2.00 [1] - 333:1 2.3 [5] - 345:22, 345:24, 346:3, 346:11 2.3.2 [2] - 330:10, 330:13 2.57 [1] - 368:15 20 [6] - 272:22, 273:14, 274:4, 275:10,</p>	<p>5 5 [8] - 278:25, 295:11, 345:16, 346:1, 346:2, 346:4, 346:11, 360:22 5.2 [3] - 310:12, 310:18, 345:18 5.3 [3] - 310:12, 310:19, 345:19 50 [2] - 330:9, 330:18</p>	<p>a.m [1] - 333:1 ABDEL [2] - 272:19, 273:8 Abdel [14] - 280:6, 293:10, 293:14, 294:8, 296:24, 316:11, 316:15, 333:17, 344:11, 347:11, 347:19, 347:20, 348:2, 352:21 able [6] - 297:12, 301:1, 307:1, 363:12, 365:24, 366:23 absence [2] - 296:4, 308:14 accept [7] - 292:18, 302:15, 306:10, 319:7, 319:25, 323:6, 324:18 acceptable [19] - 288:13, 288:15, 288:18, 288:20, 288:25, 290:16, 291:2, 291:10, 295:16, 298:17, 299:4, 309:11, 338:12, 338:22, 339:13, 339:22, 342:11, 344:25, 366:12 acceptable" [2] - 290:21, 337:6 acceptance [2] - 303:15, 315:25 accepted [4] - 316:6, 325:12, 348:23, 354:14 accepting [5] - 305:18, 338:10, 340:7, 340:9, 340:16 accepts [6] - 302:24, 316:17, 325:20, 328:11, 339:16, 345:23 access [1] - 317:18 accompanying [1] - 324:7 accorded [1] - 300:23 account [2] - 279:2, 279:13 accusation" [1] - 320:9 achieve [7] - 280:23, 280:24, 317:3,</p>

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<p>347:24, 351:16, 352:1, 352:23 achieved [1] - 280:24 achieving [2] - 351:18, 352:6 acknowledge [2] - 314:23, 321:6 acknowledged [3] - 337:19, 337:23, 348:3 acknowledges [2] - 337:5, 337:8 Act [4] - 334:2, 334:7, 334:20, 334:24 act [3] - 319:13, 321:25, 329:6 acted [1] - 319:8 acting [2] - 321:9, 368:5 action [6] - 319:24, 320:3, 320:17, 325:8, 354:4, 354:22 actual [3] - 308:14, 308:15, 356:6 add [3] - 344:17, 347:17, 359:19 added [1] - 344:21 additional [5] - 295:15, 332:22, 339:20, 340:20, 342:10 address [7] - 321:5, 321:7, 328:22, 342:19, 347:7, 347:15, 362:1 addressed [7] - 326:20, 349:19, 350:13, 352:22, 353:8, 354:7, 361:24 addresses [1] - 285:18 addressing [1] - 363:25 adduce [1] - 360:1 adjourned [2] - 332:25, 368:10 adjourning [1] - 365:10 adjournment [1] - 333:1 adjust [1] - 330:18 admits [1] - 284:5 admittedly [1] - 348:12 advance [4] - 318:9, 319:17, 323:5, 353:23 advanced [1] - 356:11 Adviser [1] - 274:19 Advisers [2] - 275:17, 275:22 advisory [3] - 316:24, 317:23, 352:16 Aegean [4] - 301:18, 303:24, 304:12, 336:19 aforementioned [1] - 295:23 afternoon [3] - 332:15, 333:2, 347:10 agent [5] - 278:16, 329:16, 329:19, 333:15, 363:19 Agent [6] - 274:8, 275:15, 363:16, 364:1, 364:11, 364:19 agree [15] - 279:23, 280:1, 280:2, 284:4, 284:19, 297:24, 303:9, 308:11, 313:17, 316:23, 317:17, 329:2, 341:1, 350:20, 357:16 agreeable [4] - 283:20, 288:22, 288:25, 316:21 agreeable [1] - 288:13 agreed [22] - 290:2, 291:18, 293:4, 299:21, 302:9, 303:11, 303:22, 307:22, 308:3, 310:13, 314:12, 314:24, 316:2, 317:1, 317:24, 319:15, 344:13, 346:21, 348:22, 357:14, 358:8 agreeing [2] - 316:21, 332:6 Agreement [11] - 320:19, 322:13, 330:17, 330:22, 331:1, 331:4, 333:20, 349:20, 350:14, 352:20, 357:16 AGREEMENT [1] - 272:3 agreement [43] - 278:23, 279:4, 279:23,</p>	<p>281:11, 283:23, 285:1, 285:22, 289:5, 289:15, 289:23, 291:9, 292:4, 292:13, 302:10, 304:5, 304:7, 304:25, 306:10, 307:23, 308:14, 308:15, 315:2, 316:13, 316:19, 317:2, 317:3, 317:6, 317:20, 317:21, 318:10, 321:22, 323:21, 324:14, 326:4, 326:7, 328:23, 335:4, 336:21, 337:16, 340:3, 346:12, 351:25, 359:1 Agreement's [2] - 322:20, 330:19 allegation [1] - 321:3 alleged [6] - 317:16, 347:14, 353:25, 355:15, 356:4, 356:10 allegedly [1] - 323:15 alleging [3] - 307:17, 318:25, 355:25 allowed [2] - 359:19, 360:2 Alma [1] - 275:8 alone [5] - 281:10, 281:23, 281:25, 303:7, 325:15 ALSO [2] - 274:7, 275:13 alternative [3] - 279:9, 313:24, 327:10 alternatively [1] - 330:18 Alternatively [1] - 331:5 Ambassador [2] - 274:12, 274:13 Ambast [2] - 276:2, 331:20 amendment [4] - 279:23, 280:1, 280:3, 340:2 amendments [4] - 303:3, 312:20, 350:20, 366:11 amount [3] - 325:9, 330:18, 332:20 amounts [3] - 309:7, 318:21, 355:21 AN [2] - 272:3, 272:5 analogue [1] - 351:20 analysed [1] - 336:16 analysing [1] - 336:14 analysis [2] - 320:23, 356:5 AND [5] - 272:4, 272:4, 272:6, 272:15, 333:9 Annex [22] - 290:13, 290:19, 291:15, 294:12, 295:20, 295:24, 296:21, 297:7, 302:16, 307:14, 308:9, 308:10, 337:20, 338:5, 338:23, 338:25, 339:2, 340:9, 340:11, 340:17, 341:24, 359:8 annex [2] - 291:7, 342:5 Annexes [1] - 349:21 announced [1] - 343:1 announcing [1] - 333:19 answer [13] - 279:9, 280:11, 293:14, 294:8, 296:24, 297:9, 300:11, 312:1, 323:25, 333:24, 351:13, 352:20, 363:14 answered [1] - 309:1 answers [3] - 285:14, 308:9, 322:10 anticipation [1] - 311:16 anyway [3] - 281:6, 285:4, 305:22 apologise [1] - 363:11 apology [11] - 327:10, 327:13, 327:22, 331:6, 361:23, 361:25, 362:20, 362:24, 363:2, 363:5, 363:8 apology.. [1] - 362:9 appear [3] - 289:14, 348:13, 355:14 APPEARANCES [1] - 273:1 appeared [4] - 301:8, 302:16, 336:2, 340:23 appearing [1] - 282:2</p>	<p>applicable [1] - 336:14 applicant [1] - 366:5 application [2] - 359:19, 359:23 apply [3] - 291:24, 310:11, 329:14 appreciate [2] - 324:8, 332:8 appreciation [2] - 312:17, 364:12 approach [5] - 286:11, 307:8, 307:12, 325:20, 343:4 appropriate [5] - 327:22, 328:2, 329:14, 331:11, 337:24 approved [1] - 306:1 approximation [1] - 325:21 April [15] - 314:11, 314:15, 314:20, 322:7, 323:7, 324:5, 325:15, 330:15, 346:9, 355:17, 357:4, 357:5, 357:14, 359:4, 361:3 arbitral [1] - 362:8 Arbitral tribunal [4] - 272:18, 273:2, 362:25, 363:10 Arbitration [7] - 329:22, 359:3, 359:9, 364:6, 364:24, 365:18, 368:5 ARBITRATION [3] - 272:3, 272:8, 276:1 ARBITRATOR [3] - 272:19, 272:20, 312:4 argue [2] - 292:16, 355:4 argument [9] - 278:6, 286:8, 286:10, 290:11, 294:16, 332:17, 352:14, 354:7, 354:11 arguments [3] - 293:22, 312:8, 368:2 Arica [3] - 317:12, 319:3, 353:3 arise [1] - 292:19 arisen [2] - 349:3, 358:2 arising [2] - 315:6, 352:12 arose [1] - 327:19 arrangements [71] - 288:12, 291:2, 293:11, 293:19, 293:23, 294:2, 294:11, 294:15, 295:4, 295:8, 295:14, 295:19, 295:22, 296:1, 296:3, 296:10, 296:12, 296:14, 296:16, 296:18, 296:20, 297:2, 297:6, 297:7, 297:20, 298:16, 298:21, 298:22, 299:3, 299:5, 299:9, 299:13, 313:13, 313:19, 314:10, 314:24, 316:1, 316:10, 317:1, 320:8, 320:14, 322:19, 322:24, 323:22, 326:5, 326:14, 329:7, 329:11, 333:13, 335:10, 338:21, 339:21, 339:23, 340:4, 341:9, 342:9, 347:1, 347:25, 348:14, 348:18, 348:21, 349:5, 350:12, 350:19, 350:20, 351:5, 351:7, 351:8, 351:9, 353:14, 354:13 arrival [3] - 310:23, 311:4, 311:5 arrivals [2] - 311:16, 311:19 arrive [1] - 352:24 Article [74] - 285:23, 285:24, 285:25, 286:4, 286:10, 286:17, 290:7, 292:23, 294:22, 295:2, 297:15, 299:22, 300:1, 300:3, 301:24, 311:9, 314:18, 315:13, 315:19, 317:10, 317:19, 318:2, 320:4, 320:19, 321:7, 321:15, 321:21, 322:13, 323:3, 323:21, 325:3, 325:7, 328:16, 330:22, 331:1, 331:3, 331:13, 333:14, 335:19, 335:21, 336:17, 339:25, 340:4, 347:11, 347:13, 347:21, 348:4, 348:13, 349:23, 350:8, 350:13, 351:3, 352:11,</p>
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<p>352:14, 352:18, 352:19, 353:2, 354:5, 354:15, 354:17, 354:19, 354:25, 355:5, 355:13, 356:11, 356:21, 357:15, 358:4, 358:7, 358:18, 360:18</p> <p>article [1] - 351:23</p> <p>Articles [2] - 300:10, 349:19</p> <p>ascertain [1] - 358:14</p> <p>ascribing [1] - 294:15</p> <p>Ashwita [2] - 276:2, 331:19</p> <p>aside [1] - 353:24</p> <p>aspect [2] - 287:22, 335:8</p> <p>aspects [1] - 349:4</p> <p>assessed [1] - 280:12</p> <p>assessment [2] - 280:13, 280:14</p> <p>assist [8] - 318:20, 327:20, 335:9, 341:16, 343:14, 345:9, 347:2, 363:12</p> <p>assistance [2] - 311:24, 341:11</p> <p>assisted [1] - 331:17</p> <p>assume [2] - 285:9, 326:3</p> <p>assuming [2] - 323:1, 351:1</p> <p>assumption [1] - 279:12</p> <p>assurances [2] - 349:10, 349:13</p> <p>asylum [2] - 311:15, 311:18</p> <p>ASYLUM [1] - 272:5</p> <p>Asylum [5] - 333:19, 334:1, 349:20, 350:14, 352:20</p> <p>atmosphere [1] - 364:13</p> <p>attack [1] - 362:24</p> <p>attempt [5] - 323:5, 323:9, 356:4, 356:20, 358:3</p> <p>attempting [1] - 298:5</p> <p>attempts [2] - 328:6, 347:15</p> <p>attention [7] - 322:8, 332:5, 350:24, 354:24, 357:7, 364:4, 365:2</p> <p>Attorney [3] - 274:16, 274:19, 306:7</p> <p>attracted [2] - 322:8, 357:7</p> <p>Aust [2] - 287:23, 287:25</p> <p>Aust's [2] - 287:16, 287:21</p> <p>authorities [1] - 287:10</p> <p>authority [3] - 287:8, 301:21, 335:19</p> <p>avoid [4] - 281:23, 325:22, 328:10, 328:13</p> <p>award [5] - 319:3, 331:7, 362:25, 366:17, 368:4</p> <p>Award [2] - 331:9, 368:6</p> <p>aware [4] - 280:4, 282:4, 334:15, 334:18</p>	<p>begin [2] - 285:25, 333:12</p> <p>beginning [1] - 283:12</p> <p>begins [1] - 310:6</p> <p>Behalf [2] - 277:4, 277:7</p> <p>behalf [3] - 331:16, 332:12, 363:21</p> <p>BEHALF [4] - 274:1, 275:1, 278:10, 333:8</p> <p>behind [1] - 282:18</p> <p>Belinda [1] - 274:2</p> <p>Ben [1] - 275:2</p> <p>benefited [1] - 327:25</p> <p>benefits [1] - 282:21</p> <p>beside [1] - 327:18</p> <p>best [6] - 293:2, 312:23, 337:9, 337:13, 337:14, 367:5</p> <p>better [1] - 294:16</p> <p>between [19] - 281:2, 286:12, 286:19, 294:10, 302:19, 303:13, 305:5, 327:4, 333:18, 334:16, 334:18, 346:16, 346:21, 351:12, 352:18, 358:2, 362:12, 364:13, 364:15</p> <p>BETWEEN [1] - 272:3</p> <p>beyond [3] - 285:6, 324:21, 348:17</p> <p>bilateral [3] - 315:21, 348:7, 353:20</p> <p>bill [4] - 281:10, 281:24, 281:25, 313:6</p> <p>bind [1] - 335:14</p> <p>binding [16] - 279:16, 279:19, 279:23, 280:1, 289:18, 289:24, 291:9, 294:5, 297:20, 297:25, 299:9, 306:2, 312:11, 312:20, 357:9</p> <p>bit [2] - 311:21, 312:11</p> <p>Board [1] - 274:11</p> <p>Bolivia [3] - 292:25, 317:13, 353:3</p> <p>Bolivia-Chile [1] - 317:13</p> <p>book [2] - 287:13, 287:21</p> <p>Border [1] - 334:1</p> <p>Borders [1] - 275:24</p> <p>bore [1] - 355:2</p> <p>borne [1] - 316:5</p> <p>borrow [1] - 318:1</p> <p>bound [17] - 279:3, 286:18, 287:1, 287:12, 291:12, 298:4, 298:7, 299:13, 299:21, 301:3, 305:3, 308:11, 313:17, 328:12, 335:24, 335:25, 336:11</p> <p>boundaries [1] - 351:22</p> <p>Box [1] - 274:9</p> <p>breach [22] - 315:8, 318:12, 318:17, 318:22, 319:9, 319:14, 319:19, 321:3, 325:7, 325:13, 325:14, 326:12, 330:12, 330:21, 330:25, 331:3, 331:6, 347:14, 355:5, 355:22, 356:10, 357:1</p> <p>breached [1] - 354:5</p> <p>brief [8] - 299:23, 309:2, 309:3, 309:5, 310:2, 315:5, 325:17, 347:18</p> <p>briefly [4] - 299:25, 302:18, 315:9, 354:10</p> <p>bring [6] - 290:17, 291:3, 291:4, 291:8, 329:11, 340:11</p> <p>bringing [1] - 281:8</p> <p>brings [9] - 317:8, 319:18, 322:1, 325:16, 337:17, 352:9, 356:9, 361:16, 365:3</p> <p>BRITAIN [4] - 272:4, 272:15, 275:1,</p>	<p>333:9</p> <p>Britain [1] - 277:7</p> <p>British [14] - 280:16, 280:17, 280:21, 281:9, 281:17, 281:19, 281:23, 283:10, 283:25, 305:5, 324:24, 328:15, 336:24, 338:23</p> <p>broader [4] - 285:4, 334:25, 335:1, 361:6</p> <p>broadly [1] - 326:11</p> <p>Building [1] - 275:18</p> <p>bulk [1] - 312:7</p> <p>buried [1] - 314:16</p> <p>business [1] - 367:16</p> <p>busy [1] - 332:6</p> <p>Butera [1] - 274:18</p> <p>by [69] - 278:22, 280:6, 282:13, 286:18, 286:19, 286:20, 287:16, 287:23, 288:3, 289:17, 290:2, 290:16, 292:2, 293:22, 296:6, 298:1, 298:4, 298:12, 299:7, 299:13, 300:21, 301:11, 301:21, 302:5, 303:14, 303:15, 303:24, 304:8, 304:9, 305:9, 305:17, 306:10, 308:11, 311:20, 312:25, 313:15, 313:17, 314:13, 315:16, 319:10, 322:5, 322:24, 323:14, 328:23, 329:22, 330:5, 333:5, 335:9, 335:14, 335:17, 336:20, 337:21, 338:12, 340:11, 341:2, 344:14, 345:11, 349:24, 351:25, 353:6, 354:18, 354:23, 355:4, 357:9, 360:8, 363:8, 364:18, 365:25</p>
B		C
<p>bad [3] - 319:7, 319:9, 319:14</p> <p>bar [1] - 361:15</p> <p>bargain [1] - 327:25</p> <p>Barrett [1] - 288:1</p> <p>based [4] - 307:12, 355:15, 355:16, 361:1</p> <p>basic [1] - 326:18</p> <p>basis [15] - 278:14, 291:18, 302:20, 304:18, 310:7, 313:16, 320:1, 325:2, 325:15, 340:17, 351:25, 355:3, 360:18, 360:24, 363:5</p> <p>bear [2] - 326:17, 350:11</p> <p>began [2] - 283:25, 301:18</p>	<p>breach [22] - 315:8, 318:12, 318:17, 318:22, 319:9, 319:14, 319:19, 321:3, 325:7, 325:13, 325:14, 326:12, 330:12, 330:21, 330:25, 331:3, 331:6, 347:14, 355:5, 355:22, 356:10, 357:1</p> <p>breached [1] - 354:5</p> <p>brief [8] - 299:23, 309:2, 309:3, 309:5, 310:2, 315:5, 325:17, 347:18</p> <p>briefly [4] - 299:25, 302:18, 315:9, 354:10</p> <p>bring [6] - 290:17, 291:3, 291:4, 291:8, 329:11, 340:11</p> <p>bringing [1] - 281:8</p> <p>brings [9] - 317:8, 319:18, 322:1, 325:16, 337:17, 352:9, 356:9, 361:16, 365:3</p> <p>BRITAIN [4] - 272:4, 272:15, 275:1,</p>	<p>C-26 [1] - 328:19</p> <p>C-29 [3] - 312:10, 339:3, 339:16</p> <p>C-30 [5] - 312:10, 338:23, 338:25, 339:3, 339:17</p> <p>C-31 [6] - 294:19, 295:1, 295:10, 341:21, 341:23, 342:13</p> <p>C-33 [3] - 319:20, 319:22, 356:13</p> <p>C-34 [3] - 319:20, 320:25, 356:13</p> <p>C-42 [2] - 305:8, 305:13</p> <p>Cairo [1] - 273:10</p> <p>calculus [1] - 282:17</p> <p>calendar [9] - 310:4, 310:8, 310:11, 310:25, 345:17, 346:7, 346:15, 346:16</p> <p>cannot [10] - 291:16, 305:2, 308:11, 309:6, 309:17, 320:22, 326:1, 326:3, 326:5, 343:24</p> <p>canvassed [1] - 353:7</p> <p>capital [2] - 281:5, 282:25</p> <p>captures [1] - 347:21</p> <p>career [1] - 282:11</p> <p>careful [1] - 350:24</p> <p>carefully [1] - 307:10</p> <p>Carnegieplein [2] - 273:5, 276:4</p> <p>carries [1] - 319:12</p> <p>case [72] - 279:14, 283:9, 284:23, 285:18, 285:21, 286:15, 290:4, 291:6, 293:20, 293:24, 293:25, 294:24, 294:25, 297:18, 298:2, 298:6, 300:9, 301:6, 301:16, 301:17, 301:19, 303:25, 304:12, 307:17, 308:19, 309:14, 309:19, 313:22, 317:13, 317:15, 317:18, 318:25, 319:19, 323:18, 327:14, 327:16, 327:23, 328:5,</p>

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<p>332:7, 336:5, 337:18, 338:1, 338:8, 342:15, 343:4, 346:17, 346:18, 347:14, 355:14, 355:25, 356:6, 356:10, 356:19, 356:22, 358:2, 358:5, 358:8, 358:18, 358:22, 359:2, 360:24, 360:25, 361:4, 361:9, 361:12, 361:22, 361:25, 362:3, 362:8, 362:10, 363:10, 367:25</p> <p>Case [1] - 272:1</p> <p>cases [9] - 313:25, 317:12, 318:14, 318:20, 327:12, 327:19, 351:21, 352:2, 354:12</p> <p>category [2] - 336:4, 336:5</p> <p>causation [3] - 325:23, 326:10, 361:19</p> <p>caused [2] - 326:12, 326:17</p> <p>caveated [1] - 309:9</p> <p>caveats [3] - 305:2, 306:11, 306:12</p> <p>ceased [1] - 350:12</p> <p>central [1] - 307:16</p> <p>certain [10] - 284:11, 284:14, 288:11, 288:12, 291:1, 304:17, 304:20, 347:12, 347:17, 357:10</p> <p>certainty [3] - 283:19, 317:14, 348:24</p> <p>Chambers [1] - 275:4</p> <p>chance [2] - 284:4, 366:7</p> <p>change [3] - 314:21, 345:1, 345:2</p> <p>changed [1] - 303:19</p> <p>changes [1] - 303:18</p> <p>chapeau [1] - 287:1</p> <p>characterisation [1] - 312:24</p> <p>characterised [3] - 313:23, 348:4, 352:4</p> <p>characteristics [1] - 349:7</p> <p>Chief [2] - 274:11, 274:18</p> <p>Chile [3] - 292:25, 317:13, 353:4</p> <p>choice [2] - 282:19, 334:18</p> <p>choose [1] - 316:22</p> <p>chooses [1] - 279:5</p> <p>chose [2] - 318:13, 335:6</p> <p>Christopher [1] - 275:21</p> <p>circumstance [2] - 302:4, 345:2</p> <p>circumstances [26] - 299:24, 300:2, 301:2, 301:25, 309:13, 309:18, 322:22, 323:12, 324:9, 327:20, 336:12, 337:16, 341:15, 343:16, 343:23, 344:1, 344:3, 344:9, 344:18, 344:22, 345:4, 345:6, 346:5, 355:3, 355:6, 366:16</p> <p>circumvent [1] - 347:15</p> <p>cited [2] - 301:21, 362:7</p> <p>City [1] - 273:9</p> <p>CLA-13 [1] - 318:5</p> <p>CLA-18 [1] - 362:17</p> <p>CLA-21 [1] - 287:17</p> <p>CLA-6 [1] - 352:3</p> <p>Claim [4] - 316:17, 327:17, 330:6, 364:25</p> <p>claim [2] - 327:10, 345:7</p> <p>Claimant's [1] - 335:19</p> <p>claimed [1] - 324:18</p> <p>claims [1] - 364:23</p> <p>clarification [1] - 311:11</p> <p>clarify [3] - 312:21, 315:15, 327:2</p> <p>clarity [3] - 294:6, 338:20, 350:25</p> <p>clear [28] - 280:18, 280:21, 281:7, 283:18, 284:9, 284:25, 285:3, 287:22,</p>	<p>287:23, 293:5, 293:16, 296:3, 296:5, 300:2, 300:21, 301:2, 301:4, 305:7, 309:7, 309:15, 312:16, 317:3, 317:22, 319:4, 320:2, 321:19, 342:3, 353:5</p> <p>clearer [1] - 326:6</p> <p>clearest [4] - 292:3, 293:2, 294:10, 294:13</p> <p>clearly [3] - 283:12, 285:11, 326:17</p> <p>close [3] - 363:24, 364:18, 367:16</p> <p>CO [2] - 272:19, 272:20</p> <p>CO-ARBITRATOR [2] - 272:19, 272:20</p> <p>coherent [1] - 346:10</p> <p>colleagues [1] - 332:1</p> <p>comfort [1] - 313:3</p> <p>coming [4] - 289:14, 290:1, 313:2, 339:15</p> <p>commence [1] - 354:2</p> <p>comment [1] - 367:21</p> <p>commentators' [1] - 337:13</p> <p>comments [3] - 306:8, 308:8, 308:13</p> <p>comments" [1] - 306:6</p> <p>commit [1] - 294:1</p> <p>commitment [1] - 297:4</p> <p>COMMITMENTS [1] - 272:5</p> <p>commitments [1] - 351:1</p> <p>committed [1] - 318:8</p> <p>Committee [10] - 320:7, 320:13, 322:6, 322:12, 323:17, 357:5, 357:20, 358:10, 359:13, 360:7</p> <p>committee [4] - 329:5, 358:13, 358:21, 359:6</p> <p>common [8] - 278:21, 279:3, 279:10, 279:11, 283:4, 283:24, 290:17, 348:8</p> <p>commonsense [1] - 279:13</p> <p>communiqué [1] - 304:24</p> <p>comparing [1] - 341:12</p> <p>compensation [4] - 315:9, 326:18, 331:3, 331:12</p> <p>complaints [1] - 355:12</p> <p>complete [3] - 294:5, 338:20, 366:23</p> <p>completely [1] - 289:11</p> <p>completes [1] - 332:14</p> <p>complicated [1] - 279:15</p> <p>complications [1] - 335:15</p> <p>comply [6] - 320:15, 325:4, 327:24, 328:1, 329:8, 360:20</p> <p>comprehensively [1] - 302:2</p> <p>compromissory [2] - 304:5, 304:7</p> <p>conceded [1] - 284:24</p> <p>concern [2] - 323:2, 336:6</p> <p>concerned [4] - 286:6, 302:1, 322:12, 358:1</p> <p>concerning [3] - 284:9, 351:22, 352:11</p> <p>concerns [1] - 335:24</p> <p>conclude [6] - 289:18, 289:24, 317:1, 318:4, 328:5, 351:5</p> <p>concluded [2] - 301:14, 368:15</p> <p>concluding [3] - 290:6, 332:3, 348:11</p> <p>conclusion [6] - 291:21, 337:20, 344:10, 345:3, 345:7, 365:4</p> <p>concrete [3] - 319:24, 320:2, 351:4</p> <p>conditions [2] - 285:24, 286:3</p> <p>conduct [14] - 297:18, 298:8, 300:21,</p>	<p>300:24, 301:4, 307:8, 307:18, 308:18, 318:16, 325:12, 336:13, 341:16, 341:20, 343:14</p> <p>conducted [1] - 301:14</p> <p>confine [2] - 336:3, 356:5</p> <p>confined [1] - 319:25</p> <p>confirm [6] - 288:18, 290:15, 291:1, 324:22, 360:14, 367:7</p> <p>confirmation [2] - 300:5, 321:24</p> <p>confirmed [3] - 298:12, 312:25, 338:22</p> <p>confirms [2] - 297:3, 297:19</p> <p>conflict [1] - 343:2</p> <p>conformed [1] - 337:12</p> <p>Congo [1] - 343:3</p> <p>connection [6] - 291:20, 294:10, 294:13, 311:13, 323:25, 343:2</p> <p>conscious [1] - 340:22</p> <p>consensually [1] - 349:13</p> <p>consent [18] - 286:18, 287:1, 287:6, 287:12, 291:12, 292:3, 298:7, 304:7, 304:9, 305:3, 306:10, 309:21, 335:25, 336:11, 343:25, 344:2, 344:6</p> <p>consequences [3] - 286:11, 326:13, 328:7</p> <p>consider [6] - 293:1, 313:12, 320:21, 323:3, 337:24, 341:8</p> <p>considerable [2] - 280:22, 282:24</p> <p>consideration [1] - 283:22</p> <p>considerations [3] - 343:11, 349:10, 350:25</p> <p>considered [3] - 297:19, 304:1, 349:8</p> <p>considers [1] - 331:10</p> <p>consisted [1] - 359:15</p> <p>consistent [8] - 288:7, 296:3, 296:9, 296:23, 299:1, 299:14, 300:22, 301:4</p> <p>consistently [1] - 352:4</p> <p>constitute [5] - 285:22, 289:5, 292:4, 292:13, 325:13</p> <p>constituted [2] - 286:19, 340:3</p> <p>constitutes [4] - 317:10, 318:12, 322:4, 352:7</p> <p>construction [2] - 286:12, 294:2</p> <p>constructive [1] - 364:15</p> <p>consult [1] - 306:5</p> <p>contain [2] - 288:9, 305:1</p> <p>contained [3] - 299:7, 307:22, 309:20</p> <p>contained" [1] - 299:11</p> <p>contained... [1] - 299:13</p> <p>contains [1] - 289:22</p> <p>contending [1] - 294:4</p> <p>contends [1] - 295:3</p> <p>content [6] - 296:14, 317:14, 323:13, 352:7, 359:13, 367:4</p> <p>contention [2] - 299:20, 312:9</p> <p>context [8] - 301:17, 303:5, 313:8, 313:9, 315:23, 319:2, 319:6, 346:8</p> <p>contextual [1] - 311:6</p> <p>Continental [4] - 301:18, 303:25, 304:12, 351:24</p> <p>continuation [1] - 314:21</p> <p>continue [3] - 313:11, 313:19, 314:4</p> <p>continued [3] - 303:18, 326:16, 341:4</p> <p>continuing [2] - 283:1, 350:10</p>
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<p>continuous [1] - 310:22 contradict [1] - 311:7 contrary [5] - 288:21, 298:9, 318:6, 348:25, 352:25 contrast [1] - 299:8 contributed [1] - 328:9 control [1] - 282:3 controversial [1] - 325:25 convene [1] - 322:5 convened [1] - 322:14 Convention [4] - 290:8, 335:18, 335:21, 336:17 convey [3] - 299:4, 362:22, 364:11 conveyed [6] - 295:14, 298:16, 298:23, 298:25, 299:3, 342:9 conveying [1] - 309:10 convincing [1] - 319:4 Cooper [1] - 305:15 cooperate [1] - 366:25 cooperation [3] - 331:21, 332:2, 364:7 cooperative [2] - 285:5, 364:13 coordinate [1] - 366:10 cordial [1] - 364:13 Corniche [1] - 273:10 correct [6] - 300:14, 340:6, 340:14, 348:8, 348:19, 359:14 corrected [2] - 366:3, 367:20 corrections [7] - 365:13, 365:24, 366:18, 366:24, 367:6, 367:17, 367:19 correspondence [6] - 281:21, 314:14, 319:18, 322:9, 357:8, 357:9 cost [1] - 350:3 Counsel [4] - 276:2, 276:2, 276:3, 284:5 counsel [19] - 278:7, 278:19, 284:24, 287:14, 288:5, 293:11, 302:12, 331:19, 333:7, 347:6, 353:20, 354:16, 355:17, 357:6, 360:5, 360:8, 360:13, 366:4, 367:2 countries [2] - 282:8, 364:16 country [3] - 282:4, 328:1, 328:24 course [16] - 303:12, 311:1, 311:24, 314:21, 332:2, 335:13, 336:5, 338:18, 342:4, 344:1, 359:5, 362:12, 363:12, 366:14, 366:25, 368:12 Court [11] - 275:4, 300:20, 301:14, 301:21, 318:2, 329:22, 329:23, 336:9, 364:6, 365:17, 368:4 court [7] - 304:3, 327:12, 331:22, 362:8, 362:13, 364:9, 368:11 Court's [1] - 336:3 covered [4] - 307:15, 334:14, 345:10, 356:15 credibility [1] - 308:5 credible [2] - 298:7, 322:23 criticism [1] - 282:2 crucial [3] - 338:1, 338:7, 338:8 cure [1] - 308:14 curious [1] - 315:14</p>	<p>334:4, 338:15, 340:13, 342:2 DAY [1] - 272:24 days [5] - 282:9, 308:15, 330:15, 334:10, 343:20 dead [1] - 314:16 deadline [1] - 366:17 deal [9] - 281:14, 281:24, 281:25, 293:13, 294:23, 299:23, 328:13, 341:19, 347:10 dealing [2] - 281:11, 334:19 deals [1] - 335:18 dealt [4] - 293:12, 302:1, 310:18, 311:9 debate [1] - 336:7 decades [1] - 301:11 December [5] - 310:6, 334:3, 334:14, 345:18, 345:22 decided [2] - 279:19, 363:4 decision [10] - 282:18, 313:4, 313:6, 315:2, 321:22, 324:14, 328:7, 337:25, 343:8, 343:12 decision-making [1] - 343:8 decisions [1] - 301:18 declare [5] - 330:8, 330:12, 330:16, 330:21, 330:25 declared [1] - 314:15 declined [1] - 327:12 Defence [3] - 318:15, 349:2, 364:21 defies [1] - 357:18 defined [1] - 346:14 definition [1] - 349:24 degree [1] - 313:3 delay [3] - 282:21, 282:22, 335:3 delayed [1] - 335:1 delaying [1] - 280:12 delegation [2] - 332:23, 333:6 deliberations [1] - 368:3 delimitation [1] - 351:24 delineation [1] - 351:22 deliver [1] - 363:16 delivered [1] - 361:14 demand [1] - 320:7 demanded [4] - 320:13, 320:14, 329:4, 329:7 Democratic [1] - 343:2 demonstrate [1] - 284:16 demonstrated [2] - 298:3, 325:10 denied [2] - 322:18, 359:21 deny [1] - 320:5 denying [1] - 347:16 depart [2] - 336:18, 337:8 Department [2] - 274:17, 275:17 Deputy [1] - 275:16 describe [3] - 296:13, 315:12, 318:16 described [13] - 286:25, 288:12, 295:9, 295:19, 297:2, 299:6, 302:5, 307:12, 307:14, 307:16, 307:20, 336:23, 357:6 describes [5] - 295:12, 298:15, 299:10, 303:20, 306:17 describing [4] - 286:5, 289:9, 342:8, 359:6 description [2] - 295:22, 298:24 descriptions [2] - 286:7, 359:16 designed [1] - 289:20</p>	<p>desperate [1] - 323:9 despite [1] - 328:15 detail [3] - 294:20, 305:9, 308:21 detailed [4] - 280:16, 349:21, 352:17, 361:21 determining [2] - 336:10, 344:4 developed [2] - 335:13, 336:21 developing [2] - 302:21, 328:1 devoted [1] - 282:24 differ [1] - 289:16 difference [2] - 308:4, 310:25 differences [1] - 352:18 different [16] - 279:14, 295:9, 301:7, 310:12, 310:15, 310:17, 310:24, 311:2, 312:15, 318:16, 318:20, 327:19, 346:4, 347:24, 348:17, 354:3 differently [1] - 292:8 difficult [3] - 292:11, 292:16, 318:19 difficulties [2] - 279:8, 297:11 diligent [1] - 364:4 diplomatic [9] - 281:3, 283:22, 284:9, 285:1, 286:12, 302:10, 305:22, 307:23, 343:1 directed [2] - 316:10, 364:17 direction [1] - 314:22 directly [2] - 323:18, 351:14 director [1] - 308:8 Director [2] - 275:16, 303:3 Directorate [2] - 275:24, 288:4 disagreement [2] - 349:3, 351:2 disagrees [1] - 316:14 disappearance [2] - 308:2, 344:12 disappears [1] - 284:22 discern [1] - 301:1 discrete [1] - 333:12 discrimination [1] - 357:23 discuss [6] - 299:18, 322:25, 357:20, 358:9, 366:7, 367:24 discussed [2] - 296:11, 313:19 discussing [1] - 296:15 discussion [3] - 305:19, 305:23, 313:10 discussions [18] - 279:22, 293:9, 302:19, 303:12, 304:4, 304:6, 315:22, 319:17, 323:3, 323:5, 334:16, 340:24, 341:1, 353:20, 353:23, 354:6, 357:3, 358:25 disinterest [1] - 283:1 dismiss [2] - 327:15, 364:23 dismissive [1] - 288:6 display [1] - 343:5 disposal [1] - 347:2 disputation [1] - 320:9 dispute [6] - 304:3, 346:15, 350:22, 358:1, 358:7, 366:13 distinguishable [1] - 317:12 distinguished [2] - 332:5, 345:16 diversion [1] - 356:3 divide [1] - 278:13 divides [1] - 325:19 document [9] - 301:8, 301:13, 304:23, 306:9, 306:14, 306:16, 307:20, 320:21, 320:23 documents [10] - 280:19, 281:16,</p>
D		
<p>dare [1] - 357:1 date [8] - 289:25, 310:23, 311:4, 311:5,</p>		

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<p>287:24, 305:1, 306:13, 319:1, 347:17, 356:1, 357:10, 358:20 domestic [1] - 334:8 dominant [1] - 282:7 done [2] - 281:12, 301:9 DONOGHUE [3] - 272:20, 273:13, 312:4 Donoghue [3] - 292:2, 312:3, 313:23 Donoghue's [2] - 300:11, 341:5 Doris [1] - 274:11 dossier [1] - 284:1 doubt [1] - 324:21 dr [1] - 274:8 Dr [6] - 274:11, 275:15, 278:16, 288:1, 329:20, 363:15 draft [11] - 303:5, 304:5, 304:8, 304:16, 306:1, 306:3, 306:5, 306:19, 307:21, 344:13 drafted [1] - 303:3 drafting [2] - 302:22, 303:13 drafts [2] - 302:22, 312:15 drawn [4] - 317:22, 336:12, 341:15, 343:17 draws [1] - 363:24 drew [1] - 354:24 due [5] - 329:10, 330:9, 331:8, 331:12, 366:14 due [1] - 278:24 during [2] - 323:15, 330:7 Dushimimana [1] - 274:12 duty [12] - 319:12, 321:9, 326:5, 348:17, 351:17, 352:4, 352:7, 353:10, 353:19, 354:25, 355:2, 356:4 DVA [4] - 284:22, 285:6, 304:15, 304:21</p>	<p>Embassy [1] - 274:14 emerging [1] - 297:13 Emile [1] - 274:16 Emmanuel [1] - 274:8 emphasis [1] - 322:2 emphasise [2] - 325:14, 344:23 emphasised [1] - 320:18 enabled [2] - 296:18, 296:22 encompassed [1] - 358:6 END [1] - 272:24 end [14] - 280:2, 280:6, 284:19, 306:13, 332:17, 339:11, 340:19, 340:24, 341:9, 347:24, 348:7, 351:15, 355:11, 366:9 endeavoring [1] - 352:24 endeavour [1] - 351:8 endeavours [2] - 285:5, 351:11 ending [1] - 282:12 ends [1] - 310:6 engage [1] - 355:9 engaged [1] - 279:21 engagement [1] - 281:3 enshrined [1] - 328:15 ensured [1] - 364:7 entailed [1] - 282:22 entered [1] - 279:16 entire [1] - 282:4 entirely [4] - 282:19, 299:1, 315:14, 326:22 entitled [4] - 342:23, 357:11, 359:24, 360:10 entry [2] - 289:25, 334:4 envisaged [1] - 340:24 envisaging [1] - 303:6 equally [2] - 349:22, 355:2 equitable [3] - 352:1, 362:14, 363:4 equivalence [1] - 327:4 equivalent [2] - 302:15, 346:20 error [1] - 339:4 especially [1] - 309:15 essence [1] - 280:7 essentially [2] - 297:17, 308:19 Essex [7] - 273:14, 273:14, 274:3, 274:4, 275:4, 275:9, 275:10 establish [3] - 316:22, 319:14, 326:1 established [3] - 280:19, 318:25, 355:25 establishment [2] - 325:23, 361:19 etcetera [4] - 288:16, 295:16, 312:14 ETIF [8] - 284:11, 303:19, 329:4, 335:5, 339:20, 340:21, 341:2, 342:11 event [3] - 304:22, 358:23, 363:3 events [1] - 284:18 evidence [12] - 298:9, 298:10, 299:19, 305:3, 319:4, 343:25, 348:10, 360:1, 360:9, 360:25, 361:13, 361:14 evidenced [1] - 293:21 evidences [2] - 289:23, 306:9 evidencing [1] - 298:7 exacting [1] - 349:22 exactly [1] - 329:24 example [7] - 287:17, 287:21, 287:22, 288:14, 346:17, 349:6, 350:2 examples [9] - 287:10, 287:18, 287:24, 288:1, 288:2, 288:6, 337:3, 337:5</p>	<p>Excellency's [2] - 289:4, 289:6 exchange [25] - 286:20, 286:22, 286:24, 287:12, 289:19, 290:7, 291:5, 291:21, 292:23, 293:6, 293:17, 294:3, 294:4, 297:24, 298:4, 298:19, 298:20, 298:21, 300:2, 300:4, 313:21, 314:14, 336:6, 336:16, 344:10 exchanges [7] - 286:12, 287:25, 293:19, 307:8, 335:12, 335:18, 358:20 exchanging [2] - 335:23, 343:18 exclusively [1] - 353:18 Executive [1] - 274:11 exercise [5] - 279:6, 283:3, 302:22, 302:23, 303:18 exercises [1] - 303:21 Exhibit [10] - 281:19, 283:11, 283:17, 295:1, 295:10, 305:13, 306:15, 306:21, 320:25, 328:19 exhibit [1] - 334:5 exhibited [1] - 359:4 existing [1] - 321:7 expanded [1] - 336:20 expected [1] - 349:22 expeditiously [1] - 281:13 expenses [1] - 326:17 explain [3] - 284:18, 302:13, 302:17 explained [3] - 302:17, 326:6, 330:5 explanation [1] - 321:24 explicitly [2] - 350:7, 358:19 exposed [1] - 282:1 express [5] - 287:11, 291:12, 292:3, 355:1, 364:2 expressed [3] - 286:20, 305:15, 361:2 expresses [1] - 304:24 expression [3] - 296:15, 309:21, 318:1 expressly [5] - 314:12, 325:12, 327:16, 354:14, 358:8 extant [1] - 321:9 extensive [1] - 358:25 extraordinary [1] - 357:2</p>
E		
<p>eager [1] - 314:9 early [2] - 313:7, 339:11 economical [1] - 368:7 edition [1] - 287:15 edits [2] - 308:8, 308:13 effect [23] - 280:2, 286:22, 286:25, 287:2, 287:5, 289:15, 289:20, 290:1, 290:18, 291:3, 291:5, 291:8, 310:13, 310:16, 314:19, 338:11, 338:15, 339:15, 340:12, 350:13 effected [1] - 351:25 efficiently [2] - 364:9, 368:13 effort [2] - 280:22, 281:3 efforts [2] - 319:17, 353:22 Egypt [1] - 273:11 eight [1] - 308:23 eighth [1] - 308:17 either [7] - 278:22, 289:24, 292:25, 294:25, 320:21, 345:3, 357:25 EI [1] - 273:10 element [8] - 288:11, 288:23, 289:3, 289:11, 289:12, 289:13, 292:7, 311:6 elements [6] - 288:10, 289:2, 289:17, 290:8, 336:23, 337:22 elsewhere [1] - 326:24 emails [1] - 308:6</p>		F

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<p>familiar [2] - 287:20, 313:24 far [9] - 286:6, 301:25, 313:10, 313:20, 326:23, 344:8, 345:10, 348:25, 366:1 fatal [2] - 293:23, 300:9 favour [2] - 284:23, 306:25 favourably [1] - 304:2 feature [2] - 290:23, 337:21 features [1] - 298:12 February [14] - 294:18, 294:21, 296:1, 296:6, 296:8, 297:10, 298:13, 298:18, 298:25, 299:8, 299:19, 308:19, 342:7, 343:9 fell [2] - 282:20, 349:1 few [8] - 279:18, 285:17, 285:19, 286:14, 297:20, 302:2, 309:3, 311:21 Fields [1] - 275:4 fifth [2] - 304:23, 317:8 figure [3] - 326:23, 327:1 final [24] - 278:16, 278:17, 300:19, 305:24, 308:23, 310:1, 312:13, 327:9, 329:16, 329:20, 329:24, 330:3, 332:18, 338:4, 339:9, 344:9, 345:4, 361:5, 361:16, 363:17, 363:20, 364:20, 365:7, 366:2 FINAL [1] - 272:24 finalise [3] - 320:7, 320:13, 329:6 finally [3] - 311:11, 320:18, 331:9 Finance [8] - 302:20, 303:4, 304:17, 304:19, 310:21, 326:25, 330:11, 330:13 finance [1] - 292:6 Finance Agreement [2] - 340:1, 350:17 financial [4] - 296:20, 333:13, 335:10, 347:1 fine [2] - 367:13, 367:15 first [45] - 278:15, 280:21, 283:10, 286:15, 288:11, 288:22, 289:23, 293:13, 293:15, 293:16, 294:5, 295:10, 295:11, 296:2, 298:14, 299:25, 301:21, 302:4, 310:3, 315:7, 315:20, 319:22, 321:1, 322:11, 322:24, 323:13, 329:2, 330:8, 334:4, 334:22, 336:25, 340:19, 341:19, 341:22, 342:12, 347:11, 347:19, 352:13, 357:13, 358:4, 358:18, 361:18, 365:11, 366:10 five [3] - 310:22, 327:8, 343:20 five-year [1] - 327:8 flexible [1] - 336:21 Floor [1] - 273:9 floor [8] - 311:23, 314:3, 314:5, 330:1, 333:7, 363:15, 363:22, 366:5 focus [2] - 312:8, 356:25 focused [2] - 326:21, 357:4 follow [2] - 319:13, 365:11 followed [2] - 313:1, 316:3 following [6] - 279:1, 290:10, 293:9, 305:14, 322:14, 338:25 following [1] - 339:8 follows [4] - 305:12, 312:6, 362:6, 362:19 FOR [1] - 272:4 force [10] - 289:15, 290:1, 291:13, 325:3, 334:2, 334:4, 334:11, 354:17, 354:19, 360:18</p>	<p>forefront [1] - 343:11 Foreign [4] - 285:3, 288:4, 308:7, 328:17 foreign [1] - 305:6 forgo [7] - 295:15, 296:12, 305:17, 329:3, 335:4, 339:20, 342:10 forgoing [2] - 296:22, 340:20 form [2] - 320:8, 351:11 formal [4] - 322:4, 333:16, 335:1, 362:23 formality [1] - 335:15 former [1] - 317:13 formidable [1] - 279:8 forming [1] - 338:5 formulated [1] - 292:7 formulation [1] - 291:14 formulations [3] - 287:19, 296:2, 296:8 four [5] - 311:13, 311:17, 347:10, 357:12, 362:25 fourteen [1] - 334:10 fourth [10] - 287:15, 292:22, 304:14, 316:12, 317:9, 337:10, 342:1, 347:17, 360:13, 361:16 France [4] - 362:20, 362:22, 363:6, 363:8 Friday [2] - 272:22, 367:12 friendly [1] - 364:15 friends [2] - 331:25, 366:8 front [1] - 359:15 frustrate [1] - 325:11 frustration [1] - 355:16 fulfil [1] - 319:24 full [1] - 346:8 fully [1] - 280:4 fundamental [2] - 293:21, 303:20</p>	<p>Great [1] - 277:7 GREAT [4] - 272:4, 272:15, 275:1, 333:9 greater [3] - 300:23, 342:17, 353:1 Greek [1] - 304:2 Gregorian [1] - 310:8 grounds [2] - 321:21, 359:24 guarantee [1] - 348:20 Guidance [1] - 288:2 guidelines [1] - 337:9 Guinea [5] - 300:12, 300:18, 301:6, 336:4, 336:20</p>
H		
		<p>H.E [2] - 272:19, 273:3 Hague [3] - 272:23, 273:5, 276:5 half [1] - 342:12 hand [3] - 319:20, 328:9, 328:12 handbooks [2] - 336:24, 337:1 happy [1] - 313:11 Hart [4] - 275:3, 277:8, 333:13, 347:4 HART [1] - 347:9 Head [1] - 274:17 headline [1] - 302:3 hear [1] - 333:15 heard [3] - 290:10, 312:11, 352:25 hearing [8] - 280:7, 361:5, 363:24, 364:5, 364:8, 364:19, 368:13, 368:15 hearings [1] - 330:7 heavily [2] - 301:15, 309:9 heightened [1] - 316:21 held [2] - 282:23, 336:9 helpful [1] - 312:21 hereby [4] - 302:9, 307:22, 308:3, 344:12 higher [1] - 291:24 highest [2] - 356:19, 356:22 highlight [1] - 305:9 highlighted [1] - 355:12 highlights [1] - 318:14 highly [1] - 284:16 Hill [1] - 287:16 Home [6] - 275:16, 275:22, 275:25, 282:10, 305:5, 305:6 home [1] - 368:9 honour [3] - 288:17, 339:14, 363:25 Honourable [1] - 332:11 hope [1] - 311:21 hours [1] - 367:16 Huges [1] - 274:14 humanitarian [2] - 349:10, 350:24 hypothetical [2] - 350:5, 361:12</p>
G		
	<p>Gabon [2] - 301:9, 301:15 Gabon/Equatorial [5] - 300:12, 300:17, 301:6, 336:4, 336:20 gains [1] - 280:12 General [6] - 274:19, 303:3, 362:11, 362:17, 363:2, 363:3 general [2] - 316:17, 335:22 General's [2] - 306:8, 363:7 generality [1] - 336:19 genuine [4] - 319:17, 323:4, 353:22, 358:3 given [12] - 287:23, 304:9, 304:11, 309:15, 310:4, 332:20, 344:22, 346:20, 349:24, 349:25, 351:1, 351:9 glaringly [1] - 359:18 Governance [1] - 274:11 GOVERNMENT [2] - 272:3, 272:4 government [6] - 281:4, 282:1, 303:8, 332:13, 363:19, 363:21 Government [8] - 275:17, 280:22, 281:23, 283:14, 283:20, 288:15, 295:16, 324:24 governments [2] - 338:14, 340:12 granted [1] - 363:5 granting [1] - 317:17 granular [1] - 356:17 gratitude [1] - 364:3</p>	
I		
		<p>identical [6] - 292:24, 293:6, 295:6, 296:5, 297:12, 300:9 identified [2] - 326:24, 327:14 identifies [1] - 305:25 identify [2] - 287:8, 300:8 ignoring [1] - 326:22 Illegal [1] - 275:23</p>

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<p>illustrated [1] - 303:24 immaterial [1] - 355:14 immediately [1] - 316:4 Immigration [1] - 334:2 immigration [4] - 281:15, 282:6, 282:10, 282:15 impediment [1] - 334:8 imply [1] - 316:19 important [4] - 281:22, 283:8, 300:17, 337:10 impose [2] - 291:16, 336:22 imposes [1] - 354:25 impossibility [1] - 300:8 impressed [1] - 305:21 imputing [1] - 307:7 IN [1] - 272:3 inaction [1] - 315:3 inappropriate [1] - 361:25 incidentally [1] - 288:19 include [1] - 338:2 included [4] - 315:20, 338:4, 350:8, 350:18 including [7] - 293:18, 301:22, 306:13, 317:25, 333:15, 352:2, 359:25 inclusion [1] - 321:19 inconsistent [2] - 286:16, 323:18 incumbent [1] - 358:12 indeed [4] - 279:14, 280:24, 324:3, 346:11 independently [1] - 348:4 indicate [1] - 313:11 indicated [5] - 299:18, 316:16, 316:20, 325:18, 363:6 indicating [2] - 322:25, 341:7 indication [5] - 289:13, 303:7, 303:15, 308:13, 313:18 individually [1] - 300:24 individuals [8] - 311:14, 311:17, 321:13, 321:23, 349:17, 350:6, 350:15, 353:12 indulgent [1] - 311:22 infer [1] - 324:16 inferred [1] - 359:22 inform [1] - 332:19 initial [1] - 285:6 initiate [7] - 315:21, 353:19, 354:6, 355:6, 356:8, 356:20, 358:3 initiated [1] - 328:21 initiating [10] - 287:4, 288:8, 288:14, 290:24, 290:25, 291:7, 291:15, 302:8, 338:6, 344:19 injury [3] - 325:23, 326:10, 361:19 Inn [1] - 275:4 inserted [1] - 321:16 inspired [1] - 329:22 Instead [1] - 322:17 instead [8] - 279:21, 281:13, 292:8, 309:2, 314:25, 326:20, 348:13, 362:13 instructed [2] - 303:8, 324:3 instructions [4] - 343:19, 360:6, 360:9, 361:15 instrument [9] - 287:3, 287:4, 287:12, 289:25, 290:1, 291:13, 336:7, 336:8, 336:10</p>	<p>instruments [8] - 286:19, 286:21, 286:23, 289:14, 290:7, 291:22, 335:23, 336:1 insufficient [1] - 317:14 insufficiently [1] - 282:2 intend [1] - 289:18 intended [5] - 315:1, 321:21, 324:13, 327:5, 354:20 intent [1] - 336:15 intention [7] - 301:2, 321:12, 325:4, 325:10, 348:11, 360:19, 365:20 interest [2] - 305:15, 331:7 interested [2] - 285:4, 303:1 interesting [2] - 301:16, 356:2 interests [1] - 279:20 interim [1] - 335:4 internal [5] - 281:17, 283:10, 305:1, 309:9, 359:20 internally [2] - 283:22, 284:13 international [6] - 291:9, 324:23, 334:9, 343:9, 352:1, 362:8 INTERNATIONAL [1] - 272:5 International [5] - 275:16, 275:21, 275:24, 318:1, 329:23 interpretation [7] - 294:17, 315:8, 315:10, 347:13, 348:9, 348:16, 352:11 introduce [1] - 304:15 introduced [2] - 302:14, 359:7 invite [10] - 278:7, 290:25, 329:15, 329:19, 333:6, 347:6, 363:14, 363:19, 366:4, 367:2 invited [5] - 290:14, 290:20, 300:4, 304:3, 320:11 invites [2] - 324:22, 329:13 inviting [1] - 360:14 invoked [1] - 320:19 involving [1] - 281:4 IRELAND [4] - 272:4, 272:15, 275:1, 333:9 Ireland [1] - 277:7 irrelevant [2] - 304:16, 321:15 issue [6] - 292:19, 317:23, 323:14, 350:5, 359:13, 367:23 issued [1] - 334:11 issues [8] - 281:20, 322:25, 343:4, 357:21, 357:22, 357:23, 357:25, 358:6 itself [8] - 294:1, 307:7, 314:9, 323:7, 323:11, 354:6, 359:5, 363:3</p>	<p>360:7 jointly [2] - 351:10, 354:25 JUDGE [4] - 272:19, 272:20, 273:3, 273:13 Judge [6] - 292:2, 300:11, 312:2, 313:23, 324:1, 341:5 judgment [2] - 300:15, 336:3 judicial [1] - 362:7 July [1] - 328:18 June [8] - 291:25, 292:6, 292:17, 304:19, 337:8, 337:24, 340:1, 340:3 Juratowitch [2] - 275:2, 277:8 JURATOWITCH [2] - 333:10, 367:3 jurisprudence [1] - 351:21 Justice [5] - 274:9, 274:19, 306:7, 318:2, 329:23 justice [1] - 274:17 justification [1] - 360:1 justify [2] - 315:3, 321:20</p>
K		
<p>KC [2] - 274:2, 275:2 keep [1] - 335:17 Keith [1] - 362:16 Kenneth [1] - 362:16 Kenya [1] - 352:3 kept [1] - 281:8 key [12] - 285:20, 289:1, 289:2, 290:8, 293:18, 302:4, 305:1, 305:2, 315:6, 321:11, 338:17, 356:13 Kigali [1] - 274:10 kind [3] - 303:12, 364:4, 365:2 King [1] - 276:3 KINGDOM [4] - 272:4, 272:15, 275:1, 333:8 Kingdom [17] - 273:15, 274:5, 274:13, 274:15, 275:5, 275:11, 275:19, 277:7, 278:19, 279:15, 279:19, 279:24, 280:3, 280:8, 280:20, 281:8, 282:20, 282:25, 283:13, 284:3, 284:5, 284:14, 284:17, 284:20, 284:21, 284:24, 285:7, 285:9, 285:10, 285:13, 287:7, 287:14, 288:5, 289:10, 290:14, 290:20, 290:22, 291:11, 293:12, 295:2, 295:15, 297:11, 297:16, 299:12, 302:5, 302:7, 302:12, 302:24, 303:2, 303:17, 306:24, 307:1, 307:5, 307:9, 307:11, 307:19, 308:1, 308:24, 309:6, 309:13, 309:17, 310:16, 310:17, 313:1, 313:16, 314:8, 314:11, 314:12, 314:15, 314:16, 314:22, 315:13, 315:18, 315:23, 315:25, 316:2, 316:6, 317:4, 317:6, 317:11, 318:13, 319:2, 319:8, 319:11, 319:15, 320:3, 320:5, 320:15, 320:18, 320:20, 321:2, 321:6, 321:14, 321:19, 322:2, 322:3, 322:16, 322:17, 322:23, 323:2, 323:4, 323:8, 323:12, 324:3, 324:5, 324:10, 324:12, 324:17, 324:22, 325:1, 325:3, 325:11, 325:17, 325:20, 326:19, 328:10, 328:13, 329:5, 329:7, 329:9, 332:1, 332:16, 332:24, 333:6, 333:18, 334:11, 334:17, 338:4, 338:12, 339:7, 340:2, 343:1, 343:24,</p>		
J		
<p>James [1] - 275:23 January [3] - 310:6, 345:18, 345:21 Jean [1] - 274:14 Jeremy [1] - 287:16 Jill [1] - 288:1 Jinyoung [1] - 276:2 JOAN [2] - 272:20, 273:13 joint [7] - 289:7, 304:23, 304:24, 329:5, 358:13, 358:21, 359:6 Joint [10] - 320:7, 320:13, 322:6, 322:12, 323:17, 357:5, 357:20, 358:9, 359:13,</p>		

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<p>343:25, 344:2, 345:13, 347:6, 349:11, 349:14, 349:18, 350:2, 350:7, 350:9, 350:15, 353:13, 353:19, 353:21, 353:25, 354:5, 355:4, 355:8, 356:7, 357:14, 358:8, 359:23, 360:4, 360:14, 360:19, 360:23, 361:1, 361:3, 361:4, 361:10, 363:11, 363:20, 364:1, 364:22, 365:8, 367:2, 367:4, 367:6</p> <p>Kingdom's [48] - 279:2, 282:18, 283:5, 286:1, 286:15, 290:3, 290:15, 291:6, 293:23, 294:16, 294:24, 298:2, 309:15, 314:20, 315:7, 315:11, 316:12, 318:6, 318:11, 319:22, 319:25, 320:6, 323:17, 326:1, 326:2, 326:8, 326:12, 326:13, 327:11, 327:24, 328:6, 329:3, 338:6, 338:17, 339:18, 339:19, 340:9, 346:25, 348:15, 351:14, 355:15, 356:23, 357:19, 359:12, 363:16, 364:12, 365:3</p> <p>KJ [2] - 273:5, 276:5</p> <p>known [4] - 282:6, 327:15, 334:1, 335:12</p> <p>knows [2] - 285:8, 303:21</p>	<p>342:25, 343:8, 356:20, 357:14, 357:19, 357:21, 357:22, 358:6, 359:4, 359:5, 359:8, 361:2</p> <p>letters [7] - 287:25, 289:19, 355:17, 356:14, 357:4, 358:1, 361:1</p> <p>level [3] - 281:1, 313:12, 341:8</p> <p>liberty [1] - 360:13</p> <p>light [2] - 301:12, 360:11</p> <p>limited [2] - 354:13, 358:19</p> <p>Lincoln's [1] - 275:4</p> <p>line [11] - 284:6, 285:2, 290:12, 293:8, 295:11, 295:19, 301:17, 323:23, 323:24, 342:1</p> <p>lines [4] - 278:25, 355:20, 360:22, 362:5</p> <p>list [2] - 324:7, 327:19</p> <p>listen [1] - 333:5</p> <p>logic [1] - 325:19</p> <p>logistical [1] - 335:15</p> <p>London [5] - 273:15, 274:4, 275:5, 275:10, 275:19</p> <p>look [6] - 287:18, 305:4, 311:3, 323:7, 344:4, 358:12</p> <p>looks [1] - 319:5</p> <p>LORD [4] - 278:11, 312:23, 366:6, 367:13</p> <p>Lord [4] - 274:2, 277:4, 278:7, 366:5</p> <p>loss [1] - 326:12</p> <p>lost [1] - 358:17</p>	<p>measures [2] - 282:14, 343:1</p> <p>mechanism [1] - 335:13</p> <p>MEDP [3] - 314:16, 321:13, 328:21</p> <p>meet [5] - 278:3, 319:16, 332:15, 353:21, 360:24</p> <p>meeting [24] - 283:10, 322:6, 322:7, 322:13, 323:7, 323:10, 323:14, 323:17, 323:20, 324:5, 357:5, 357:15, 357:20, 358:9, 358:13, 358:15, 358:21, 358:25, 359:6, 359:10, 359:13, 359:17, 359:20, 360:8</p> <p>meetings [2] - 281:1, 281:18</p> <p>member [1] - 329:6</p> <p>Members [1] - 345:5</p> <p>members [12] - 278:12, 278:18, 328:4, 332:4, 333:11, 335:7, 337:17, 346:24, 347:9, 363:23, 364:3, 366:2</p> <p>mention [2] - 289:11, 306:14</p> <p>mere [2] - 303:5, 303:13</p> <p>merely [3] - 298:22, 299:7, 326:18</p> <p>met [1] - 361:3</p> <p>method [1] - 336:21</p> <p>Michael [1] - 274:18</p> <p>might [8] - 292:11, 292:15, 305:20, 321:16, 340:23, 340:25, 343:18, 345:1</p> <p>MIGRANTS [1] - 272:6</p> <p>migration [2] - 282:3</p> <p>Migration [2] - 275:24</p> <p>million [7] - 311:12, 311:14, 330:9, 330:14, 330:18, 330:19, 331:4</p> <p>mind [2] - 294:7, 316:5</p> <p>mine [1] - 339:3</p> <p>minister [3] - 305:6, 305:10, 305:21</p> <p>Minister [5] - 274:19, 285:3, 332:11, 362:22, 362:23</p> <p>minister's [1] - 306:18</p> <p>ministerial [2] - 281:1, 343:20</p> <p>ministers [2] - 281:4, 281:10</p> <p>Ministry [5] - 274:9, 274:17, 306:7, 328:17, 328:20</p> <p>MinJust [1] - 306:5</p> <p>minutes [3] - 278:8, 311:21, 323:10</p> <p>misquoted [1] - 287:15</p> <p>misses [1] - 345:20</p> <p>missing [1] - 289:9</p> <p>mistake [1] - 339:3</p> <p>mitigate [1] - 328:6</p> <p>modalities [1] - 331:12</p> <p>Modern [1] - 287:16</p> <p>MOHAMED [2] - 272:19, 273:8</p> <p>moment [1] - 355:10</p> <p>money [1] - 328:11</p> <p>month [7] - 279:18, 346:14, 346:15, 346:16, 346:19, 346:20</p> <p>months [4] - 280:24, 311:4, 342:7, 346:21</p> <p>moreover [1] - 300:20</p> <p>morning [32] - 278:1, 278:4, 281:18, 315:5, 335:10, 336:2, 336:22, 337:3, 337:19, 337:23, 338:19, 340:22, 341:21, 341:22, 342:20, 343:17, 344:14, 344:18, 345:12, 345:25, 352:13, 353:1, 353:16, 353:18, 354:9, 354:16, 355:18, 356:12,</p>
L		
<p>lack [3] - 294:6, 306:23, 338:20</p> <p>lacked [1] - 297:4</p> <p>lacks [1] - 320:23</p> <p>laid [1] - 282:18</p> <p>Lambert [1] - 274:12</p> <p>language [24] - 286:5, 289:15, 289:23, 291:19, 292:10, 292:12, 292:14, 292:16, 292:20, 299:14, 302:8, 302:11, 307:25, 316:24, 317:19, 318:16, 320:2, 321:11, 321:15, 344:20, 344:21, 357:18</p> <p>larger [1] - 281:14</p> <p>last [9] - 299:9, 338:24, 339:1, 339:5, 340:10, 342:12, 347:16, 360:12</p> <p>late [2] - 334:17, 360:2</p> <p>latter [2] - 317:15, 336:4</p> <p>Law [1] - 287:16</p> <p>law [3] - 335:11, 343:9, 352:1</p> <p>Lawyer [1] - 275:21</p> <p>Lead [1] - 275:23</p> <p>leading [1] - 343:8</p> <p>leap [1] - 346:8</p> <p>leave [2] - 347:16, 359:21</p> <p>led [2] - 302:23, 357:9</p> <p>left [1] - 326:15</p> <p>legal [11] - 280:13, 282:21, 299:23, 301:23, 306:8, 320:15, 329:1, 329:8, 331:19, 335:19, 345:3</p> <p>Legal [8] - 274:17, 275:16, 275:17, 275:22, 276:2, 276:2, 276:3, 288:4</p> <p>legally [8] - 301:2, 305:3, 306:2, 312:11, 312:20, 313:17, 328:11, 329:10</p> <p>legislation [6] - 281:15, 333:25, 334:14, 334:19, 334:25, 335:1</p> <p>legislative [5] - 281:9, 281:20, 307:15, 333:21, 333:25</p> <p>lengthy [1] - 279:22</p> <p>less [2] - 326:23, 354:20</p> <p>letter [21] - 287:4, 314:20, 319:21, 320:20, 325:15, 341:20, 341:23, 342:16,</p>	M	
	<p>madam [3] - 314:5, 363:22, 365:6</p> <p>Madam [1] - 363:19</p> <p>main [5] - 293:4, 309:19, 313:22, 345:7, 356:25</p> <p>makers [1] - 343:12</p> <p>managed [2] - 284:19, 285:14</p> <p>manifested [1] - 336:11</p> <p>manifestly [2] - 291:19, 298:5</p> <p>March [11] - 272:22, 314:14, 319:21, 324:20, 330:20, 346:22, 354:18, 355:4, 355:17, 356:20, 357:3</p> <p>maritime [1] - 351:22</p> <p>marks [1] - 301:13</p> <p>Marsham [1] - 275:18</p> <p>MATTER [1] - 272:3</p> <p>matter [6] - 278:21, 282:16, 313:5, 338:14, 342:15, 350:13</p> <p>matter" [1] - 289:8</p> <p>matters [7] - 327:21, 334:15, 342:5, 347:7, 347:10, 351:3, 366:22</p> <p>McCann [1] - 275:21</p> <p>McRae [6] - 274:2, 277:5, 278:13, 311:22, 314:3, 314:6</p> <p>mean [3] - 311:3, 340:23, 349:8</p> <p>meaning [10] - 288:24, 294:15, 295:4, 296:4, 310:4, 310:5, 310:25, 346:8, 353:10, 353:17</p> <p>meanings [1] - 353:7</p> <p>means [8] - 293:19, 341:3, 341:4, 347:23, 348:7, 351:15, 352:5, 355:14</p> <p>meant [3] - 315:17, 324:12, 353:5</p>	

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<p>356:16, 359:11, 360:21, 362:2 morning's [2] - 332:14, 355:19 most [6] - 315:20, 317:5, 323:16, 337:10, 349:9, 359:18 move [2] - 294:23, 335:7 Mozetic [1] - 275:8 Mr chairman [1] - 312:5 Mukama [1] - 274:14 multiple [3] - 289:8, 320:24, 354:14 must [16] - 279:6, 286:23, 287:6, 289:14, 289:20, 292:24, 293:5, 301:1, 310:4, 310:24, 316:5, 319:14, 320:21, 323:6, 323:11, 346:2 mutual [1] - 348:11 mutually [1] - 301:4</p>	<p>noncommitment [1] - 306:22 noncommittal [1] - 306:20 none [3] - 293:19, 296:2, 358:16 Nonproliferation [1] - 352:19 NORTHERN [4] - 272:4, 272:15, 275:1, 333:9 Northern [1] - 277:7 notably [1] - 320:5 Note [77] - 280:25, 287:5, 288:8, 288:9, 288:14, 288:17, 289:22, 290:24, 290:25, 291:7, 291:9, 291:15, 293:5, 293:11, 294:18, 294:21, 295:3, 295:8, 295:12, 295:13, 295:20, 295:23, 295:24, 296:1, 296:6, 296:8, 296:10, 297:8, 297:10, 298:1, 298:13, 298:15, 298:18, 298:23, 298:25, 299:1, 299:2, 299:8, 299:19, 302:4, 302:6, 302:8, 302:20, 303:4, 304:17, 304:19, 305:16, 305:17, 306:20, 307:13, 307:21, 307:25, 308:3, 308:20, 309:11, 309:20, 309:22, 310:21, 313:14, 313:15, 313:20, 326:25, 328:18, 330:11, 330:13, 338:3, 339:17, 339:18, 339:19, 340:25, 341:25, 342:4, 342:6, 342:7, 342:8, 344:19 note [15] - 289:5, 289:6, 289:10, 292:6, 298:16, 305:25, 332:11, 338:6, 338:10, 338:23, 340:9, 340:20, 342:2, 342:4, 365:7 Notes [20] - 285:16, 285:21, 286:2, 289:19, 294:10, 295:5, 295:6, 297:13, 298:19, 312:24, 335:12, 337:8, 337:12, 337:18, 337:24, 337:25, 341:12, 341:15, 343:16, 344:5 notes [16] - 287:25, 291:2, 291:25, 300:20, 309:9, 312:9, 312:10, 312:13, 312:19, 336:16, 340:6, 340:7, 341:6, 343:21 nothing [13] - 284:20, 285:12, 288:25, 291:11, 302:21, 303:21, 303:22, 307:24, 308:9, 320:12, 321:14, 322:16, 359:21 Notice [3] - 359:2, 359:9, 364:24 notice [4] - 279:18, 332:8, 334:11, 334:21 notification [2] - 335:2, 346:19 notifying [1] - 280:25 November [33] - 285:16, 285:21, 291:24, 292:11, 292:15, 292:18, 292:21, 293:17, 294:3, 294:4, 295:5, 295:6, 295:12, 296:10, 297:13, 297:24, 298:4, 298:15, 298:25, 299:3, 302:23, 306:16, 306:18, 307:9, 312:10, 337:12, 337:18, 337:25, 338:2, 340:7, 342:2, 342:8, 344:7 nowhere [1] - 321:5 Ntwari [1] - 274:16 nuance [1] - 320:23 Nuclear [3] - 316:24, 317:23, 352:18 nuclear [1] - 352:16 number [8] - 281:16, 287:10, 326:21, 327:4, 327:6, 342:1, 349:4, 358:16 Number [1] - 345:14 numbered [6] - 339:6, 339:9, 339:13, 340:8, 340:16, 340:24</p>	<p style="text-align: center;">O</p> <p>o'clock [1] - 332:15 obligation [26] - 314:23, 316:18, 316:19, 316:23, 317:10, 317:16, 318:3, 318:12, 318:17, 318:22, 319:9, 319:12, 322:18, 347:22, 347:25, 348:17, 351:3, 351:4, 351:7, 351:16, 352:6, 352:8, 352:15, 353:3, 354:12, 355:22 obligations [11] - 314:18, 316:22, 319:16, 319:24, 320:16, 321:7, 328:2, 341:2, 343:10, 350:10, 353:22 obliged [9] - 280:1, 316:1, 316:13, 326:7, 330:16, 350:3, 352:23, 353:14, 360:23 obliges [1] - 317:19 obscure [1] - 315:14 observed [1] - 342:14 obstructed [2] - 354:1, 356:7 obstruction [3] - 318:24, 325:9, 355:24 obtaining [1] - 350:25 obvious [5] - 315:20, 325:24, 326:11, 326:19, 361:20 obviously [1] - 359:14 occurred [1] - 346:18 ocean [1] - 317:18 October [5] - 281:18, 302:20, 313:7, 343:18, 343:21 OF [17] - 272:3, 272:3, 272:4, 272:4, 272:5, 272:6, 272:12, 272:15, 272:24, 274:1, 275:1, 276:1, 278:10, 333:8, 333:9 offer [12] - 284:3, 284:10, 284:15, 284:22, 285:6, 305:20, 305:22, 306:24, 322:4, 322:5, 322:15, 323:2 offered [3] - 285:7, 285:11, 285:12 offering [2] - 282:5, 283:14 Office [6] - 275:16, 275:22, 275:25, 288:4, 306:8, 308:7 office [2] - 282:13, 282:14 Officer [1] - 274:11 official [6] - 283:9, 303:15, 304:4, 304:8, 304:14, 308:7 official's [1] - 308:12 officials [7] - 281:2, 282:16, 283:25, 302:19, 302:21, 303:13, 343:18 omitted [1] - 289:11 ON [5] - 272:5, 274:1, 275:1, 278:10, 333:8 once [5] - 283:18, 316:1, 354:2, 356:7, 368:8 one [44] - 283:5, 287:3, 287:17, 287:22, 288:19, 288:21, 289:3, 294:14, 300:14, 300:24, 301:1, 304:18, 307:6, 308:17, 308:18, 311:3, 311:11, 311:12, 317:17, 319:5, 319:13, 320:24, 323:3, 323:6, 323:20, 327:2, 327:14, 328:9, 334:6, 334:24, 336:6, 336:7, 336:22, 338:9, 339:7, 342:18, 345:21, 353:10, 354:20, 356:17, 362:21, 363:7 one-to-one [1] - 327:2 onwards [1] - 346:9 open [3] - 278:3, 278:8, 333:4</p>
N		
<p>name [1] - 328:24 namely [5] - 285:11, 287:1, 293:10, 308:18, 321:8 Naomi [1] - 275:3 Nations [1] - 362:11 natural [1] - 346:5 near [1] - 334:19 neatly [1] - 356:9 necessarily [2] - 315:19, 351:11 necessary [2] - 332:24, 365:15 need [11] - 280:17, 294:1, 300:1, 307:14, 311:8, 313:25, 341:11, 353:5, 356:3, 356:16, 365:23 needed [4] - 283:13, 318:10, 351:20, 361:12 needs [1] - 319:8 negotiate [31] - 314:10, 314:24, 316:18, 317:17, 318:13, 318:18, 318:22, 318:23, 319:10, 320:22, 321:8, 321:9, 322:4, 322:15, 326:14, 331:12, 347:22, 348:5, 348:12, 348:18, 351:17, 352:5, 352:7, 354:1, 355:2, 355:22, 355:23, 356:24, 357:16, 358:15, 361:2 negotiate" [1] - 314:12 negotiated [1] - 344:20 negotiation [1] - 347:23 negotiations [20] - 304:19, 317:25, 318:4, 318:24, 325:10, 348:6, 351:12, 351:15, 352:5, 352:24, 354:1, 354:2, 355:6, 355:9, 355:16, 355:24, 356:7, 356:21, 358:4, 358:7 Netherlands [5] - 272:23, 273:6, 274:13, 274:15, 276:5 never [2] - 358:22, 360:9 New [2] - 362:20, 362:23 new [5] - 281:4, 282:10, 304:17, 307:20, 357:1 next [6] - 289:2, 305:25, 306:4, 320:6, 365:25, 367:5 night [2] - 347:16, 360:12 Nil [1] - 273:10 Nile [1] - 273:9 non [1] - 289:24 non-binding [1] - 289:24 nonbinding [1] - 354:19</p>		

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<p>opening [9] - 285:18, 287:9, 297:22, 298:18, 302:2, 305:21, 310:11, 327:21, 353:13</p> <p>operation [3] - 315:19, 329:12, 353:11</p> <p>operational [2] - 311:15, 315:21</p> <p>operationalise [3] - 315:13, 355:13, 356:5</p> <p>operationalise" [1] - 353:6</p> <p>opinion [5] - 316:24, 317:24, 318:2, 352:16, 362:15</p> <p>opportunity [2] - 278:4, 364:2</p> <p>opposed [1] - 352:23</p> <p>opposite [1] - 284:23</p> <p>option [3] - 334:22, 334:23, 335:6</p> <p>oral [7] - 278:13, 290:4, 330:7, 364:18, 364:21, 365:3, 365:14</p> <p>order [10] - 327:13, 330:23, 331:2, 331:5, 331:7, 331:11, 352:1, 358:13, 363:2, 363:10</p> <p>ordered [2] - 327:15, 362:9</p> <p>ordinarily [2] - 290:23, 337:21</p> <p>ordinary [2] - 288:23, 339:16</p> <p>organising [1] - 368:13</p> <p>otherwise [2] - 347:2, 367:23</p> <p>outcome [5] - 279:7, 284:16, 296:13, 318:9, 348:14</p> <p>outline [3] - 299:18, 313:13, 341:8</p> <p>outlined [9] - 295:19, 295:23, 297:2, 297:6, 297:8, 299:6, 299:7, 299:16, 313:18</p> <p>outset [1] - 307:3</p> <p>outstanding [1] - 330:24</p> <p>outweigh [1] - 280:13</p> <p>overall [1] - 327:6</p> <p>overarching [2] - 348:17, 351:16</p> <p>overcome [1] - 279:10</p> <p>overlooked [2] - 316:3, 362:2</p> <p>overlooking [1] - 357:8</p> <p>overnight [2] - 322:9, 357:8</p> <p>overrun [1] - 311:20</p> <p>own [10] - 282:19, 283:2, 284:18, 309:16, 323:18, 340:19, 342:3, 355:1, 359:2, 359:16</p>	<p>321:5, 322:1, 322:11, 330:10, 330:13, 331:13, 338:4, 338:24, 339:1, 339:2, 339:4, 339:6, 339:9, 339:10, 340:10, 340:16, 340:19, 340:25, 341:23, 342:13, 345:16, 346:1, 346:2, 346:4, 349:3, 362:15, 362:18, 364:24, 364:25</p> <p>paragraphs [4] - 301:20, 339:6, 339:9, 339:13</p> <p>parallel [1] - 317:22</p> <p>parliamentary [1] - 280:16</p> <p>parliaments [1] - 328:24</p> <p>part [12] - 281:14, 304:5, 311:17, 320:8, 327:25, 334:17, 334:24, 338:5, 347:14, 352:9, 356:10, 358:22</p> <p>particular [3] - 294:1, 346:18, 352:23</p> <p>particularly [1] - 323:11</p> <p>parties [46] - 289:7, 290:2, 297:24, 300:21, 300:24, 305:9, 310:7, 310:13, 316:13, 316:20, 316:25, 317:19, 317:24, 318:8, 319:15, 320:11, 323:5, 325:19, 326:7, 331:11, 332:19, 334:16, 335:5, 346:16, 346:22, 348:3, 348:7, 348:20, 349:21, 350:7, 350:11, 350:19, 351:5, 351:8, 351:12, 352:22, 353:12, 354:22, 354:25, 355:2, 358:2, 358:14, 362:12, 365:12, 366:10, 368:1</p> <p>parties' [6] - 293:17, 314:13, 316:10, 317:6, 322:8, 358:20</p> <p>Partners [1] - 273:9</p> <p>Partnership [4] - 333:20, 349:20, 350:14, 352:20</p> <p>PARTNERSHIP [1] - 272:5</p> <p>partnership [5] - 279:16, 279:19, 279:20, 327:8, 328:8</p> <p>party [9] - 279:16, 302:13, 307:17, 314:9, 321:8, 323:20, 348:20, 350:4, 364:18</p> <p>party's [2] - 357:7, 364:19</p> <p>passage [1] - 319:5</p> <p>passages [2] - 300:17, 356:13</p> <p>passed [2] - 328:23, 332:21</p> <p>patient [1] - 332:5</p> <p>pay [5] - 328:12, 329:9, 330:14, 330:23, 331:2</p> <p>payable [1] - 330:9</p> <p>paying [1] - 328:10</p> <p>payment [7] - 279:4, 303:6, 305:11, 305:17, 311:14, 311:17, 330:17</p> <p>payments [10] - 278:23, 284:11, 295:15, 296:22, 310:14, 329:4, 335:5, 339:20, 340:21, 342:10</p> <p>PCA [7] - 272:1, 272:8, 331:20, 332:19, 365:20, 367:19, 368:13</p> <p>PCA's [1] - 331:18</p> <p>Peace [2] - 273:4, 276:4</p> <p>Peel [1] - 275:18</p> <p>per [1] - 326:24</p> <p>perfectly [2] - 296:19, 310:15</p> <p>perform [2] - 314:17, 316:1</p> <p>perhaps [2] - 282:7, 301:16</p> <p>period [4] - 279:18, 300:22, 311:3, 333:18</p> <p>Permanent [4] - 329:22, 364:6, 365:17, 368:4</p>	<p>PERMANENT [1] - 276:1</p> <p>permission [1] - 331:15</p> <p>PETER [2] - 272:19, 273:3</p> <p>Picard [1] - 274:11</p> <p>pick [1] - 318:13</p> <p>picture [1] - 314:9</p> <p>piece [2] - 281:15, 333:25</p> <p>place [7] - 282:5, 291:4, 292:8, 322:7, 338:13, 357:3, 358:4</p> <p>placed [2] - 315:24, 322:2</p> <p>places [3] - 289:6, 300:15, 305:2</p> <p>placing [1] - 292:12</p> <p>plain [4] - 317:21, 321:10, 355:18, 357:18</p> <p>plainer [1] - 317:7</p> <p>plainly [3] - 283:2, 285:22, 286:16</p> <p>plane [1] - 334:9</p> <p>plank [2] - 338:1, 338:7</p> <p>plausible [2] - 296:19, 340:15</p> <p>pleaded [1] - 359:2</p> <p>pleadings [1] - 290:4</p> <p>plural [3] - 286:23, 339:22, 342:9</p> <p>point [80] - 283:8, 284:22, 287:7, 287:8, 288:23, 289:1, 292:1, 292:18, 292:22, 293:12, 293:13, 293:15, 293:16, 294:5, 294:8, 295:7, 296:7, 296:24, 297:1, 299:25, 300:7, 300:11, 300:25, 301:5, 302:17, 302:25, 303:19, 303:20, 303:23, 303:24, 306:23, 306:25, 307:5, 307:6, 308:17, 309:6, 310:3, 310:10, 310:20, 311:2, 311:9, 311:11, 311:12, 315:11, 316:12, 317:8, 318:11, 319:22, 320:6, 322:10, 324:8, 325:22, 326:2, 326:22, 327:11, 327:18, 335:8, 336:25, 337:4, 337:7, 337:10, 342:20, 342:24, 344:9, 345:3, 345:8, 345:11, 345:15, 346:1, 346:2, 346:13, 348:2, 354:3, 356:17, 358:11, 360:5, 367:18</p> <p>pointed [3] - 305:20, 354:8, 354:11</p> <p>points [23] - 285:17, 285:20, 286:14, 295:25, 297:21, 299:23, 302:3, 303:19, 309:1, 309:3, 309:6, 315:6, 333:13, 335:9, 346:4, 347:13, 347:18, 348:14, 352:10, 352:12, 354:9, 356:15, 357:12</p> <p>policy [1] - 325:1</p> <p>Policy [3] - 275:23, 275:24, 275:24</p> <p>political [18] - 280:11, 281:5, 282:17, 282:20, 282:24, 302:6, 306:19, 307:13, 307:21, 307:25, 313:12, 313:15, 313:18, 341:8, 343:3, 343:7, 344:22, 345:2</p> <p>politician [1] - 282:8</p> <p>politics [2] - 280:17, 282:7</p> <p>population [1] - 326:15</p> <p>portion [6] - 296:16, 316:7, 317:4, 324:25, 348:1, 365:19</p> <p>portrayal [1] - 282:11</p> <p>portrayed [1] - 282:9</p> <p>posed [2] - 280:5, 333:17</p> <p>position [25] - 283:14, 283:18, 284:9, 286:2, 286:6, 287:9, 289:9, 292:24, 293:7, 293:17, 295:7, 296:5, 297:13, 299:2, 300:9, 306:18, 316:18, 324:21, 327:23, 351:14, 359:3, 359:10, 361:6,</p>
P		
<p>p.m [2] - 333:1, 368:15</p> <p>P.O [1] - 274:9</p> <p>PAGE [1] - 277:2</p> <p>page [13] - 278:25, 283:17, 284:6, 285:2, 290:11, 323:23, 334:4, 334:6, 335:20, 355:19, 360:22, 362:5, 362:16</p> <p>pages [1] - 362:18</p> <p>pains [1] - 344:23</p> <p>painted [1] - 314:8</p> <p>Palace [2] - 273:4, 276:4</p> <p>paragraph [57] - 288:9, 292:25, 294:12, 295:10, 295:11, 295:18, 295:21, 296:13, 296:21, 297:5, 298:14, 298:18, 299:10, 300:13, 300:19, 300:25, 301:3, 301:22, 305:13, 305:24, 310:18, 310:19, 310:21, 311:10, 316:16, 316:20, 318:4, 321:1,</p>		

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<p>367:7 positions [1] - 284:10 positively [1] - 353:25 possibility [1] - 351:2 possible [3] - 296:19, 350:8, 353:7 possibly [1] - 342:21 post [1] - 331:7 post-award [1] - 331:7 postulate [1] - 340:23 potential [4] - 303:3, 313:13, 341:9, 351:6 potentially [2] - 282:11, 296:9 powerfully [1] - 328:18 practice [10] - 287:8, 287:11, 290:5, 291:20, 293:2, 309:16, 329:21, 329:23, 337:13, 337:15 Practice [1] - 288:2 practices [1] - 337:9 practise [1] - 300:6 pre [1] - 331:7 preceded [1] - 312:25 precedent [1] - 363:9 precise [4] - 292:14, 316:23, 317:2, 362:4 precisely [2] - 290:19, 318:8 preclusion [2] - 309:4, 309:5 precursor [1] - 354:19 preparation [2] - 304:8, 311:18 prepare [1] - 304:17 prepared [5] - 284:15, 288:3, 303:5, 304:4, 362:21 prescribed [1] - 351:6 PRESENT [2] - 274:7, 275:13 present [4] - 278:5, 329:20, 332:16, 363:20 presentation [3] - 314:4, 333:5, 368:1 presented [2] - 359:25, 361:8 presenting [1] - 368:1 President [15] - 273:3, 278:12, 278:18, 314:7, 328:4, 329:15, 330:3, 331:15, 332:4, 332:8, 333:10, 347:3, 363:23, 366:6, 367:3 pressure [1] - 313:2 pretty [1] - 285:18 prevent [1] - 323:9 previous [1] - 295:22 previously [1] - 299:18 Prime [2] - 362:21, 362:22 Principal [1] - 274:16 principle [5] - 304:18, 305:11, 324:10, 325:18, 336:19 principled [2] - 362:14, 363:4 pro [1] - 330:18 problem [2] - 296:4, 328:22 problems [1] - 354:8 procedurally [1] - 360:3 procedure [2] - 280:17, 305:12 Procedures [1] - 288:3 procedures [1] - 281:9 proceed [3] - 313:5, 325:2, 360:17 proceeding [1] - 310:7 proceedings [9] - 309:19, 331:18, 331:19, 332:2, 353:8, 357:11, 359:8,</p>	<p>364:14, 365:14 process [4] - 284:2, 307:2, 333:22, 333:25 process" [1] - 307:15 processes [1] - 311:15 producing [2] - 331:23, 364:10 Prof [1] - 316:15 professed [1] - 282:25 professionalism [2] - 331:21, 364:7 Professor [13] - 280:6, 293:10, 293:14, 294:8, 296:24, 316:11, 333:17, 344:11, 347:11, 347:19, 347:20, 348:2, 352:21 PROFESSOR [1] - 273:8 Programmes [1] - 275:25 progress [3] - 304:20, 305:23, 306:23 progressed [1] - 313:10 progressing [1] - 324:9 promise [1] - 328:15 prompt [1] - 334:21 properly [1] - 309:14 proposal [13] - 304:2, 304:25, 306:11, 309:11, 324:2, 324:4, 324:6, 324:9, 339:15, 340:10, 360:7, 361:7, 365:14 proposals [10] - 288:12, 288:15, 288:18, 290:15, 291:1, 338:9, 338:11, 339:8, 339:12, 340:8 propose [4] - 290:16, 339:14, 341:17, 365:24 proposed [10] - 295:14, 297:6, 297:7, 298:16, 307:11, 307:20, 338:21, 339:21, 342:9, 357:19 proposes [3] - 283:21, 338:24, 339:7 proposing [4] - 340:2, 343:13, 345:6, 367:7 proposition [2] - 290:5, 299:15 PROTECTION [1] - 272:5 protest [4] - 320:9, 320:10, 320:16, 320:21 protocol [1] - 317:15 prove [4] - 308:9, 309:18, 319:8, 319:14 proved [1] - 323:6 provide [12] - 286:21, 286:24, 287:2, 287:5, 289:20, 294:1, 300:4, 300:5, 306:5, 331:5, 335:23, 337:3 provided [3] - 305:11, 344:5, 364:20 provides [1] - 363:8 PROVISION [1] - 272:5 provision [8] - 303:14, 311:1, 314:19, 348:5, 348:9, 350:8, 350:18, 350:21 provisions [4] - 304:15, 310:14, 345:13, 346:7 public [1] - 331:24 publish [1] - 367:19 purportedly [1] - 301:10 purporting [1] - 342:22 purpose [2] - 324:6, 365:16 purposes [6] - 290:6, 293:25, 320:24, 323:22, 340:4, 346:1 pursuant [2] - 335:2, 339:25 PURSUANT [1] - 272:3 pursue [3] - 305:11, 317:24, 318:3 put [13] - 289:17, 292:2, 304:21, 314:11, 323:13, 324:6, 324:21, 345:8, 353:10,</p>	<p>353:24, 355:18, 359:12, 365:20 putting [3] - 303:2, 313:2, 365:16</p> <p style="text-align: center;">Q</p> <p>questions [3] - 285:15, 309:16, 363:13 quickly [1] - 366:20 quite [6] - 299:25, 301:7, 310:2, 312:11, 335:22, 366:20 quote [12] - 278:20, 283:13, 284:7, 290:11, 318:7, 320:8, 323:19, 341:7, 341:10, 347:21, 355:19, 360:17 quoted [2] - 318:14, 362:18</p> <p style="text-align: center;">R</p> <p>R-15 [3] - 281:19, 283:11, 283:17 R-33 [1] - 308:6 R-34 [2] - 306:16, 306:21 R-45 [1] - 359:4 R-50 [1] - 334:3 Rainbow [3] - 327:16, 362:3, 362:10 raise [1] - 324:4 raised [8] - 356:15, 357:21, 357:22, 357:25, 358:6, 360:6, 360:24, 361:9 range [1] - 334:14 rata [1] - 330:19 rather [9] - 292:13, 296:13, 314:21, 315:16, 327:18, 342:17, 345:20, 348:6, 357:8 ratio [1] - 327:2 reach [6] - 283:13, 316:13, 316:19, 317:20, 326:7, 341:14 reached [4] - 326:4, 337:16, 345:3, 359:1 reaching [1] - 337:25 read [11] - 278:16, 281:17, 283:10, 305:4, 305:7, 306:17, 329:16, 330:3, 333:15, 364:19, 365:9 read-out [5] - 281:17, 283:10, 305:4, 305:7, 306:17 reading [12] - 296:9, 296:23, 297:23, 298:11, 311:6, 325:15, 329:24, 340:6, 340:14, 346:5, 346:10, 368:6 ready [3] - 332:22, 333:5, 368:3 real [2] - 279:13, 360:10 reality [3] - 314:13, 326:19, 326:20 really [4] - 294:25, 301:7, 318:20, 344:7 reason [3] - 281:24, 321:18, 333:23 reasonable [4] - 309:18, 365:12, 366:1, 366:16 reasons [4] - 283:2, 330:5, 346:6, 364:20 rebuttal [2] - 278:5, 278:9 receive [1] - 368:4 received [2] - 306:19, 309:22 receiving [2] - 283:7, 303:9 recitation [1] - 359:16 recognise [1] - 361:13 recognised [1] - 321:9 reconvene [1] - 368:6 record [11] - 289:7, 291:4, 292:8, 292:12, 304:13, 323:7, 334:3, 338:13, 347:17, 352:3, 359:20</p>
--	--	---

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<p>recording [2] - 365:19, 365:21 records [2] - 358:13, 364:10 redact [1] - 365:19 redaction [1] - 365:15 redactions [7] - 365:16, 365:25, 366:19, 367:8, 367:17, 367:18 refer [4] - 280:18, 298:17, 298:20, 339:5 reference [14] - 284:6, 296:12, 297:3, 301:3, 301:11, 304:11, 306:15, 310:20, 311:2, 341:25, 342:1, 345:15, 352:16, 361:13 referenced [1] - 324:13 references [3] - 281:19, 300:16, 301:19 referred [9] - 287:9, 301:12, 302:9, 319:3, 322:20, 333:22, 339:11, 349:2, 363:1 referring [4] - 287:20, 299:15, 322:5, 341:24 refers [5] - 295:11, 298:22, 299:8, 320:2, 339:18 reflect [5] - 292:24, 307:10, 330:19, 345:1, 366:21 reflected [1] - 295:6 reflecting [1] - 364:14 reflects [3] - 293:6, 303:14, 348:10 refugee [2] - 326:24, 350:1 REFUGEES [1] - 272:6 refugees [28] - 296:17, 314:25, 315:3, 317:5, 322:16, 322:19, 324:11, 324:15, 324:19, 324:25, 325:9, 326:8, 326:16, 326:22, 327:3, 327:5, 327:7, 328:14, 348:1, 348:24, 349:7, 349:9, 349:12, 349:15, 349:23, 350:12, 357:17, 360:16 refugees" [1] - 316:8 refugees' [1] - 320:1 refusal [7] - 318:23, 320:22, 321:25, 326:13, 327:24, 355:23, 361:2 refuse [1] - 356:23 refused [4] - 302:15, 329:9, 329:10, 354:1 refusing [1] - 324:10 regard [2] - 324:17, 361:10 regarding [1] - 349:14 regards [1] - 293:18 registry [1] - 368:5 rejected [2] - 302:10, 307:23 related [1] - 317:9 relates [1] - 347:24 relating [2] - 298:21, 347:10 relation [4] - 349:23, 350:6, 350:11, 350:14 relations [1] - 364:15 release [1] - 311:25 relevance [2] - 295:1, 342:17 relevant [13] - 292:22, 294:22, 294:24, 294:25, 319:1, 334:5, 336:9, 343:11, 343:12, 344:3, 353:2, 356:1, 363:9 reliance [3] - 309:18, 309:25, 323:17 relied [6] - 309:14, 315:1, 317:11, 327:17, 345:14, 353:17 relief [1] - 331:10 relies [3] - 280:20, 290:23, 297:16 relinquish [1] - 283:6</p>	<p>relocate [5] - 315:2, 321:12, 321:23, 324:14, 324:15 relocated [3] - 327:7, 349:18, 350:15 relocation [1] - 350:6 rely [1] - 357:11 relying [2] - 323:14, 343:24 remain [1] - 299:12 remains [3] - 293:14, 330:9, 358:19 remarks [1] - 307:6 reminded [1] - 335:17 reminds [1] - 328:20 removal [1] - 350:3 removed [1] - 344:20 reparation [2] - 325:16, 347:18 reparations [1] - 361:17 repeal [1] - 334:20 repealed [2] - 334:6, 334:24 repeat [6] - 286:4, 310:10, 316:4, 338:18, 356:16, 361:22 replaced [1] - 304:19 Reply [22] - 277:4, 277:7, 288:8, 288:16, 289:22, 291:9, 293:5, 293:11, 299:2, 309:20, 311:10, 313:14, 313:20, 330:6, 330:7, 331:14, 333:13, 338:11, 338:15, 346:25, 364:18, 365:1 REPLY [2] - 278:10, 333:8 reply [14] - 278:14, 285:17, 286:6, 289:5, 289:6, 289:10, 291:12, 308:25, 338:19, 340:11, 340:13, 347:11, 352:10, 361:4 report [2] - 362:17, 362:19 reporter [3] - 331:23, 364:9, 368:11 represent [2] - 324:23, 332:17 representation [3] - 309:8, 309:10, 309:12 representations [2] - 358:24, 359:9 reproduced [3] - 293:1, 293:3, 293:4 Republic [9] - 274:13, 274:15, 274:19, 278:4, 329:19, 330:4, 330:5, 331:16, 343:3 REPUBLIC [2] - 272:3, 272:12 request [7] - 308:10, 322:14, 328:21, 329:3, 344:21, 345:1, 363:9 requesting [1] - 305:16 requests [3] - 330:8, 339:19, 364:22 require [3] - 283:6, 349:11, 365:12 required [4] - 300:6, 349:14, 354:22, 361:4 requirements [1] - 326:2 requiring [2] - 301:1, 348:5 rescind [4] - 297:23, 298:2, 342:16, 342:19 rescind" [1] - 297:17 rescinded [1] - 298:1 rescission [2] - 341:19, 341:23 resettle [10] - 296:16, 316:7, 317:4, 322:15, 322:19, 324:24, 325:8, 347:25, 353:11, 360:16 resettled [5] - 349:7, 349:12, 349:16, 349:23, 350:11 Resettlement [2] - 275:16, 275:21 resettlement [17] - 296:17, 314:10, 314:25, 320:8, 320:14, 324:2, 324:4, 326:8, 326:14, 329:6, 329:11, 348:21,</p>	<p>350:19, 353:10, 357:17, 360:7, 361:7 resile [1] - 353:15 resisted [1] - 359:23 resolve [1] - 297:10 resolved [2] - 296:6, 349:1 resolves [1] - 295:3 respect [9] - 279:11, 286:8, 308:4, 326:11, 337:14, 340:17, 341:3, 346:13, 363:8 respectfully [2] - 329:13, 364:22 respond [2] - 305:17, 361:11 responded [1] - 344:13 Respondent [2] - 285:15, 360:23 responding [2] - 312:8, 321:2 responds [1] - 316:14 response [9] - 291:14, 292:1, 305:15, 341:5, 344:16, 344:17, 345:24, 354:9, 356:23 responses [1] - 358:16 responsibilities [1] - 329:8 responsible [1] - 326:16 responsive [4] - 338:3, 338:10, 340:20, 342:4 restrictive [1] - 337:1 result [12] - 296:17, 316:9, 316:23, 317:2, 317:10, 317:20, 328:14, 351:17, 351:19, 352:15, 352:23, 352:25 return [4] - 283:7, 284:20, 303:10, 368:9 returned [1] - 350:1 returns [1] - 350:9 reverse [1] - 298:11 reversing [1] - 298:10 revisit [2] - 354:10, 356:17 revisited [1] - 356:12 revive [1] - 352:14 rights [2] - 282:23, 329:2 rise [1] - 318:17 risks [2] - 280:13, 282:21 RLA-6 [1] - 304:13 round [3] - 278:5, 278:15, 332:16 route [2] - 279:7, 279:9 rule [1] - 329:25 rules [2] - 310:12, 310:15 RULES [1] - 272:8 ruling [9] - 347:16, 357:9, 360:11, 362:12, 362:13, 362:18, 362:21, 363:1, 363:7 run [2] - 286:10, 313:25 running [1] - 364:8 runs [2] - 340:18, 346:18 Ruritania [1] - 288:16 RWANDA [4] - 272:4, 272:12, 274:1, 278:10 Rwanda [186] - 274:10, 274:11, 274:13, 274:15, 274:20, 277:4, 278:5, 279:15, 279:22, 279:24, 280:2, 281:2, 282:23, 283:15, 285:1, 285:6, 285:10, 285:11, 285:12, 286:1, 290:14, 290:17, 290:18, 291:17, 291:18, 291:23, 292:16, 292:19, 293:25, 294:3, 295:10, 295:11, 295:17, 297:19, 297:25, 298:3, 298:10, 298:15, 298:17, 299:12, 299:15, 299:20, 300:4, 302:10, 302:13, 302:25, 305:6, 305:10,</p>
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<p>305:16, 305:20, 306:8, 306:10, 307:7, 307:11, 307:23, 308:11, 309:23, 312:6, 312:17, 313:9, 313:14, 313:16, 315:3, 315:17, 316:14, 316:16, 318:24, 319:7, 320:10, 320:19, 324:1, 324:3, 324:19, 324:21, 324:25, 325:6, 326:1, 326:12, 326:15, 326:17, 326:18, 327:2, 327:3, 327:13, 327:16, 327:21, 327:25, 328:8, 328:11, 328:14, 328:24, 329:1, 329:2, 329:3, 329:4, 329:9, 329:13, 329:20, 330:4, 330:6, 330:7, 330:10, 330:23, 331:2, 331:5, 331:8, 331:9, 331:16, 332:20, 334:7, 334:12, 334:18, 334:20, 334:24, 335:4, 335:9, 335:17, 336:2, 336:18, 336:22, 337:3, 337:4, 337:7, 337:19, 337:23, 338:2, 338:10, 338:21, 339:15, 339:19, 340:7, 340:11, 340:15, 340:22, 340:25, 341:6, 341:20, 341:22, 342:6, 342:12, 342:15, 342:21, 343:1, 344:7, 344:13, 344:14, 344:23, 344:25, 345:12, 345:21, 348:23, 349:11, 349:13, 349:18, 350:1, 350:2, 350:7, 350:16, 352:13, 353:15, 353:17, 354:2, 354:4, 354:13, 355:7, 355:9, 355:24, 356:7, 356:11, 356:12, 357:10, 357:13, 358:2, 358:11, 359:5, 359:7, 359:18, 359:25, 360:6, 361:9, 362:7, 364:12</p> <p>Rwanda's [71] - 278:15, 278:16, 285:21, 286:6, 289:9, 289:22, 289:23, 299:1, 299:2, 304:25, 305:3, 312:7, 314:5, 315:12, 316:7, 317:5, 318:21, 319:23, 320:7, 321:3, 321:18, 322:14, 323:10, 325:19, 326:4, 326:22, 327:9, 327:23, 329:16, 337:21, 338:1, 338:7, 338:19, 339:17, 340:14, 340:19, 342:3, 342:20, 343:3, 347:15, 348:25, 349:9, 352:13, 354:16, 355:1, 355:12, 355:17, 355:21, 356:4, 356:6, 356:19, 357:1, 357:6, 357:21, 357:22, 357:25, 358:5, 358:6, 358:18, 358:24, 359:2, 359:10, 359:16, 360:5, 360:13, 360:25, 361:18, 362:1, 363:9, 364:23</p> <p>Rwanda [1] - 283:20</p> <p>Rwandan [16] - 283:11, 285:3, 289:10, 303:2, 305:4, 305:24, 306:4, 306:17, 308:7, 310:18, 313:6, 313:20, 322:16, 328:17, 342:2, 342:6</p> <p>Rwandans [2] - 284:4, 284:19</p> <p>Rwandans's [1] - 315:24</p>	<p>seated [2] - 278:2, 333:3</p> <p>Sebastian [1] - 276:3</p> <p>Second [2] - 302:7, 323:1</p> <p>second [34] - 278:5, 281:7, 283:17, 287:7, 289:3, 289:11, 289:13, 289:16, 289:25, 292:7, 294:8, 295:18, 295:21, 296:7, 296:24, 297:5, 298:24, 299:10, 300:7, 309:10, 310:10, 315:8, 329:4, 332:16, 334:23, 335:6, 337:4, 347:12, 352:9, 353:5, 353:17, 358:11, 358:23</p> <p>secretariat [1] - 368:12</p> <p>Secretary [8] - 282:10, 305:5, 305:7, 362:11, 362:17, 363:2, 363:3, 363:7</p> <p>Secretary-General [4] - 362:11, 362:17, 363:2, 363:3</p> <p>Secretary-General's [1] - 363:7</p> <p>section [2] - 310:1, 334:5</p> <p>Section [1] - 334:5</p> <p>secured [1] - 279:6</p> <p>Security [1] - 334:1</p> <p>see [8] - 285:10, 285:11, 297:5, 305:20, 306:6, 309:1, 318:19, 334:13</p> <p>seeing [1] - 323:10</p> <p>seek [4] - 279:22, 283:19, 304:15, 327:2</p> <p>seeking [6] - 291:24, 304:17, 322:24, 323:22, 336:3, 360:1</p> <p>seeks [4] - 323:20, 326:18, 336:18, 362:20</p> <p>self [1] - 283:5</p> <p>self-serving [1] - 283:5</p> <p>sending [1] - 298:1</p> <p>sends [1] - 290:24</p> <p>Senior [1] - 276:2</p> <p>senior [2] - 281:4, 331:18</p> <p>sense [10] - 278:21, 279:3, 279:10, 279:11, 283:4, 283:24, 335:16, 336:8, 346:3, 356:4</p> <p>sent [3] - 307:21, 313:15, 342:25</p> <p>sentence [3] - 299:9, 300:19, 321:1</p> <p>Seok [1] - 276:2</p> <p>separate [4] - 289:12, 351:17, 352:6, 362:15</p> <p>separately [1] - 296:16</p> <p>series [1] - 333:12</p> <p>seriously [2] - 308:12, 360:3</p> <p>Services [1] - 274:17</p> <p>serving [1] - 283:5</p> <p>sessions [1] - 331:24</p> <p>set [7] - 287:11, 299:6, 311:14, 331:13, 339:12, 362:14, 364:23</p> <p>settled [5] - 291:20, 300:6, 303:20, 303:23, 348:24</p> <p>settlement [1] - 350:22</p> <p>seventh [1] - 307:5</p> <p>shall [9] - 286:22, 286:24, 289:5, 292:4, 292:13, 330:3, 335:24, 351:24, 364:19</p> <p>share [1] - 305:25</p> <p>SHARED [1] - 272:5</p> <p>sharing [1] - 306:3</p> <p>Shelf [4] - 301:19, 303:25, 304:12, 351:24</p> <p>shift [1] - 325:1</p> <p>Short [1] - 333:1</p>	<p>short [11] - 278:17, 280:11, 280:25, 281:10, 281:23, 281:25, 291:19, 307:13, 307:20, 332:7, 345:8</p> <p>show [5] - 295:5, 297:12, 307:1, 309:25, 356:23</p> <p>side [6] - 283:11, 303:14, 306:4, 314:5, 366:8, 366:25</p> <p>sides [2] - 306:2, 343:22</p> <p>significant [2] - 286:13, 344:15</p> <p>signing [1] - 305:16</p> <p>similar [4] - 286:7, 290:23, 292:20, 317:16</p> <p>similarly [2] - 296:19, 318:3</p> <p>simple [3] - 278:21, 279:2, 281:25</p> <p>simply [8] - 281:12, 315:17, 320:10, 322:11, 338:9, 343:6, 348:6, 355:3</p> <p>single [1] - 362:7</p> <p>singular [1] - 341:25</p> <p>sit [1] - 332:7</p> <p>sitting [6] - 278:3, 332:14, 332:25, 333:4, 365:10, 368:9</p> <p>six [1] - 327:11</p> <p>sixth [2] - 306:23, 318:11</p> <p>slightly [1] - 332:21</p> <p>slower [1] - 334:25</p> <p>small [1] - 334:24</p> <p>smooth [1] - 364:8</p> <p>soft [1] - 282:9</p> <p>soil [1] - 328:15</p> <p>solely [2] - 334:19, 355:15</p> <p>solution [1] - 352:2</p> <p>Somalia [1] - 352:3</p> <p>someone [1] - 349:8</p> <p>somewhat [1] - 288:5</p> <p>sorry [1] - 339:2</p> <p>sort [3] - 303:23, 322:17, 361:14</p> <p>sought [8] - 321:19, 328:10, 328:13, 329:1, 352:14, 354:2, 355:7, 356:8</p> <p>South [1] - 273:9</p> <p>sovereign [1] - 317:17</p> <p>speaks [1] - 310:22</p> <p>special [1] - 317:15</p> <p>specific [6] - 297:4, 316:9, 317:20, 318:9, 319:6, 339:23</p> <p>specifically [2] - 323:14, 345:24</p> <p>specificity [2] - 297:5, 353:1</p> <p>specified [1] - 311:5</p> <p>speech [1] - 278:17</p> <p>spent [3] - 280:22, 282:15, 341:20</p> <p>stage [4] - 284:8, 306:22, 324:18, 341:2</p> <p>stamps [1] - 312:14</p> <p>stand [3] - 281:10, 281:23, 281:25</p> <p>stand-alone [3] - 281:10, 281:23, 281:25</p> <p>standard [4] - 287:18, 291:24, 319:4, 337:21</p> <p>start [7] - 282:12, 282:14, 315:10, 319:21, 333:7, 335:11, 368:3</p> <p>starting [7] - 281:17, 311:2, 345:15, 346:1, 346:2, 346:4, 348:2</p> <p>State [4] - 274:16, 279:3, 290:24, 304:10</p> <p>state [8] - 283:6, 287:10, 290:4, 291:1, 303:16, 328:23, 362:9</p> <p>state-to-state [1] - 328:23</p>
S		
<p>safe [1] - 368:9</p> <p>Safety [3] - 334:7, 334:20, 334:23</p> <p>sanction [2] - 328:3, 329:14</p> <p>satisfy [2] - 285:24, 286:3</p> <p>save [1] - 283:4</p> <p>saw [6] - 281:8, 283:11, 298:14, 304:16, 312:15, 313:5</p> <p>schedules [1] - 332:7</p> <p>scheduling [2] - 322:12, 357:15</p> <p>scheme [2] - 282:4, 283:1</p> <p>Sea [1] - 336:19</p>		

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<p>Statement [7] - 316:17, 318:15, 327:17, 330:6, 349:2, 364:21, 364:25</p> <p>statement [3] - 319:23, 361:6, 364:18</p> <p>statements [2] - 309:8, 360:8</p> <p>States [9] - 286:13, 286:18, 291:17, 292:3, 335:14, 335:23, 336:10, 336:15, 336:22</p> <p>states [9] - 287:11, 289:4, 289:17, 293:1, 337:16, 339:18, 344:5, 350:23</p> <p>status [1] - 301:13</p> <p>statute [1] - 334:10</p> <p>steadfast [1] - 327:24</p> <p>step [3] - 306:4, 315:4, 315:20</p> <p>steps [10] - 305:25, 314:17, 315:18, 320:4, 320:11, 321:20, 325:4, 329:10, 360:20, 365:11</p> <p>still [2] - 285:13, 293:5</p> <p>stopped [1] - 279:24</p> <p>straight [1] - 340:18</p> <p>straightaway [1] - 280:9</p> <p>straightforward [4] - 315:16, 315:24, 318:23, 355:23</p> <p>strained [2] - 294:17, 328:6</p> <p>Strategy [2] - 275:16, 275:21</p> <p>stray [1] - 280:16</p> <p>Street [5] - 273:10, 273:14, 274:4, 275:10, 275:18</p>	<p>suggested [14] - 287:14, 288:19, 291:25, 307:6, 308:12, 310:23, 311:12, 319:10, 321:14, 348:16, 357:13, 358:11, 365:13, 366:9</p> <p>suggestion [5] - 322:23, 326:1, 340:15, 352:22, 359:11</p> <p>suggestions [1] - 283:21</p> <p>suggests [1] - 302:7</p> <p>suite [1] - 285:4</p> <p>suited [1] - 279:20</p> <p>suits [1] - 367:5</p> <p>sum [1] - 331:4</p> <p>summary [1] - 359:20</p> <p>sums [2] - 330:24, 331:8</p> <p>superfluous [2] - 286:5, 290:9</p> <p>support [2] - 287:9, 297:23</p> <p>supports [3] - 290:5, 299:20, 311:6</p> <p>supposedly [1] - 302:14</p> <p>surely [1] - 321:8</p> <p>surprising [3] - 286:9, 343:7, 344:18</p> <p>suspension [2] - 303:6, 303:9</p> <p>sustained [1] - 300:22</p> <p>SW1P [1] - 275:19</p> <p>system [1] - 311:18</p>	<p>textbooks [2] - 336:24, 337:1</p> <p>textual [3] - 294:13, 296:9, 298:12</p> <p>textually [2] - 294:9, 294:15</p> <p>that" [1] - 360:20</p> <p>theme [1] - 282:7</p> <p>themselves [2] - 335:14, 344:2</p> <p>therefore [2] - 298:3, 361:11</p> <p>thin [1] - 291:14</p> <p>thinking [2] - 306:6, 349:9</p> <p>third [18] - 289:12, 289:17, 291:23, 297:1, 299:5, 300:10, 302:12, 309:17, 310:20, 315:8, 315:11, 321:1, 323:16, 337:7, 347:13, 356:9, 359:18, 360:5</p> <p>three [20] - 279:18, 288:9, 289:21, 295:9, 295:25, 299:23, 300:16, 314:19, 322:10, 336:23, 337:22, 339:8, 339:9, 339:13, 340:8, 342:7, 346:20, 354:17, 354:21, 366:22</p> <p>three-month [1] - 279:18</p> <p>threshold [1] - 291:17</p> <p>throughout [7] - 281:20, 283:9, 299:2, 310:12, 327:7, 346:11, 364:4</p> <p>Thursday [6] - 365:25, 367:5, 367:11, 367:14, 367:15, 367:16</p> <p>timetable [2] - 334:25, 366:8</p> <p>TO [2] - 272:3, 272:5</p> <p>today [1] - 357:1</p> <p>together [4] - 291:3, 324:6, 334:20, 335:5</p>
T		
<p>STRENGTHEN [1] - 272:5</p> <p>striking [1] - 324:20</p> <p>strong [1] - 348:10</p> <p>Stubbing [1] - 275:15</p> <p>stubbing [1] - 363:15</p> <p>STUBBING [1] - 363:23</p> <p>subject [1] - 279:17</p> <p>Submission [2] - 277:4, 277:7</p> <p>SUBMISSION [2] - 278:10, 333:8</p> <p>submission [23] - 278:17, 280:15, 307:10, 308:4, 315:12, 315:17, 316:3, 318:7, 318:21, 321:18, 326:5, 326:21, 332:12, 338:19, 348:15, 348:25, 355:1, 355:21, 357:18, 361:18, 361:24, 362:2, 362:4</p> <p>submissions [37] - 278:14, 278:15, 308:23, 308:25, 315:6, 315:7, 329:17, 329:21, 329:24, 330:4, 332:18, 333:14, 333:16, 337:2, 338:17, 344:15, 346:25, 352:10, 352:13, 352:17, 353:13, 356:14, 356:25, 357:2, 357:4, 359:12, 359:15, 361:5, 361:21, 361:23, 363:17, 363:21, 364:20, 364:21, 365:1, 365:3, 365:8</p> <p>submit [3] - 298:6, 304:2, 324:20</p> <p>submits [1] - 325:6</p> <p>submitted [3] - 324:2, 353:20, 360:16</p> <p>subsequent [11] - 297:18, 298:8, 300:21, 300:23, 301:14, 308:18, 336:13, 341:16, 341:20, 343:14, 358:21</p> <p>subsequently [1] - 298:4</p> <p>substance [1] - 312:18</p> <p>substantive [1] - 352:6</p> <p>substantively [1] - 342:5</p> <p>suffers [1] - 293:20</p> <p>sufficient [3] - 287:3, 291:8, 309:21</p> <p>suggest [2] - 288:24, 308:1</p>	<p>table [2] - 299:17, 303:2</p> <p>Tacna [3] - 317:12, 319:3, 353:3</p> <p>Tacna-Arica [1] - 353:3</p> <p>Tamsin [1] - 275:15</p> <p>team [1] - 364:5</p> <p>teams [1] - 364:14</p> <p>tease [1] - 285:19</p> <p>Technical [21] - 274:18, 290:13, 290:19, 291:15, 294:12, 295:20, 295:24, 296:21, 297:6, 302:16, 307:13, 308:9, 308:10, 337:20, 338:5, 338:25, 339:2, 340:8, 340:11, 340:17, 341:24</p> <p>technique [1] - 325:21</p> <p>tellingly [1] - 323:16</p> <p>term [8] - 282:12, 282:14, 293:10, 294:2, 296:3, 334:19, 353:6, 354:21</p> <p>terminate [6] - 280:8, 280:9, 282:19, 321:12, 333:19, 341:1</p> <p>terminated [3] - 284:12, 309:24, 346:22</p> <p>terminating [4] - 279:21, 279:25, 282:3, 282:13</p> <p>termination [26] - 278:22, 279:5, 279:17, 280:12, 280:25, 281:11, 281:14, 281:24, 282:1, 283:3, 310:14, 310:16, 310:17, 310:19, 315:1, 321:22, 322:21, 324:13, 330:20, 334:8, 334:12, 334:21, 335:2, 343:10, 346:17, 350:22</p> <p>terms [8] - 296:4, 300:5, 302:14, 302:15, 335:22, 351:6, 355:18, 356:22</p> <p>territory [1] - 341:3</p> <p>test [6] - 292:25, 299:23, 300:12, 300:13, 300:15, 301:24</p> <p>text [11] - 293:1, 293:3, 293:4, 304:21, 308:14, 336:11, 341:18, 345:4, 356:15, 357:18</p>	<p>tomka [2] - 272:19, 273:3</p> <p>Tomka's [1] - 324:1</p> <p>took [4] - 315:4, 322:7, 357:3, 360:13</p> <p>topic [1] - 361:17</p> <p>tough [2] - 282:2, 282:14</p> <p>Tower [1] - 273:9</p> <p>Towers [1] - 273:9</p> <p>tracked [1] - 303:18</p> <p>traditional [2] - 335:16, 336:8</p> <p>transaction [1] - 307:3</p> <p>transactional [2] - 284:2, 307:3</p> <p>transcript [9] - 323:24, 331:23, 355:19, 360:21, 362:5, 365:15, 365:17, 366:3, 367:8</p> <p>transcripts [2] - 365:13, 367:20</p> <p>transferred [2] - 327:3, 327:5</p> <p>transit [1] - 283:23</p> <p>transpired [1] - 323:15</p> <p>travel [1] - 314:22</p> <p>treat [1] - 291:18</p> <p>Treaties [1] - 288:3</p> <p>treatment [2] - 349:15, 349:17</p> <p>treaty [30] - 279:21, 279:25, 280:9, 282:23, 286:19, 289:18, 290:6, 291:13, 291:21, 301:9, 301:10, 301:11, 310:9, 316:21, 317:23, 317:25, 328:2, 334:8, 334:12, 334:21, 335:2, 335:15, 336:8, 339:25, 340:5, 343:10, 346:22, 348:8, 348:11, 354:21</p> <p>Treaty [3] - 287:16, 288:3, 352:19</p> <p>Tribunal [68] - 278:12, 278:18, 312:8, 312:18, 313:24, 318:21, 319:20, 321:16, 323:9, 323:11, 324:7, 324:16, 324:23, 325:2, 325:13, 326:3, 327:21, 328:3,</p>

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<p>328:4, 329:13, 330:8, 331:10, 332:5, 332:21, 333:4, 333:11, 334:13, 334:15, 335:7, 335:13, 337:11, 337:17, 338:8, 338:16, 339:24, 341:11, 341:17, 342:14, 342:24, 343:5, 343:15, 344:4, 345:5, 345:9, 346:24, 347:9, 351:20, 356:3, 356:13, 356:18, 357:10, 358:12, 358:17, 358:23, 360:15, 360:17, 360:25, 361:20, 363:13, 363:14, 363:24, 364:3, 364:17, 364:23, 365:7, 366:2, 367:5, 368:2</p> <p>tribunal [3] - 327:12, 362:9, 362:13</p> <p>Tribunal's [5] - 312:2, 337:14, 347:1, 347:16, 360:11</p> <p>tried [1] - 284:17</p> <p>trips [1] - 281:2</p> <p>true [1] - 291:23</p> <p>try [1] - 285:19</p> <p>trying [1] - 280:23</p> <p>Turkey [2] - 304:1, 304:6</p> <p>Turkish [1] - 304:4</p> <p>turn [5] - 285:16, 297:15, 299:22, 320:25, 321:11</p> <p>turns [1] - 308:19</p> <p>Twenty [3] - 273:14, 274:3, 275:9</p> <p>twice [1] - 297:2</p> <p>two [28] - 280:18, 283:21, 289:2, 289:4, 290:8, 291:2, 294:10, 298:19, 308:15, 312:9, 312:10, 312:13, 317:11, 329:2, 337:15, 338:13, 340:12, 344:5, 345:20, 350:23, 352:12, 353:6, 355:16, 356:14, 358:20, 361:1, 364:13, 364:16</p> <p>twofold [1] - 318:3</p>	<p>unfair [1] - 360:3</p> <p>unilateral [4] - 278:22, 279:4, 279:17, 328:7</p> <p>unilaterally [2] - 297:25, 351:10</p> <p>Unit [1] - 288:3</p> <p>United [218] - 273:15, 274:5, 275:5, 275:11, 275:19, 277:7, 278:19, 279:2, 279:15, 279:19, 279:24, 280:3, 280:7, 280:19, 281:8, 282:18, 282:20, 282:25, 283:4, 283:13, 284:3, 284:5, 284:13, 284:17, 284:20, 284:21, 284:24, 285:7, 285:9, 285:10, 285:13, 286:1, 286:15, 287:7, 287:14, 288:5, 289:10, 290:3, 290:14, 290:15, 290:20, 290:22, 291:6, 291:11, 293:12, 293:23, 294:16, 294:24, 295:2, 295:15, 297:11, 297:16, 298:2, 299:12, 302:5, 302:7, 302:12, 302:24, 303:1, 303:17, 306:24, 307:1, 307:5, 307:9, 307:11, 307:19, 308:1, 308:23, 309:6, 309:13, 309:15, 309:17, 310:16, 310:17, 313:1, 313:16, 314:8, 314:11, 314:12, 314:15, 314:16, 314:20, 314:22, 315:7, 315:11, 315:12, 315:17, 315:23, 315:25, 316:2, 316:6, 316:12, 317:4, 317:5, 317:11, 318:6, 318:11, 318:13, 319:2, 319:8, 319:11, 319:15, 319:22, 319:25, 320:3, 320:5, 320:6, 320:15, 320:18, 320:20, 321:1, 321:6, 321:13, 321:19, 322:2, 322:3, 322:16, 322:17, 322:23, 323:1, 323:4, 323:8, 323:12, 323:16, 324:2, 324:4, 324:10, 324:12, 324:17, 324:22, 324:25, 325:3, 325:11, 325:17, 325:20, 325:25, 326:2, 326:8, 326:12, 326:13, 326:19, 327:10, 327:23, 328:6, 328:9, 328:12, 329:3, 329:5, 329:7, 329:9, 332:1, 332:16, 332:24, 333:6, 333:18, 334:11, 334:17, 338:4, 338:5, 338:12, 338:16, 339:7, 339:18, 339:19, 340:2, 340:9, 342:25, 343:24, 343:25, 344:2, 345:13, 346:25, 347:6, 348:15, 349:11, 349:14, 349:18, 350:2, 350:7, 350:9, 350:15, 351:14, 353:13, 353:19, 353:21, 353:25, 354:5, 355:4, 355:8, 355:15, 356:7, 356:22, 357:14, 357:19, 358:8, 359:12, 359:22, 360:3, 360:14, 360:19, 360:23, 361:1, 361:3, 361:4, 361:10, 362:11, 363:10, 363:15, 363:16, 363:20, 364:1, 364:12, 364:22, 365:3, 365:8, 367:2, 367:4, 367:6</p> <p>UNITED [4] - 272:4, 272:15, 275:1, 333:8</p> <p>unless [5] - 311:23, 335:8, 341:16, 343:14, 345:9</p> <p>unlikely [1] - 366:13</p> <p>unnumbered [4] - 338:24, 339:1, 339:5, 339:10</p> <p>unprecedented [1] - 288:20</p> <p>unqualified [1] - 362:23</p> <p>unsurprisingly [1] - 319:5</p> <p>untenable [1] - 286:9</p> <p>unwilling [1] - 283:2</p> <p>unwillingness [2] - 321:20, 325:8</p> <p>up [6] - 281:8, 311:15, 336:12, 341:15, 343:17, 353:5</p> <p>useful [1] - 319:19</p>	<p>uses [2] - 291:10, 318:15</p> <p>utmost [1] - 328:1</p> <p>Uwicyeza [1] - 274:11</p>
U		
<p>Ugirashebuja [3] - 274:8, 278:16, 329:20</p> <p>UGIRASHEBUJA [1] - 330:2</p> <p>UK [19] - 305:12, 305:20, 305:25, 306:2, 306:13, 306:17, 306:19, 328:20, 328:21, 328:22, 330:12, 330:16, 330:21, 330:23, 330:25, 331:2, 331:5, 340:25, 344:24</p> <p>UK's [3] - 304:25, 305:15, 312:9</p> <p>ultimately [1] - 282:17</p> <p>uncertain [2] - 284:15, 284:16</p> <p>uncertainty [4] - 293:20, 293:21, 295:4, 317:16</p>	<p>UNCLOS [1] - 351:23</p> <p>uncontroversial [2] - 325:24, 361:20</p> <p>under [30] - 279:4, 282:23, 285:23, 285:24, 290:7, 300:10, 301:10, 301:24, 313:2, 314:18, 320:4, 321:7, 321:13, 321:20, 322:13, 323:21, 330:10, 331:12, 336:17, 339:20, 340:21, 342:10, 349:23, 351:23, 353:19, 354:21, 356:21, 357:15, 358:4, 358:7</p> <p>underhanded [3] - 307:7, 307:18, 307:24</p> <p>underlying [1] - 279:10</p> <p>understandable [1] - 312:7</p> <p>understood [5] - 284:1, 303:7, 306:21, 307:2, 309:20</p> <p>unearthed [1] - 327:11</p> <p>unequivocal [1] - 309:7</p>	<p>uses [2] - 291:10, 318:15</p> <p>utmost [1] - 328:1</p> <p>Uwicyeza [1] - 274:11</p>
V		
<p>valuable [1] - 283:6</p> <p>various [2] - 296:7, 301:9</p> <p>VCLT [2] - 285:23, 311:9</p> <p>Verbale [59] - 280:25, 287:5, 288:8, 288:9, 288:14, 288:17, 289:22, 290:24, 290:25, 291:8, 291:10, 291:15, 293:5, 293:11, 294:19, 294:21, 295:3, 295:8, 295:12, 295:13, 295:20, 295:23, 295:24, 296:2, 296:6, 296:8, 296:10, 297:10, 298:1, 298:13, 298:15, 298:19, 298:23, 298:25, 299:1, 299:2, 299:8, 299:19, 302:5, 302:6, 302:8, 305:16, 305:18, 306:20, 307:13, 307:21, 307:25, 308:3, 308:20, 309:11, 309:20, 309:22, 313:14, 313:15, 313:20, 328:18, 341:25, 344:19</p> <p>Verbale [1] - 297:8</p> <p>Verbales [9] - 285:16, 285:22, 286:2, 289:19, 294:11, 297:14, 298:20, 312:24, 344:5</p> <p>verbatim [2] - 316:4, 364:10</p> <p>VERDIRAME [4] - 278:11, 312:23, 366:6, 367:13</p> <p>Verdirame [4] - 274:2, 277:4, 278:7, 366:5</p> <p>version [2] - 283:4, 284:18</p> <p>VI [1] - 352:18</p> <p>video [5] - 365:19, 365:21, 366:22, 367:8, 367:21</p> <p>Vienna [4] - 290:8, 335:18, 335:21, 336:17</p> <p>view [5] - 321:2, 348:8, 348:10, 348:18, 351:18</p> <p>views [2] - 337:13, 337:14</p> <p>vindicate [1] - 329:1</p> <p>virtual [1] - 322:6</p> <p>visa [4] - 283:22, 283:23, 284:9, 285:1</p> <p>vulnerable [12] - 316:7, 317:5, 326:15, 327:7, 348:1, 349:9, 349:12, 349:15, 349:24, 349:25, 350:11, 357:17</p>	<p>UNITED [4] - 272:4, 272:15, 275:1, 333:8</p> <p>unless [5] - 311:23, 335:8, 341:16, 343:14, 345:9</p> <p>unlikely [1] - 366:13</p> <p>unnumbered [4] - 338:24, 339:1, 339:5, 339:10</p> <p>unprecedented [1] - 288:20</p> <p>unqualified [1] - 362:23</p> <p>unsurprisingly [1] - 319:5</p> <p>untenable [1] - 286:9</p> <p>unwilling [1] - 283:2</p> <p>unwillingness [2] - 321:20, 325:8</p> <p>up [6] - 281:8, 311:15, 336:12, 341:15, 343:17, 353:5</p> <p>useful [1] - 319:19</p>	<p>uses [2] - 291:10, 318:15</p> <p>utmost [1] - 328:1</p> <p>Uwicyeza [1] - 274:11</p>
W		
<p>Wahab [9] - 280:6, 293:10, 293:14, 294:8, 296:25, 333:17, 344:11, 347:20, 348:3</p> <p>WAHAB [2] - 272:19, 273:8</p> <p>Wahab's [5] - 316:11, 316:15, 347:12, 347:19, 352:21</p> <p>waiver [1] - 283:23</p> <p>warrants [1] - 328:2</p> <p>Warrior [3] - 327:16, 362:3, 362:10</p> <p>ways [4] - 287:11, 289:16, 295:9, 329:2</p> <p>WC2A [1] - 275:5</p> <p>WC2R [3] - 273:15, 274:4, 275:10</p> <p>weapons [1] - 352:16</p> <p>Weapons [2] - 316:24, 317:23</p>	<p>Wahab [9] - 280:6, 293:10, 293:14, 294:8, 296:25, 333:17, 344:11, 347:20, 348:3</p> <p>WAHAB [2] - 272:19, 273:8</p> <p>Wahab's [5] - 316:11, 316:15, 347:12, 347:19, 352:21</p> <p>waiver [1] - 283:23</p> <p>warrants [1] - 328:2</p> <p>Warrior [3] - 327:16, 362:3, 362:10</p> <p>ways [4] - 287:11, 289:16, 295:9, 329:2</p> <p>WC2A [1] - 275:5</p> <p>WC2R [3] - 273:15, 274:4, 275:10</p> <p>weapons [1] - 352:16</p> <p>Weapons [2] - 316:24, 317:23</p>	<p>uses [2] - 291:10, 318:15</p> <p>utmost [1] - 328:1</p> <p>Uwicyeza [1] - 274:11</p>

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<p>website [3] - 365:17, 365:21, 367:20 Wednesday [3] - 342:21, 365:25, 367:4 week [4] - 365:25, 366:15, 366:23, 367:5 weeks [1] - 279:18 weigh [1] - 282:20 weighed [1] - 301:15 weight [4] - 300:23, 304:9, 315:24, 360:10 well-known [2] - 282:6, 327:15 well-settled [1] - 291:20 Western [1] - 282:8 whatsoever [1] - 314:17 whereas [1] - 327:13 wide [1] - 334:14 willing [7] - 313:12, 314:9, 324:18, 324:24, 341:7, 360:15, 363:6 willingness [2] - 299:17, 322:25 wish [9] - 331:18, 339:5, 364:5, 364:11, 365:18, 365:23, 367:25, 368:8, 368:11 wished [3] - 317:3, 350:23, 361:11 wishes [2] - 282:9, 291:11 withdraw [2] - 328:7, 368:2 Woodhouse [1] - 275:23 word [19] - 288:20, 290:19, 290:20, 291:10, 296:1, 297:17, 297:22, 310:3, 310:5, 310:24, 327:9, 337:5, 339:23, 339:24, 342:16, 342:19, 345:1, 346:10, 348:12 words [16] - 286:16, 288:13, 288:21, 288:24, 290:22, 290:23, 291:7, 307:22, 307:24, 308:3, 336:15, 337:20, 338:3, 340:18, 344:12 written [1] - 290:3 wrote [1] - 283:9</p>	<p>£50 [1] - 330:14 £6 [1] - 331:4</p>
Y	
<p>Year [4] - 309:4, 310:1, 345:8, 345:11 year [17] - 310:5, 310:11, 310:25, 327:6, 327:8, 330:9, 330:14, 330:17, 345:12, 345:17, 345:22, 345:23, 346:7, 346:8, 346:9, 346:10, 354:20 years [6] - 310:22, 310:24, 314:19, 354:17, 354:21, 363:1 yesterday [29] - 278:19, 280:6, 284:25, 288:6, 289:8, 290:10, 307:6, 314:8, 315:7, 318:7, 322:3, 323:13, 325:11, 337:2, 344:11, 344:16, 346:6, 347:12, 347:20, 352:17, 353:9, 354:7, 355:12, 356:14, 356:18, 359:12, 361:21, 361:24, 362:4 Yvette [1] - 305:15</p>	
Z	
<p>Zealand [2] - 362:20, 362:23 Zulficar [1] - 273:9</p>	
£	
<p>£20 [2] - 311:12, 311:14</p>	

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