

**PCA Case No. 2025-45**

**IN THE MATTER OF AN ARBITRATION PURSUANT TO THE AGREEMENT  
BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN  
AND NORTHERN IRELAND AND THE GOVERNMENT OF THE REPUBLIC OF  
RWANDA 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**

**- between -**

**THE REPUBLIC OF RWANDA**

**- and -**

**THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND**

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**DISSENTING AND SEPARATE OPINION**

**15 May 2026**

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**Arbitrator**

**Professor Dr Mohamed Abdel Wahab**

**TABLE OF CONTENTS**

<b>I.</b>	<b>PRELIMINARY STATEMENT.....</b>	<b>1</b>
<b>II.</b>	<b>THE EXCHANGE OF NOTES VERBALES ACCORDING TO ARTICLE 13 OF THE VCLT .....</b>	<b>4</b>
	A. ARTICLE 13 OF THE VCLT AND THE APPLICABLE LEGAL STANDARD.....	4
	B. THE NON-APPLICABILITY OF ARTICLE 13(A) OF THE VCLT.....	6
	C. WHETHER CONCURRENCE OF WILLS IS ESTABLISHED ACCORDING TO ARTICLE 13(B) OF THE VCLT.....	8
	1. The Parties’ Practice.....	11
	2. Relevant Circumstances .....	14
	3. The Parties’ Subsequent Conduct.....	22
<b>III.</b>	<b>THE UNITED KINGDOM’S ESTOPPEL DEFENCE.....</b>	<b>27</b>
	A. THE APPLICABLE REQUIREMENTS AND STANDARD .....	27
	B. THE ANALYSIS .....	29
	1. The Clear and Consistent Representation.....	29
	2. The Reliance.....	30
	3. The Prejudice.....	32
<b>IV.</b>	<b>WHETHER OR NOT RWANDA IS ENTITLED TO FURTHER ETIF PAYMENTS UNDER THE 2024 FINANCE AGREEMENT.....</b>	<b>33</b>
	A. THE YEAR 2 PAYMENT STATUS .....	34
	B. THE YEAR 3 PAYMENT STATUS .....	35
<b>V.</b>	<b>RWANDA’S CLAIM UNDER ARTICLE 18 OF THE AGREEMENT.....</b>	<b>37</b>
<b>VI.</b>	<b>CONCLUDING REMARKS .....</b>	<b>38</b>

## I. PRELIMINARY STATEMENT

1. At the outset, I record my agreement with certain conclusions reached in the majority's Award (the "**Award**").<sup>1</sup> I also acknowledge the care, diligence, and conscientious attention brought to this matter by all members of the Tribunal. Nonetheless, much to my regret and in spite of my great respect and esteem for my colleagues forming the majority of the Tribunal, I am compelled to part ways with certain views and conclusions expressed by the majority in the Award, in some respects, for imperative reasons of principle and law that I address in the present dissenting and separate opinion (the "**Opinion**").
2. This Opinion is advanced in the spirit of intellectual candour. I offer it not as a mere posture of opposition, but as a faithful discharge of my duty to articulate my independent legal convictions. Where I depart from the majority, I do so because, in my considered view, the governing legal principles and the evidentiary record compel a different conclusion. However, nothing in this Opinion should be understood as diminishing the deliberations of the Tribunal or the collegiality that has characterised these proceedings throughout.
3. By way of a brief factual background, the present case arises out of a series of agreements and subsequent actions concerning an asylum relocation framework established between the United Kingdom and Rwanda. On 13 April 2022, the Parties entered into the MoU establishing an Asylum Partnership Arrangement, pursuant to which the United Kingdom sought to relocate to Rwanda certain individuals whose asylum claims had not been considered by the UK.<sup>2</sup> On the same date, the Parties concluded the 2022 Finance Arrangement governing their respective financial obligations under the MoU.<sup>3</sup>
4. However, the Supreme Court of the United Kingdom, by its judgment of 15 November 2023, held that the removal of individuals under the MoU from the United Kingdom to Rwanda for the purpose of processing their asylum claims there was unlawful.<sup>4</sup>
5. In the aftermath of that judgment, the Parties proceeded to formalise their cooperation through a binding instrument. On 5 December 2023, they concluded the Asylum Partnership Agreement,

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<sup>1</sup> This Opinion incorporates the same defined terms as those used in the Award.

<sup>2</sup> **C-9**, MoU, signed 13 April 2022.

<sup>3</sup> **C-10**, 2022 Finance Arrangement.

<sup>4</sup> **R-7**, *AAA v. Secretary of State for the Home Department* [2023] UKSC 42; [2023] 1 WLR 4433, 15 November 2023, paras. 1, 149.

which was to remain in force until 13 April 2027.<sup>5</sup> The implementation of the Agreement was supported by the enactment of the Safety of Rwanda Act in the United Kingdom, dated 7 December 2023 and which entered into force on 25 April 2024. The Parties further supplemented their financial arrangements through the 2024 Finance Note together with Rwanda's response thereto on 21 June 2024, thereby reaffirming their commitment to the continuation of the agreed framework.<sup>6</sup>

6. The genesis of the dispute between the Parties started on or around July 2024, where, on 6 July 2024, and without prior notice, consultation, or negotiations with Rwanda, the newly elected Prime Minister of the United Kingdom, Sir Keir Starmer, publicly announced that “the Rwanda deportation scheme is dead and buried”.<sup>7</sup> In response, on 8 July 2024, Rwanda formally communicated its concerns, objecting to the characterisation of Rwanda's name as a “scheme” and rejecting any implication of misuse of the United Kingdom's public funds, while asserting its expectation to be consulted prior to any action affecting the Agreement.<sup>8</sup> On the same date, the United Kingdom notified Rwanda of its intention to proceed with the termination of the Agreement and confirmed that no further relocations would take place.<sup>9</sup>
7. In respect of the dispute, I agree with my co-arbitrators on certain analyses and conclusions in the Award including: (a) that the November 2024 Notes Verbales do not amount to a valid agreement under Article 13(a) of the VCLT, (b) that there is no evidenced breach from the United Kingdom's side of Article 19 of the Agreement, (c) that there is no breach from the United Kingdom's side of Article 18 of the Agreement, but I offer separate reasons for this, and (d) that the financial claim for Year 3 is not due and payable. I, however, disagree with the analysis and conclusion of the Award in respect of the implications and the characterisation of the November 2024 Notes Verbales under Article 13(b) of the VCLT. Given my disagreement on this issue, I am compelled to also address the estoppel (or preclusion) defence of the United Kingdom and whether any amounts are due to Rwanda under the Agreement.
8. In brief, this case calls for a structured inquiry into whether—and, if so, to what extent—consent and concurrence of wills have been formed, through the exchange of the November 2024 Notes Verbales, to terminate the 2024 Finance Agreement. At its core, the question is conceptually

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<sup>5</sup> C-19, Asylum Partnership Agreement.

<sup>6</sup> C-22, 2024 Finance Note; C-23, Rwanda's Note Verbale 051/09.16/North. E/24, 21 June 2024.

<sup>7</sup> C-25, BBC News, “Starmer confirms Rwanda deportation plan ‘dead’”, 6 July 2024.

<sup>8</sup> C-26, Rwanda's Note Verbale 068/09.01/CAB.PS/24, 8 July 2024.

<sup>9</sup> C-28, United Kingdom's Note Verbale 111/2024, 8 July 2024.

straightforward: it turns on the legal effect of particular communications and the extent to which they can be said to capture the required unequivocal consent or concurrence of wills. However, true difficulty lies in the careful reading of the evidence, in discerning the precise legal meanings that the Parties attribute to their exchanges, and in reconciling those positions with the relevant legal principles and facts invoked before the Tribunal.

9. By and large, the case calls for a disciplined interpretation of the record, a coherent engagement with the Parties' competing arguments, and an exacting assessment of how treaty amendment by correspondence operates in law. It is against this background that I respectfully dissent from the majority's Award on two principal grounds, each of which, in my considered view, compels a different conclusion from that which is reached by the majority.
10. *First*, as to Rwanda's financial arrangements claim, the majority has concluded that the November 2024 Notes Verbales constitute a binding amendment of the 2024 Finance Agreement under Article 13(b) of the VCLT. In utmost respect, it is my independent view that this conclusion conflates evidence of Rwanda's political willingness to entertain an agreement with evidence of its juridical consent to be bound. I consider that this distinction lies at the very heart of the factual and legal matrix of the dispute and the law of treaties.
11. The majority of the Tribunal also treats Rwanda's subsequent use of the term "rescind" as proof that the November 2024 Notes Verbales bore binding effect, and the reasoning in the Award simultaneously holds that their binding nature precludes the very act of unilateral rescission that Rwanda purported to perform. To me, this creates a circularity in reasoning. One cannot employ the same instrument both as the proof and as the thing to be proven.
12. *Second*, the majority of the Tribunal's treatment of Rwanda's claim under Article 18 of the Asylum Partnership Agreement is, with respect, premised on a finding that the November 2024 Notes Verbales capture an unequivocal concurrence of wills to bring an end to the 2024 Finance Agreement, such that the United Kingdom is not bound to make any further payments under the Agreement. While I do agree that under international law an agreement between States may be embodied in two or more related instruments irrespective of their particular designation, and that agreements through the exchange of diplomatic notes are indeed a possibility, what is decisive is whether the November 2024 Notes Verbales sufficiently evidence the Parties' express and unequivocal consent to be bound along the lines invoked by the United Kingdom. The majority holds that the obligation under Article 18 was exhausted upon the conclusion of the 2024 Finance Agreement and that it would be—to borrow the majority's own phrase—"out of touch with reality" to require the United Kingdom to maintain financial arrangements after announcing its

intention to cease relocations.<sup>10</sup> However, with respect, this reasoning elides a distinction of cardinal importance: the distinction between an obligation to make arrangements “in support of relocation” and the broader undertaking—acknowledged in the very Technical Annex upon which the majority relies—to “continue to discuss arrangements for formal termination ... including financial arrangements related to termination”.<sup>11</sup> It is unclear from the Award how the non-performance of an obligation to continue to discuss arrangements for formal termination, including financial arrangements, can be reconciled with the obligation of good faith that pervades the performance of every treaty.

## **II. THE EXCHANGE OF NOTES VERBALES ACCORDING TO ARTICLE 13 OF THE VCLT**

13. Although the Parties hold divergent views in respect of the characterisation and impact of the November 2024 Notes Verbales, it is a point of consensus between both Parties and the Tribunal that the assessment of the Parties’ consent to the alleged amendment of the 2024 Finance Agreement through the November 2024 Notes Verbales falls to be determined under Article 13 of the VCLT, which governs States’ consent to be bound by an exchange of instruments.<sup>12</sup>
14. Both Rwanda and the United Kingdom, throughout their submissions, advanced their respective cases as to whether the exchange of the November 2024 Notes Verbales constitutes a binding amendment under Article 13(a) and Article 13(b) of the VCLT. Before engaging in any factual and legal analysis, it is necessary to first examine Article 13 and the applicable legal standard.

### **A. ARTICLE 13 OF THE VCLT AND THE APPLICABLE LEGAL STANDARD**

15. Article 13 of the VCLT reads, in pertinent part, as follows:

The consent of States to be bound by a treaty constituted by instruments exchanged between them is expressed by that exchange when: (a) the instruments provide that their exchange shall have that effect; or (b) it is otherwise established that those States were agreed that the exchange of instruments should have that effect.<sup>13</sup>

16. Article 13 of the VCLT governs States’ expression of consent to be bound by a treaty constituted by an exchange of instruments. The provision contemplates two distinct, yet complementary, avenues of proof. Paragraph (a) addresses *intrinsic proof*: consent is established where the instruments themselves clearly provide that their exchange shall have a binding effect. Paragraph

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<sup>10</sup> Award, para. 204.

<sup>11</sup> **R-31**, Attachment: “DRAFT technical annex NV”, 6 November 2024.

<sup>12</sup> Statement of Defence, para. 116; Reply, para. 16.

<sup>13</sup> VCLT, art. 13.

(b) addresses *extrinsic proof*: consent may otherwise be established by reference to external sources. The legal requirements of each paragraph are set out below, before turning to their application to the facts.

17. Under paragraph (a), the inquiry is confined to the four corners of the instruments: a State's consent is established intrinsically where the text, whether by an explicit declaration of binding effect or implicitly, for instance by stipulating a date of entry into force, provides that the exchange shall have that effect. The instruments must record an unequivocal concurrence of wills; where the replying note diverges from the initiating note, no meeting of minds can be established.
18. Under paragraph (b), the inquiry extends beyond the text to extrinsic sources. As the ICJ confirmed in *Gabon v. Equatorial Guinea*, admissible extrinsic evidence encompasses the previous dealings between the States, the circumstances surrounding the exchange, and the subsequent conduct of both States, in so far as it bears upon whether they perceived the instrument as binding,<sup>14</sup> all to be assessed within the interpretive framework of Articles 31 and 32 of the VCLT.<sup>15</sup>
19. Jurisprudence confirms that both avenues demand a high standard of proof. For intrinsic proof, the ICJ observed in *Bolivia v. Chile* that the language of the exchange should be identical, or at the very least reflect identical positions between both parties, so as to permit an inference of concurrence of wills; and the wording must express an intention to be bound by a treaty, rather than employing language of a merely political nature.<sup>16</sup> For extrinsic proof, the standard is equally exacting: clear and convincing evidence of the parties' intention at the time of the exchange is required, not mere speculative inference; consistent actions by both States demonstrating a manifest intention to be bound are essential.<sup>17</sup>
20. In the *South China Sea Arbitration*, the arbitral tribunal articulated the applicable test with particular clarity:

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<sup>14</sup> **RLA-34**, *Land and Maritime Delimitation and Sovereignty over Islands (Gabon/Equatorial Guinea)*, Judgment, 19 May 2025, 2025 ICJ Rep. 179, paras. 73–74; see also **RLA-6**, *Aegean Sea Continental Shelf (Greece v. Turkey)*, Judgment, 19 December 1978, 1978 ICJ Rep. 3, para. 96.

<sup>15</sup> **CLA-7**, O. Corten, P. Klein, V. Koutroulis and A. Lagerwell (eds.), *The Vienna Convention on the Law of Treaties: A Commentary*, (2nd ed., 2025), p. 303.

<sup>16</sup> **CLA-4**, *Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile)*, Judgment, 1 October 2018, 2018 ICJ Rep. 507, paras. 117–119, 126.

<sup>17</sup> **RLA-23**, *South China Sea Arbitration (Philippines v. China)*, Award on Jurisdiction and Admissibility, 29 October 2015, XXXIII RIAA 1, para. 213; see also **RLA-34**, *Land and Maritime Delimitation and Sovereignty over Islands (Gabon/Equatorial Guinea)*, Judgment, 19 May 2025, 2025 ICJ Rep. 179, paras. 82, 91.

To constitute a binding agreement, an instrument must evince a clear intention to establish rights and obligations between the parties. Such clear intention is determined by reference to the instrument's actual terms and the particular circumstances of its adoption. The subsequent conduct of the parties to an instrument may also assist in determining its nature. This test is accepted by both Parties and has been articulated in a number of international cases, including *Aegean Continental Shelf, Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)*, and *Land and Maritime Boundary (Cameroon v. Nigeria)*.<sup>18</sup>

21. In the instant case, it is my understanding that there is consensus among all members of the Tribunal that the wording of the exchange of the November 2024 Notes Verbales does not support a finding that Article 13(a) of the VCLT is applicable.
22. Given that the Award does not specifically analyse consent under Article 13(b), I provide my separate opinion that details my reasoning as to why Article 13(a) does not apply before proceeding to also address the non-applicability of Article 13(b).

**B. THE NON-APPLICABILITY OF ARTICLE 13(A) OF THE VCLT**

23. A careful review of the Notes Verbales exchanged on 13 and 14 November 2024 reveals a number of issues.
24. At the outset, the United Kingdom's Note Verbale dated 13 November 2024 and the Technical Annex attached thereto expressly state the following:

If the proposals set out above are acceptable to the Government of Rwanda, I have the honour to propose that this Note and your reply to that effect will place on record the understanding of our two Governments in this matter, which will come into effect on the date of your reply.<sup>19</sup>

25. According to this wording proposed by the UK, in order to establish a concurrence of wills between both Parties, Rwanda should reply with a three-fold confirmation: (a) that the United Kingdom's proposals under that note verbale are acceptable, (b) that the exchange of notes captures the clear understanding of both Parties, and (c) that such exchange should be effective on the date of Rwanda's reply.
26. However, the wording of Rwanda's reply in its note verbale dated 14 November 2024 did not provide this three-fold confirmation. Rwanda only mentioned in its response that the "proposed arrangements are acceptable to the Government of the Republic of Rwanda".<sup>20</sup> Rwanda neither

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<sup>18</sup> **RLA-23**, *South China Sea Arbitration (Philippines v. China)*, Award on Jurisdiction and Admissibility, 29 October 2015, XXXIII RIAA 1, para. 213; see also **RLA-34**, *Land and Maritime Delimitation and Sovereignty over Islands (Gabon/Equatorial Guinea)*, Judgment, 19 May 2025, 2025 ICJ Rep. 179, paras. 82, 91.

<sup>19</sup> **C-29**, United Kingdom's Note Verbale 182/2024, 13 November 2024, p. 3.

<sup>20</sup> **C-30**, Rwanda's Note Verbale 8520/09.16/North. E/24, 14 November 2024 (emphasis added).

confirmed that such exchange validly sets out the common understanding of both Parties, nor did it mention a date of effectiveness for such exchange.

27. Moreover, the proposed Technical Annex attached to the United Kingdom's note verbale dated 13 November 2024, included multiple proposals:

the High Commission proposes the following:

1. That Rwanda acknowledges and agrees that the Economic Transformation and Integration Funds of £50 million due in April 2025 and April 2026 in accordance with paragraphs 2.3.1 and 2.3.2 of the Finance Note will not be paid and that the Finance Note is accordingly amended.
2. That Rwanda and the United Kingdom continue to discuss arrangements for formal termination of the Agreement including financial arrangements related to termination and the on-going treatment and financial arrangements for those individuals relocated to Rwanda under the Memorandum of Understanding between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Rwanda for an arrangement facilitating Voluntary departures of Illegal Migrants to the Republic of Rwanda signed in Kigali on 11 March 2024, so as to reach an agreement on these issues as soon as possible;<sup>21</sup>

28. On a proper analysis of the United Kingdom's note verbale (inclusive of its Technical Annex), it made two proposals: *first* requesting Rwanda to forgo further payments under the 2024 Finance Agreement, and *second* that both Parties will continue to discuss further arrangements related to the termination of the Agreement. It does appear from the note verbale that both proposals are interlinked. Moreover, the United Kingdom's note verbale made no mention of the word "arrangements" except in respect of the second proposal. I believe this should be carefully considered when ascertaining whether a clear and unequivocal concurrence of wills exists between the Parties.

29. In its note verbale dated 14 November 2024, Rwanda states the following:

The Ministry of Foreign Affairs and International Cooperation of the Republic of Rwanda presents its compliments to the High Commission of the United Kingdom of Great Britain and Northern Ireland to the Republic of Rwanda, and has the honour to **acknowledge receipt of the High Commission's Note Verbale 182/2024, dated 8 July 2024, informing the intention of the Government of the United Kingdom to formally terminate the Migration and Economic Development Partnership, and requesting the Government of Rwanda to forgo any additional payments under the Economic Transformation and Integration Fund.**

The Ministry of Foreign Affairs and International Cooperation has the further honor to confirm that the **proposed arrangements** are **acceptable** to the Government of the Republic of Rwanda.<sup>22</sup>

30. When properly considering this note verbale, it is abundantly clear that Rwanda only acknowledged receipt of the United Kingdom's request that Rwanda forgo further payments under

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<sup>21</sup> C-29, United Kingdom's Note Verbale 182/2024, 13 November 2024, p. 2.

<sup>22</sup> C-30, Rwanda's Note Verbale 8520/09.16/North. E/24, 14 November 2024 (emphasis added).

the ETIF, and that it consider the United Kingdom’s proposed arrangements acceptable. This, on a proper reading of the notes verbales, demonstrates that the two interlinked proposals were considered by Rwanda,<sup>23</sup> which acknowledged receipt of the United Kingdom’s request to forgo further payments and accepted the proposed arrangements (*without much clarity as to what exactly those arrangements entail*), such that the outcome of the Parties’ discussions will inform whether Rwanda will *finally, unequivocally and unconditionally* forgo further payments under the ETIF or not.

31. In any event, it cannot be disputed that the word “arrangements” which Rwanda found acceptable features in the United Kingdom’s second proposal. This fact, *in and of itself and collectively with the incomplete three-fold confirmation*, negates a finding of concurrence of wills through Rwanda’s note verbale of 14 November 2024.
32. Thus, in the instant case, the difference in wording between the notes verbales, the absence of a clear and unequivocal consent by Rwanda (in its note verbale dated 14 November 2024) to forgo payments under the ETIF, and the ambiguity in the use of the word “arrangements”, makes it hard to establish a concurrence of wills between the Parties. In the words of the ICJ in *Bolivia v. Chile* “nor do they reflect an identical position”<sup>24</sup> and there is no identical expression of consent.
33. On this basis, the wording and the mere exchange of the notes verbales are not sufficient to establish the Parties’ intention to be bound by such exchange under Article 13(a) of the VCLT. Simply put, there is no clear and convincing evidence of concurrence of wills over the forgoing of the ETIF payments.
34. I will now proceed to address the applicability of Article 13(b) of the VCLT to ascertain the Parties’ common intention at the time of the exchange of the notes verbales, as this is the exact point in time when consent ought to be established.

**C. WHETHER CONCURRENCE OF WILLS IS ESTABLISHED ACCORDING TO ARTICLE 13(B) OF THE VCLT**

35. In the view of the majority of the Tribunal, Rwanda (through its note verbale of 14 November 2024) consented to amend paragraphs 2.3.1 and 2.3.2 of the 2024 Finance Agreement and to forgo

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<sup>23</sup> The fact that the United Kingdom’s proposals are interlinked is actually evidenced by the contemporaneous record, where the United Kingdom itself acknowledged in an internal e-mail dated 3 October 2024 that it is “expected” that the £50 million ETIF payment due in April 2025 and the DVA and Airside Transit Visa Waivers were “inextricably interlinked”. See **R-15**, E-mail from Richard Williams to John Brocklehurst et al, “READOUT: Negotiations with the Government of Rwanda”, 3 October 2024.

<sup>24</sup> See **CLA-4**, *Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile)*, Judgment, 1 October 2018, 2018 ICJ Rep. 507, para. 117.

any additional payments by the United Kingdom in April 2025 and April 2026. The majority of the Tribunal also states that there was no reference in the notes verbales or the Technical Annex to the DVA or transit visa waivers, and that the Parties' subsequent conduct confirms the majority's conclusion.<sup>25</sup>

36. Given my analysis above, the only logical inference to be drawn is that the majority's finding of concurrence of wills to forgo the ETIF payments according to the notes verbales can only arise if Article 13(b) of the VCLT is applicable.
37. In their assessment of the facts and the circumstances surrounding the exchange of the November 2024 Notes Verbales, the majority of the Tribunal is convinced that Rwanda showed the intention to be bound by such exchange as amending the 2024 Finance Agreement. I respectfully disagree.
38. I consider that the circumstances surrounding the exchange of the November 2024 Notes Verbales and the Parties' subsequent conduct do not evince an agreement by Rwanda to finally, unequivocally and unconditionally forgo the ETIF payments.
39. In other words, given that I had already established that the relevant instruments (i.e., the November 2024 Notes Verbales) do not provide that their exchange shall have the effect of establishing concurrence of wills over the forgoing of the ETIF payments according to Article 13(a),<sup>26</sup> it must be otherwise established, under Article 13(b), that the United Kingdom and Rwanda were agreed that the exchange of these instruments should have that effect.
40. At the outset, it should be noted that in the specific context of establishing concurrence of wills to amend the 2024 Finance Agreement and to forgo further ETIF payments by virtue of the November 2024 Notes Verbales, the relevant, specific and only point in time to consider this must be the exact time of exchanging the notes verbales and not any later date. Thus, any subsequent conduct must unveil (not create) that consent and concurrence of wills that occurred at that specific moment in time (*i.e., 14 November 2024 being the date of Rwanda's note verbale which is said to have provided for the acceptance of the United Kingdom's request and proposals*). In other words, *ex post facto* conduct cannot magically create consent or concurrence of wills retroactively, especially when the specific and only instruments of consent pleaded in this case are the November 2024 Notes Verbales.

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<sup>25</sup> Award, paras. 196–198.

<sup>26</sup> See paras. 23–33 above.

41. Thus, it is imperative to consider the November 2024 Notes Verbales, the surrounding circumstances and the extrinsic evidence on record in order to ascertain whether there was a final, unequivocal and unconditional expression of consent and concurrence of wills to forgo further ETIF payments at the time of exchange of the notes verbales.
42. Rwanda submits that the wording of the November 2024 Notes Verbales does not constitute a binding agreement between the Parties to amend the 2024 Finance Agreement. Rwanda submits that this was a mere political exchange of notes. Rwanda also relies upon the wording of its note verbale dated 14 November 2024, which signals Rwanda’s willingness to enter into discussions rather than acceptance of the United Kingdom’s note verbale as a binding amendment. Rwanda adds that this is further supported by its deliberate non-reproduction of the full wording of the Technical Annex attached to United Kingdom’s note verbale dated 13 November 2024.<sup>27</sup>
43. The United Kingdom, on the other hand, contends that the exchange of the November 2024 Notes Verbales evinces a binding agreement between both Parties, and that this agreement replaced the 2024 Finance Agreement regarding any amounts due under the ETIF payment schedule. The United Kingdom relies upon the assertion that the wording employed by Rwanda in its note verbale dated 14 November 2024, namely, “acceptable”, mirrored the United Kingdom’s request in the Technical Annex appended to the United Kingdom’s note verbale dated 13 November 2024.<sup>28</sup>
44. However, as mentioned hereinabove,<sup>29</sup> there was no identical expression of consent between the United Kingdom’s note verbale dated 13 November 2024 and Rwanda’s note verbale dated 14 November 2024.<sup>30</sup> Again, the difference in wording between the notes verbales, the absence of a clear and unequivocal consent by Rwanda (in its note verbale dated 14 November 2024) to forgo further payments under the ETIF, and the ambiguity in the use of the word “arrangements”, make it hard to satisfy the high threshold to establish a concurrence of wills between the Parties according to Article 13(b) of the VCLT.
45. To put things in context, and by way of illustration, the United Kingdom’s first proposal was as follows:

the High Commission proposes the following:

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<sup>27</sup> Statement of Claim, paras. 88–91; Tr. (Day 1), pp. 88:9–90:15.

<sup>28</sup> Statement of Defence, paras. 115–136; Tr. (Day 2), pp. 207:6–210:2.

<sup>29</sup> See paras. 25–31 above.

<sup>30</sup> **CLA-4**, *Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile)*, Judgment, 1 October 2018, 2018 ICJ Rep. 507, para. 117.

1. That Rwanda **acknowledges** and **agrees** that the Economic Transformation and Integration Funds of £50 million due in April 2025 and April 2026 in accordance with paragraphs 2.3.1 and 2.3.2 of the Finance Note will not be paid and that the Finance Note is accordingly amended.<sup>31</sup>

46. And, Rwanda’s specific reply in response to the United Kingdom’s specific request and first proposal was as follows:

The Ministry of Foreign Affairs and International Cooperation of the Republic of Rwanda ... has the honour to **acknowledge receipt** of the High Commission’s Note Verbale 182/2024 ... informing the intention of the Government of the United Kingdom to formally terminate the Migration and Economic Development Partnership, and requesting the Government of Rwanda to **forgo any additional payments under the Economic Transformation and Integration Fund.**<sup>32</sup>

47. Thus, Rwanda only acknowledged receipt and did not agree. The reference to “acceptable” expressly referred to “arrangements” that only featured in the United Kingdom’s second interlinked proposal.<sup>33</sup>

48. Accordingly, by carefully reviewing the November 2024 Notes Verbales themselves, it is not possible to conclude that a concurrence of wills in respect of forgoing further payments under the ETIF is established, let alone the ambiguity that surrounds the term “arrangements”.

49. That said, I now turn to look at the extrinsic evidence to discern whether there was a clear and convincing common intention at the time of exchanging the November 2024 Notes Verbales to amend the 2024 Finance Agreement and forgo further payments under the ETIF. This necessitates considering: (i) the *Parties’ practice*; (ii) the *relevant circumstances*; and (iii) the *Parties’ subsequent conduct*.

### 1. The Parties’ Practice

50. At the outset, I do note that in the Tribunal Analysis Section of the Award that starts at paragraph 168, the majority only made one passing reference to the Parties’ exchange of notes verbales on 20 and 21 June 2024. The majority of the Tribunal stated that they cannot uphold Rwanda’s claims that the United Kingdom is in breach of Article 18 of the Asylum Partnership Agreement because the obligation to make financial arrangements in support of the relocation of individuals under the Agreement was actually implemented when the Parties agreed on the financial arrangements, through the exchange of the notes verbales on 20 and 21 June 2024,

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<sup>31</sup> C-29, United Kingdom’s Note Verbale 182/2024, 13 November 2024, p. 2 (emphasis added).

<sup>32</sup> C-30, Rwanda’s Note Verbale 8520/09.16/North. E/24, 14 November 2024 (emphasis added).

<sup>33</sup> C-30, Rwanda’s Note Verbale 8520/09.16/North. E/24, 14 November 2024.

respectively,<sup>34</sup> and that these arrangements were modified thereafter through the November 2024 Notes Verbales.

51. I believe the matter requires a more detailed analysis as set out below.
52. The United Kingdom contends that, as evidenced by the Parties' practice in prior exchanges of notes—and specifically the 2024 Finance Agreement—the word “acceptable” was used to signify acceptance by both Parties to be bound by an exchange of notes. The United Kingdom submits that, accordingly, the wording utilised by Rwanda in the note verbale dated 14 November 2024 ought to be treated as evincing a clear intention on the part of Rwanda to be bound by that exchange.<sup>35</sup>
53. Rwanda, on the other hand, submits that, according to the Parties' established practice, the constitution of a binding agreement through an exchange of notes required a clear representation of the Parties' intention—one that was never confined to the single word “acceptable”, but extended well beyond it, leaving no doubt that the Parties intended to be bound.<sup>36</sup>
54. In my analysis, under Article 13(b) of the VCLT, one must have regard—among other things—to the Parties' practice in order to ascertain whether a common intention may be discerned. The only precedent of a binding agreement between both Parties that occurred through an exchange of notes is the 2024 Finance Agreement.
55. According to the 2024 Finance Agreement, the United Kingdom's note verbale dated 20 June 2024 stated the following in pertinent part:
- If the arrangements set out above are acceptable to the Government of Rwanda, the High Commission has the honour to propose that this Note and the Ministry of Foreign Affairs and International Cooperation's reply to that effect will place on record the understanding of our two Governments in this matter, which will come into effect on the date of your reply.<sup>37</sup>
56. The above statement confirms that the United Kingdom required the very same three-fold confirmation referred to in paragraph 25 above: (a) the acceptability of the United Kingdom's proposals, (b) the exchange of notes captures the clear understanding of both Parties, and (c) the clear understanding of both Parties should become effective on the date of Rwanda's reply.

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<sup>34</sup> Award, para. 203; *See also* C-22, 2024 Finance Note; C-23, Rwanda's Note Verbale 051/09.16/North. E/24, 21 June 2024.

<sup>35</sup> Statement of Defence, para. 136; Tr. (Day 2), p. 206:10–22.

<sup>36</sup> Reply, para. 21; Tr. (Day 1), pp. 31:19–37:23.

<sup>37</sup> C-22, 2024 Finance Note, p. 7.

57. In its note verbale dated 21 June 2024, Rwanda precisely mirrored the wording of the United Kingdom's note verbale of 20 June 2024 when it specifically and clearly stated the following:

The Ministry of Foreign Affairs and International Cooperation of the Republic of Rwanda presents its compliments ... and has the honour to acknowledge receipt of the High Commission's Note Verbale 101/2024, relating to **the financial arrangements which sets out the joint understanding of the meaning of Article 18 of 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, done at Kigali on 5th December 2023 (the "Agreement").

The Ministry of Foreign Affairs and International Cooperation has the further honor to confirm that the above arrangements are acceptable to the Government of the Republic of Rwanda, and that the High Commission's Note and this Note in reply will place on record the understanding of our two Governments on the matter and which will come into effect today.<sup>38</sup>

58. Thus, it is abundantly clear that Rwanda's note verbale dated 21 June 2024 fully mirrored the United Kingdom's proposal and provided the three-fold confirmation, where Rwanda: (a) clarified what was acceptable and the scope of the agreed arrangements; (b) recorded the Parties' understanding, and (c) confirmed the effective date of the agreement.
59. This 2024 Finance Agreement entered into through the exchange of the mirror image note verbale dated 20 June 2024 and note verbale dated 21 June 2024 stands in stark contrast to the November 2024 Notes Verbales.<sup>39</sup> Rwanda's approach adopted in its note verbale dated 14 November 2024 is strikingly distinct from its approach adopted in the note verbale dated 21 June 2024.
60. These differences are not merely linguistic or stylistic; they are substantive. They evince a clear unwillingness on Rwanda's part to accord the June and the November 2024 instruments equal standing and, more fundamentally, underscore the absence of any genuine concurrence of wills between the United Kingdom and Rwanda. In other words, the Parties' established practice through the June 2024 notes verbales reflects the absence of a shared meeting of minds capable of grounding mutual consent and producing the intended legal effects in respect of the November 2024 Notes Verbales.
61. Accordingly, when assessed against the Parties' established practice, which materialised only five months earlier, the November 2024 Notes Verbales cannot be said to evidence any clear and convincing concurrence of wills between the United Kingdom and Rwanda, and it cannot be concluded that the 2024 Finance Agreement (concluded through the June 2024 notes verbales) was amended through the November 2024 Notes Verbales.

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<sup>38</sup> C-23, Rwanda's Note Verbale 051/09.16/North. E/24, 21 June 2024 (emphasis added).

<sup>39</sup> Tr. (Day 1), pp. 35:21–37:23.

## 2. Relevant Circumstances

62. The majority of the Tribunal in the Award is of the opinion that the circumstances leading to the November 2024 Notes Verbales support the view that the Parties' intention was to validly amend the 2024 Finance Agreement and for the November 2024 exchange to have such effect.<sup>40</sup> I respectfully disagree.
63. From both legal and factual standpoints, and as elaborated below, the exchanges between the United Kingdom and Rwanda, together with the earlier draft iterations of the relevant instruments contemplated for exchange, fall well short of demonstrating clearly and convincingly any unequivocal intention on Rwanda's part to be legally bound by that process so as to forgo, fully and definitively, any entitlement to further ETIF payments without any consideration.
64. Under Article 13(b) of the VCLT, the circumstances in which the exchange was effected bear directly upon whether a concurrence of wills as to its binding nature may be established.<sup>41</sup>
65. That said, Rwanda maintains throughout its submissions that the Parties never intended the November 2024 Notes Verbales to constitute a binding amendment to the 2024 Finance Agreement. Rwanda characterises the United Kingdom's note verbale dated 13 November 2024 as no more than a "short political note" devoid of legal effect, relying upon the assertion that Rwanda would never have agreed to forgo payments without consideration in return, which, in its submission, was the DVA, an agreement the Parties had yet to conclude.<sup>42</sup>
66. Conversely, the United Kingdom contends that the circumstances preceding the November 2024 Notes Verbales confirm that the Parties clearly intended the exchange to be binding in nature and to amend the 2024 Finance Agreement. It is the United Kingdom's position that the amendment was never intended to be conditional upon the conclusion of the DVA.<sup>43</sup>
67. Both Parties adduced documentary evidence, including e-mails, drafts of the different notes verbales, and multiple meeting minutes pertaining to the November 2024 exchange. The relevant documents are analysed below.

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<sup>40</sup> Award, paras. 176–197.

<sup>41</sup> See **CLA-7**, O. Corten, P. Klein, V. Koutroulis and A. Lagerwell (eds.), *The Vienna Convention on the Law of Treaties: A Commentary*, (2nd ed., 2025), p. 303; **RLA-14**, *Arbitration regarding the Iron Rhine ("Ijzeren Rijn") Railway*, Award, 24 May 2005, XXVII RIAA 35, para. 142.

<sup>42</sup> Reply, paras. 25–30; Tr. (Day 1), pp. 40:3–70:25; Tr. (Day 3), pp. 282:23–283:7, 301:25–308:16.

<sup>43</sup> Statement of Defence, paras. 139–150; Tr. (Day 2), pp. 152:5–196:21.

68. First, the United Kingdom dispatched to Rwanda a note verbale dated 1 October 2024, which proposed scheduling a meeting to discuss several topics, including the arrangements contemplated in the context of the Agreement's termination.<sup>44</sup>
69. The meeting took place between both Parties on 3 October 2024. The said meeting included several points for discussion, but the most relevant point was the discussions regarding the forgoing of further ETIF payments. This meeting was summarised in the United Kingdom's internal e-mail dated 3 October 2024, which stated the following:

**£50m ETIF Payment due in April 2025 / Diplomatic Visa Arrangements / Airside Transit Visa Waivers**

As expected, these issues appear inextricably interlinked. We talked GoR through the timeline for revoking the Safety of Rwanda Act in order to bring the treaty to an end, and the reasons for needing to do so in the way set out. We then made the case that our desire is not to do so, and highlighted the risk of further negative media coverage of Rwanda, that we wished to avoid. GoR appeared open to agreeing a Notes Verbale confirming that all parties agree that no further ETIF payments are due, however they are clear that they would like to be added to the DVA list in Spring. Specifically they would like this to allow diplomats and those with a service passport (civil servants travelling on official business to transit landside. The 'issue' from GoR perspective was the length of time that it takes to get a visa for individuals who may need to attend UK on an urgent basis.

They further asked to be added to the list of countries eligible for Airside Transit Visa Waivers. At present Rwanda is listed in Schedule 1 of the Immigration (Passenger Transit Visa) Order 2014. That means nationals of Rwanda are required to hold a visa to transit airside. Nationals of Rwanda may be eligible to transit airside without a visa but only if they hold one of the specified exemption documents for airside transit set out in Article 4 of the 2014 Order (these are set out at the end of this email).

...

@Harrison Worrell @Daniel Hobbs (DG Migration and Borders)- is there anything else you think the Home Secretary will need to make a decision on what, if anything, she would like to offer in exchange for the £50m Notes Verbale? Once we have a clear position we can formalise our position and seek to get certainty on whether it is agreeable to GoR, or whether we will need to introduce SoRA repeal in the next two weeks.<sup>45</sup>

70. Having considered the above, and given the fact that this is an internal e-mail among United Kingdom officials, a few issues merit highlighting. First, the title of that section includes both the payments under the ETIF and the DVA. Second, according to the United Kingdom's own understanding of the meeting, the United Kingdom acknowledged that Rwanda's position is that the DVA and the forgoing of further ETIF payments are "inextricably linked", and that Rwanda was open to forgoing further ETIF payments but they needed the DVA in return. This shows

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<sup>44</sup> R-14, United Kingdom's Note Verbale 166/2024, 1 October 2024.

<sup>45</sup> R-15, E-mail from Richard Williams to John Brocklehurst et al, "READOUT: Negotiations with the Government of Rwanda", 3 October 2024.

clearly that Rwanda had no intention to forgo further ETIF payments for no consideration, and this appeared to be understood by the United Kingdom.

71. Moving forward, on 8 October 2024, a Rwandan official had a meeting with the British High Commissioner, and the content was documented in an internal e-mail among Rwanda’s officials. This reads as follows:

2. The High Commissioner informed me that after consulting London, the UK Home Secretary wishes to negotiate a diplomatic visa waiver agreement with Rwanda. In return, Rwanda would not seek any further payments under the MEDP. This arrangement, she explained, would give the Home Secretary more time to introduce the legal process required to repeal the Rwanda Act as part of a broader migration policy package. Without such an agreement, the legal process would need to be submitted to the UK Parliament by next Friday to meet the deadline of 12th January 12, 2025, and issue a formal termination notification.

3. I asked for further details about the proposed visa waiver, and she clarified that it would apply only to diplomatic passport holders. The waiver would be biometric-free, without fees, and limited to 100 passports per year.

4. The High Commissioner emphasized that the UK government would like to have a written confirmation of Rwanda’s position, though a verbal confirmation would be acceptable given the sensitivity of the matter.<sup>46</sup>

72. This e-mail further supports the view that Rwanda never had the intention to forgo the further ETIF payments without the DVA in return. Rwanda’s use of the words “not seek further payments” rather than “forgo payments” is interesting, and appears to imply a possibility to halt the payment until a full agreement is reached.

73. Quite interestingly, and in further support of the absence of a clear understanding and agreement to forgo all further ETIF payments, Rwanda’s further contemporaneous internal e-mail dated 9 October 2024 refers to not pursuing the third £50 million payment in exchange for a diplomatic visa waiver agreement. It does not refer to not pursuing the second £50 million payment.<sup>47</sup>

74. On 10 October 2024, the United Kingdom Home Secretary had a call with Rwanda’s Foreign Minister to further discuss the ETIF payments and the DVA. While both Parties appear to have different contemporaneous understandings of the meeting, which further reflects the absence of a common intention to forgo ETIF payments for no consideration, the common factor between both

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<sup>46</sup> C-43, E-mail from Grace Nyinawumuntu to Olivier Nduhungirehe et al, “Report of the meeting with the UK HC”, 8 October 2024.

<sup>47</sup> Rwanda in an internal e-mail dated 9 October 2024 expressly stated that: “I would like to invite you to a follow-up meeting on the UK MEDP Treaty termination timeline including a request by the UK that we do not pursue the third £50 million payment under the MEDP in exchange for a diplomatic visa waiver agreement with Rwanda”; see C-44, E-mail from Olivier Nduhungirehe to Emmanuel Ugirashebuja et al, “Invitation to a meeting on the UK MEDP | Tomorrow at 11h30”, 9 October 2024 (emphasis added).

Parties' understandings is that forgoing further ETIF payments and the DVA are linked and addressed together.<sup>48</sup>

75. Rwanda's contemporaneous internal minutes referred to several points which included, *inter alia*, the following:

3. On the MEDP, she explained the long and complex legislative process to repeal the Rwanda Safety Act, which is the legal instrument in the UK of the MEDP. In this respect, given the delays that the process in Parliament could take, YC reiterated UK's request for a commitment of Rwanda to not seek the payment of the £50M, due in April 2025.

4. In this regards, Minister recalled that Rwanda was always motivated by good faith, and that we entered into a migration partnership with a State, not a government. He assured that Rwanda will, in principle, not pursue that payment, provided that the UK follows the right legal procedure. He then asked YC what kind of legal formality and documentation the UK will provide to move forward.

5. As a response, YC expressed the UK's interest in signing a note verbale requesting Rwanda to forgo the £50M payment, to which we will respond by a note verbale accepting it. In this respect, the UK will send us a draft in morning, so that we can provide our inputs. She added that, to show the strong partnership with Rwanda, the UK is willing to facilitate visa waivers for up to 100 diplomatic passports per year.

...

8. Regarding next steps, the UK will share for review a draft note verbale on ceasing financial arrangements, which once approved from our side, would be legally binding for both parties. We will consult MINIJUST on the draft to provide comments. The UK hopes to sign it this week.<sup>49</sup>

76. The salient points include Rwanda's *in-principle* (not final and not definitive) readiness not to pursue further payments under the ETIF, but only on the condition that the United Kingdom follows the right legal procedure, and the United Kingdom's expression of reciprocal willingness to facilitate visa waivers for up to 100 diplomatic passports per year. At a minimum, this demonstrates that any forgoing of further ETIF payments was envisaged not as a stand-alone concession, but as one element of a broader, negotiated package encompassing other matters, most notably the DVA.

77. The majority of the Tribunal considers that these exchanges reflect that "an understanding was reached at the Ministerial level between the United Kingdom Home Secretary and Rwanda's Foreign Minister about the way to proceed in addressing the United Kingdom's request and what

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<sup>48</sup> R-16, E-mail from Richard Williams to Simon Ridley et al, "READOUT: Home Secretary / Minister Nduhungirehe (GoR) bilat", 10 October 2024; C-42, Rwandan Government, "Report: Phone call with the UK Home Secretary", 10 October 2024.

<sup>49</sup> C-42, Rwandan Government, "Report: Phone call with the UK Home Secretary", 10 October 2024.

the legal consequences would be if the text of the United Kingdom’s note verbale was reviewed by Rwanda and responded to with an acceptance of the request”.<sup>50</sup> I respectfully disagree.

78. My reading of those exchanges, without confining the analysis to the 10 October 2024 call, is that, at a minimum, Rwanda made it abundantly clear that it would not forgo further ETIF payments without reciprocal consideration. That understanding is reinforced by the United Kingdom’s own contemporaneous expectation, in an internal e-mail dated 3 October 2024, where the United Kingdom described the DVA and the question of forgoing further ETIF payments as “inextricably interlinked”.<sup>51</sup> Any contrary suggestion would be divorced from practical reality and cannot be squared with the contemporaneous record, as set out above.
79. The Parties subsequently exchanged a number of e-mails and drafts of their notes verbales. At first, the United Kingdom provided a new draft that aimed at replacing the 2024 Finance Agreement and sought to remove any obligation to pay any further ETIF amounts,<sup>52</sup> but Rwanda expressed concerns and did not accept this draft. It stated the following:

Dear David and All,

Thank you for your patience while we reviewed the NV.

The proposed NV introduces significant changes that raise concerns for us and diverge considerably from our prior understandings.

To address this gap, Rwanda will propose amendments to the Financial NV, agreeing to halt the ETIF payment schedule and clarifying the continuation of responsibilities in anticipation of the UK’s formal termination notice. Introducing any new elements that haven’t been previously discussed would be problematic at this point.<sup>53</sup>

80. This subsequent e-mail clearly shows that the Parties never intended for the note verbale to include a final, definitive and unconditional forgoing of payments under the ETIF without the DVA. Rwanda showed its intention of merely “halt[ing] the ETIF payment[s]” rather than forgoing it in anticipation of the formal termination notice. The United Kingdom responded

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<sup>50</sup> Award, para. 182.

<sup>51</sup> **R-15**, E-mail from Richard Williams to John Brocklehurst et al, “READOUT: Negotiations with the Government of Rwanda”, 3 October 2024; **C-43**, E-mail from Grace Nyinawumuntu to Olivier Nduhungirehe et al, “Report of the meeting with the UK HC”, 8 October 2024.

<sup>52</sup> **R-18**, E-mail from David Rinnert to Clementine Mukeka et al, “For GoR comments following Ministerial call last night: Draft Finance NV”, 11 October 2024; **R-19**, Attachment: “NV re finances for termination RW comments”, 11 October 2024; **R-20**, E-mail from Grace Nyinawumuntu to David Rinnert et al, “RE: For GoR comments following Ministerial call last night: Draft Finance NV”, 11 October 2024; **R-21**, E-mail from Richard Williams to Grace Nyinawumuntu et al, “RE: For GoR comments following Ministerial call last night: Draft Finance NV”, 11 October 2024.

<sup>53</sup> **R-22**, E-mail from Grace Nyinawumuntu to David Rinnert et al, “Re: For GoR comments following Ministerial call last night: Draft Finance NV”, 15 October 2024.

positively to this e-mail showing the Parties' understanding of the purpose of the note verbale which is, at best, halting the payments rather than forgoing the same:

Dear Grace,

We are grateful for your continued engagement on this matter and are happy to agree to the proposal being framed in the way you most helpfully set out.

The attached changes we have made are designed primarily to meet certain audit and scrutiny requirements on the UK side ....<sup>54</sup>

81. Thereafter, Rwanda transmitted to the United Kingdom a series of revised drafts of the proposed note verbale. Although those drafts omitted the express statement that the instrument was non-binding, they nonetheless stated explicitly, at paragraph 2.3, that payments under the ETIF were to be “halted”<sup>55</sup> pending the United Kingdom’s issuance of a formal notice of termination to Rwanda. That framing is telling: it indicates that Rwanda did not envisage a definitive forgoing of further ETIF payments, but rather a temporary suspension pending the conclusion of a broader, negotiated package—one that included, in particular, matters relating to the DVA and the issuance of a formal notice of termination.
82. In this respect, the majority of the Tribunal is of the view that, as per paragraph 2.3 of the draft note verbale, Rwanda showed a clear intention for the exchange of notes to amend the 2024 Finance Agreement in respect of the obligations under the ETIF.<sup>56</sup> I respectfully disagree.
83. First, pursuant to Rwanda’s e-mail dated 15 October 2024, Rwanda showed its clear intention of not forgoing the payments as it informed the United Kingdom that the proposed draft “diverge[s] considerably from our prior understandings”.<sup>57</sup> Things cannot be clearer.
84. Secondly, paragraph 2.3 of the draft note verbale expressly mentions that the ETIF payments are to be merely halted rather than totally waived.<sup>58</sup> This change of wording further highlights that Rwanda had no final, definitive and unconditional intention to forgo the payments but rather to halt same, pending the conclusion of a package deal on termination, including the DVA.

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<sup>54</sup> **R-24**, E-mail from David Rinnert to Grace Nyinawumuntu et al, “RE: For GoR comments following Ministerial call last night: Draft Finance NV”, 16 October 2024.

<sup>55</sup> **R-23**, Attachment: “Draft NV ON MEDP October 2024 (Rwanda side) (1)”, 15 October 2024, para. 2.3.1; **R-27**, Attachment: “Draft NV ON MEDP October 2024 (Rwanda side) UK comments updated after instructions v3”, 22 October 2024, para. 2.3.1.

<sup>56</sup> Award, paras. 186–189.

<sup>57</sup> **R-22**, E-mail from Grace Nyinawumuntu to David Rinnert et al, “Re: For GoR comments following Ministerial call last night: Draft Finance NV”, 15 October 2024.

<sup>58</sup> **R-23**, Attachment: “Draft NV ON MEDP October 2024 (Rwanda side) (1)”, 15 October 2024, para. 2.3.1; **R-27**, Attachment: “Draft NV ON MEDP October 2024 (Rwanda side) UK comments updated after instructions v3”, 22 October 2024, para. 2.3.1.

85. Accordingly, in light of this contemporaneous record and taking all circumstances into consideration, it is not possible to infer a clear and unequivocal concurrence of wills or even an intention on the part of Rwanda under the November 2024 Notes Verbales to forgo further ETIF payments for nothing.
86. Nothing in the October 2024 exchanges indicates any meeting of minds or concurrence of wills that the notes verbales were intended to operate as an amendment to the 2024 Finance Agreement so as to waive further ETIF payments. On the contrary, the contemporaneous record is replete with evidence that Rwanda's position remained consistent throughout: it did not contemplate forgoing ETIF payments unless and until a final agreement on the DVA was reached and the United Kingdom had issued a formal notice of termination.
87. Subsequently, on 6 November 2024, the United Kingdom sent Rwanda an important e-mail alongside a draft note verbale. This e-mail included the following:

Dear Grace and Isabelle,

As discussed in the meeting with the Foreign Minister this afternoon please see attached copies of the two new proposed documents from our UK Home Office Colleagues:

- A short political NV
- A technical annex to the NV (which as Ali explained covers the things we need covered for our legislative process)

As Ali mentioned, there is a lot of urgency to get this concluded due to the UK legislative timetable. So we would welcome your feedback at the earliest opportunity and please don't hesitate to call if there is anything that needs redrafting from the Government of Rwanda perspective.<sup>59</sup>

88. A careful review of this e-mail brings two points into sharp focus. First, the United Kingdom clearly shifted its approach by expressly characterising the note verbale as a *political* NV rather than a legal instrument intended, of itself, to create binding obligations. Secondly, the United Kingdom moved away from the "full agreement" model it had contemplated in October, and instead proposed a Technical Annex.
89. In this respect, the majority of the Tribunal expresses the following view in the Award:

There were no reservations or limitations expressed. Rwanda just informed the United Kingdom that 'the proposed arrangements are acceptable' to its Government. The understanding of the majority of the Tribunal is that the proposed arrangements are those discussed earlier through several exchanges by the Parties and formulated in the British High Commission's note verbale on 13 November 2024 and its Technical Annex. Rwanda then accepted that the '£50 million due in April 2025 and April 2026 in accordance with paragraph 2.3.1 and 2.3.2 of the Finance Note will not be paid and that the Finance Note is accordingly amended'. In the view of the majority of the Tribunal, Rwanda through its note verbale of

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<sup>59</sup> R-29, E-mail from Jennifer Stockill to Grace Nyinawumuntu et al, "Draft NVs for UK", 6 November 2024.

14 November 2024 consented to amend paragraph 2.3.1 and 2.3.2 of the 2024 Finance Agreement and to forgo any additional payments by the United Kingdom in April 2025 and April 2026.<sup>60</sup>

90. I respectfully disagree with this analysis.
91. First, as regards the view that Rwanda introduced no limitations or reservations in either the draft note verbale or the note verbale dated 14 November 2024, that in fact supports the conclusion that the instrument was intended to be political in nature as expressly characterised and represented by the United Kingdom in its 6 November 2024 cover e-mail.<sup>61</sup> Rwanda cannot fairly be criticised for proceeding on the basis of the United Kingdom’s own stated framing. It therefore makes complete sense that Rwanda did not append formal reservations or limitations to what was presented as a purely political communication, rather than a legally binding agreement. That same context also accounts for the absence, in Rwanda’s note verbale dated 14 November 2024, of the three-fold confirmation referred to above, and which distinctly characterised the 2024 Finance Agreement concluded through the exchanged June 2024 notes verbales.
92. Secondly, a comparison between the United Kingdom’s draft note verbale and the version revised by Rwanda is striking. Rwanda deliberately excised language that connoted agreement and legal obligation: for example, it replaced “hereby agreed” with “respectfully requests”, and recast “[t]his diplomatic agreement is underpinned” as “[t]his request is supported by”.<sup>62</sup> Those amendments cannot sensibly be treated as cosmetic. They are fully consistent with Rwanda’s approach in the October 2024 drafts, and they underscore a sustained and coherent position: Rwanda regarded the November 2024 exchange not as a free-standing legal amendment of existing obligations, but as a political exchange situated within a broader package of negotiations, ultimately envisaging a formal termination agreement, and any non-payment of further ETIF amounts only in the context of reciprocal consideration, notably an agreed DVA.
93. Thirdly, given Rwanda’s notable edits that are not merely cosmetic, it is clear that any indication that Rwanda was content for the United Kingdom to send its proposed note verbale dated 13 November 2024 cannot be construed as an acceptance of an offer, still less acceptance of terms that had not yet been transmitted and evaluated at the receiving end. Properly understood, it amounts only to an acknowledgment that Rwanda was ready to receive the United Kingdom’s

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<sup>60</sup> Award, para. 196.

<sup>61</sup> **R-29**, E-mail from Jennifer Stockill to Grace Nyinawumuntu et al, “Draft NVs for UK”, 6 November 2024.

<sup>62</sup> **R-30**, Attachment: “DRAFT Note Verbale”, 6 October 2024; **R-31**, Attachment: “DRAFT technical annex NV”, 6 November 2024; **R-36**, Attachment: “DRAFT Note Verbale (Rwanda inputs)”, 12 November 2024.

request and proposals for its consideration, particularly given the United Kingdom's earlier characterisation of the instrument as a "political NV".

94. All being considered, it is clear that the circumstances preceding the termination of the Agreement provide neither clear nor convincing evidence of concurrence of wills between the Parties. On the contrary, Rwanda's position throughout that period was consistent: it did not regard the notes verbales as a binding legal agreement that finally extinguishes the United Kingdom's obligation to make further ETIF payments against nothing.

### **3. The Parties' Subsequent Conduct**

95. It is common ground between the Parties that one of the accepted extrinsic methods of establishing intention under Article 13(b) is the Parties' subsequent conduct following the exchange of notes. However, the role of this is to simply unveil an earlier agreement not to create one where none exists.
96. The United Kingdom contends that the Parties' subsequent conduct evinces their intention to be bound by the November 2024 exchange, relying principally upon Rwanda's note verbale dated 25 February 2025 and multiple WhatsApp messages.<sup>63</sup>
97. Rwanda, on the contrary, maintains that the subsequent conduct of the Parties indicates unequivocally that neither Party intended the November 2024 Notes Verbales to amend the 2024 Finance Agreement. In its defence, Rwanda relies upon its note verbale dated 25 February 2025, which featured a unilateral rescission of the note verbale dated 14 November 2024.<sup>64</sup>
98. The majority of the Tribunal is of the view that the Parties' subsequent actions confirm that the Parties intended for the November 2024 Notes Verbales to amend the 2024 Finance Agreement.<sup>65</sup> I respectfully disagree.
99. First, the United Kingdom relies on its own e-mail of 15 November 2024 stating that "the Note Verbale [is] agreed and signed".<sup>66</sup> This e-mail records the United Kingdom's own understanding; it says nothing about Rwanda's position, nor does it help with the distinct question of whether the November 2024 Notes Verbales were intended to vary the 2024 Finance Agreement. Nor can Rwanda's silence in response to that e-mail—viewed against the Parties' practice and the

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<sup>63</sup> Statement of Defence, paras. 152–154; *see* Tr. (Day 2), pp. 215:6–220:18.

<sup>64</sup> Reply, paras. 31–37; *see* Tr. (Day 1), pp. 72:7–76:17; *see also* Tr. (Day 3), pp. 297:15–299:21.

<sup>65</sup> Award, paras. 198–202.

<sup>66</sup> **R-39**, E-mail from Kristian Armstrong to Clementine Mukeka et al, "RE: Closing off the Note Verbale", 15 November 2024.

contemporaneous record—be elevated to a deemed acceptance that the November 2024 Notes Verbales amended the 2024 Finance Agreement, such that further ETIF payments are forgone against nothing. If anything, the absence of a reply is consistent with Rwanda’s approach of proceeding on the basis of the United Kingdom’s characterisation of the note as political in nature just one week earlier,<sup>67</sup> and with Rwanda’s continuing understanding and expectation that the wider, interlinked DVA, together with the termination steps remained to be finalised. Indeed, the penultimate line of the 15 November 2024 e-mail expressly refers to the DVA proposal, reinforcing Rwanda’s understanding that any agreement to forgo further ETIF payments was contingent upon reaching a comprehensive final deal, including on the DVA, as borne out by the contemporaneous evidence.

100. Secondly, while the United Kingdom also relies on multiple WhatsApp messages from one of its officials to an official of Rwanda dated 16 and 20 January 2025, those messages relate to the further arrangements related to the termination of the Agreement, specifically the arrangements of the four volunteers and the financial report for implementing the Agreement.<sup>68</sup> Those messages do not indicate that Rwanda considers that the exchange of the November 2024 Notes Verbales constitute a binding agreement that varies the 2024 Finance Agreement. On the contrary, they confirm that there remain final details to discuss to close the Agreement, which supports Rwanda’s view that the November 2024 exchange had a political connotation and was part of a greater deal. Thus, the discussions and negotiations between Parties were still ongoing.
101. Thirdly, and regarding Rwanda’s rescission of the note verbale dated 25 February 2025, the entirety of the United Kingdom’s argument revolves around the assertion that the act of rescission by Rwanda is in itself demonstrative of Rwanda’s understanding that the November 2024 exchange was binding, otherwise there would be no need for rescission in the first place.<sup>69</sup>
102. To carefully consider the matter, it is worth recalling that the note verbale dated 25 February 2025 states the following:

The Ministry of Foreign Affairs and International Cooperation of the Republic of Rwanda presents its compliments to the High Commission of the United Kingdom of Great Britain and Northern Ireland to the Republic of Rwanda, and has the honour to refer to the Ministry’s Note Verbale 8520 /09.16/North. E/24, dated 14 November 2024, which conveyed that the proposed arrangements from the Government of the United Kingdom to forgo any additional

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<sup>67</sup> **R-29**, E-mail from Jennifer Stockill to Grace Nyinawumuntu et al, “Draft NVs for UK”, 6 November 2024.

<sup>68</sup> **R-40**, Communication via WhatsApp from Jennifer Stockill to Grace Nyinawumuntu, 16 January 2025; **R-41**, Communications via WhatsApp between Jennifer Stockill and Grace Nyinawumuntu, 20 January 2025.

<sup>69</sup> See Tr. (Day 2), pp. 218:8–219:20.

payments under the Economic Transformation and Integration Fund were acceptable to the Government of the Republic of Rwanda.

The Ministry of Foreign Affairs and International Cooperation now has the honour to inform the High Commission that the proposed arrangements, as outlined in the Technical Annex to Note Verbale 182/2024, are not acceptable to the Government of the Republic of Rwanda. As a result, the previous arrangements outlined in the aforementioned Note Verbale, dated 14 November 2024, are hereby rescinded. Rwanda and the United Kingdom remain bound by the arrangements as contained in the bilateral agreement for the Provision of an Asylum Partnership Agreement to strengthen shared international commitments on the protection of refugees and migrants, along with its associated annexes and notes verbales.<sup>70</sup>

103. The majority of the Tribunal is of the view that it was not possible to withdraw that consent given more than three months earlier, nor to unilaterally rescind the agreement made through the November 2024 Notes Verbales. The majority of the Tribunal adds that it would only be possible to amend this agreement through a new agreement by the Parties, through their mutual consent, but not unilaterally.<sup>71</sup> The majority of the Tribunal also reasons that:

It was only when the United Kingdom, in a statement issued following the visit of its Foreign Secretary to the Democratic Republic of the Congo and Rwanda, called for ‘the withdrawal of all Rwanda Defence Forces from Congolese territory’ and announced certain measures to be taken against Rwanda,<sup>72</sup> that Rwanda sent the United Kingdom High Commission the note verbale on 25 February 2025 informing the latter that ‘the proposed arrangements, as outlined in the Technical Annex to Note Verbale 182/2024, are not acceptable to the Government of the Republic of Rwanda’.<sup>73</sup>

104. I respectfully disagree.
105. First, any insinuation that the United Kingdom’s press release and/or measures regarding the Democratic Republic of the Congo’s situation motivated Rwanda’s note verbale dated 25 February 2025 finds no support in the evidence on record. There are also no witness statements that support this understanding or finding. Thus, this should not have any bearing on the Tribunal’s analysis and determination which ought to be exclusively grounded in the factual and legal matrix of the case.
106. Secondly, the majority of the Tribunal’s view is premised on an earlier finding that the November 2024 Notes Verbales actually amended the 2024 Finance Agreement. As previously stated, an *ex post facto* use of the word “rescind” cannot magically create consent or concurrence of wills

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<sup>70</sup> C-31, Rwanda’s Note Verbale 1499/09.16/North. E/25, 25 February 2025.

<sup>71</sup> Award, para. 201.

<sup>72</sup> R-43, United Kingdom Government, Press Release, “UK Statement on response to the situation in Eastern DRC”, 25 February 2025. The measures announced were the following: 1. Cease high-level attendance at events hosted by the Government of Rwanda; 2. Limit trade promotion activity with Rwanda; 3. Pause direct bilateral financial aid to the Government of Rwanda, excluding support to the poorest and most vulnerable; 4. Coordinate with partners on potential new sanctions designations; 5. Suspend future defence training assistance to Rwanda; 6. Review export licences for the Rwanda Defence Force.

<sup>73</sup> Award, para. 200.

retroactively, especially when (a) the specific and only instruments of consent pleaded in this case are the November 2024 Notes Verbales,<sup>74</sup> (b) the Parties' practice in respect of the June 2024 notes verbales has been conspicuously different;<sup>75</sup> (c) the United Kingdom has expressly referred to its note as a "political NV" in its e-mail of 6 November 2024;<sup>76</sup> (d) the United Kingdom's own understanding and expectation were that the issue of forgoing further ETIF payments and the DVA were "inextricably linked";<sup>77</sup> and (e) Rwanda's intentions and consistent conduct all throughout the Parties' exchanges were reflective of an understanding that Rwanda did not contemplate forgoing further ETIF payments unless and until a final agreement on the DVA was reached and the United Kingdom had issued a formal notice of termination.

107. Thus, if no concurrence of wills takes place and is established at the point in time of exchanging the November 2024 Notes Verbales, there can be no basis to ascribe to the word "rescind" the specific and exclusive legal connotation advanced in the majority's Award.
108. Thirdly, the mere reliance on the word "rescind" within a note verbale, drafted by diplomats, does not in itself denote contract rescission, especially since diplomatic communications often transcend strict legal connotations. Linguistically, "rescind" stems from a broader etymology rooted in the notion of withdrawal, and, as stated above, this can apply to unilateral statements, bilateral or multilateral agreements, and/or other stances and decisions—each resonating with layers of intent and context. Thus, when deployed in diplomatic language, "rescind" unfolds as a multifaceted act, one that beckons careful interpretation of the underlying will of the parties, not merely through the narrow lens of legal finality, but through the broader context of diplomatic communications.
109. Fourthly, even on the assumption that "rescind" implies the revocation of an agreement which requires consent by the other side, this in the specific context of the present case and its factual matrix must be considered in the context of the continuing negotiations and discussions between the Parties regarding the DVA and the other steps needed to terminate the Agreement, which were not yet concluded at the time of the note verbale of 25 February 2025. Accordingly, if the final, unequivocal and unconditional agreement has not yet been concluded, the rescission of an earlier stance requires no consent from the other party when this forms part of the ongoing negotiations and discussions.

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<sup>74</sup> See para. 40 above.

<sup>75</sup> See paras. 60–61 above.

<sup>76</sup> See paras. 87–88 above.

<sup>77</sup> See para. 70 above.

110. Fifthly, as for the argument that the first paragraph of Rwanda’s note verbale dated 25 February 2025 refers to the “proposed arrangements” referred to in its note verbale of 14 November 2024 and includes the forgoing of the further ETIF payments,<sup>78</sup> I refer to my second and fourth reasons and comments above. I also add that this argument does not meet the threshold of clear and convincing evidence of the Parties’ concurrence of wills at the time of exchanging the November 2024 Notes Verbales. Interpreting treaties or agreements between sovereigns should be done in accordance with the *contemporaneity principle*, meaning that words should be interpreted in accordance with their ordinary meaning at the time of the conclusion of the treaty or agreement not afterwards. As previously discussed,<sup>79</sup> regarding the proposed “arrangements” at the time of the exchange of the November 2024 Notes Verbales, it cannot be disputed that the word “arrangements” only featured in paragraph 2 of the Technical Annex and not the paragraph referring to the United Kingdom’s request to forgo further ETIF payments, which Rwanda only acknowledged but did not accept.<sup>80</sup>
111. In the light of all the above, neither the exchanges or communications between the Parties prior to Rwanda’s note verbale of 25 February 2025, nor Rwanda’s reference to rescission in the very same note represent consistent or clear subsequent actions by the Parties showing consent to be bound by a contended agreement that is purported to have amended the 2024 Finance Agreement. Accordingly, the record does not demonstrate that the Parties’ subsequent conduct evinces the existence of a prior agreement through the November 2024 Notes Verbales.
112. It is also worth recalling that, as already established by the ICJ in *Gabon v. Equatorial Guinea*, great weight is to be afforded to the subsequent conduct of the Parties if it is clear and consistent over a period of time.<sup>81</sup> In the specificities of the present case, there is no clear and consistent conduct along the lines suggested by the United Kingdom, and there is no sufficient period of time to glean the existence of consistent conduct from. To the contrary, the exchanges and the communications between the Parties, as well as their past practice and their own internal e-mails prior to Rwanda’s note verbale dated 25 February 2025 demonstrate the absence of concurrence of wills in respect of an agreement to forgo further ETIF payments against no consideration.

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<sup>78</sup> Tr. (Day 2), pp. 216:16–218:24.

<sup>79</sup> See paras. 26–31 above.

<sup>80</sup> **C-29**, United Kingdom’s Note Verbale 182/2024, 13 November 2024; **C-30**, Rwanda’s Note Verbale 8520/09.16/North. E/24, 14 November 2024.

<sup>81</sup> **RLA-34**, *Land and Maritime Delimitation and Sovereignty over Islands (Gabon/Equatorial Guinea)*, Judgment, 19 May 2025, 2025 ICJ Rep. 179, para. 91.

113. By and large, in light of all the above, it is clear that Article 13(b) of the VCLT is not applicable, and the positions exchanged through the November 2024 Notes Verbales do not support a finding that there is clear and convincing evidence of established consent to forgo further ETIF payments against no consideration. The Parties' past practice, the relevant circumstances, and their subsequent conduct do not evidence concurrence of wills between the United Kingdom and Rwanda in this respect. Thus, I am of the view that the November 2024 Notes Verbales do not qualify as an agreement to vary or amend the 2024 Finance Agreement.

### **III. THE UNITED KINGDOM'S ESTOPPEL DEFENCE**

114. Given that the majority of the Tribunal finds in favour of the United Kingdom on the principal claim that the 2024 Finance Agreement was validly amended by virtue of the November 2024 Notes Verbales, they considered that there is no need to address the United Kingdom's alternative defence of preclusion.

115. On my part, given that I consider that the November 2024 Notes Verbales did not vary or amend the 2024 Finance Agreement, I am therefore compelled to address the United Kingdom's preclusion defence. Specifically, the issue is whether Rwanda, by virtue of its actions, is estopped or precluded from invoking and relying on the 2024 Finance Agreement to claim the ETIF payments for Years 2 and 3 under the Agreement.

116. I will first address the applicable legal standard and then I will analyse the Parties' arguments in respect of estoppel or the United Kingdom's preclusion defence.

#### **A. THE APPLICABLE REQUIREMENTS AND STANDARD**

117. Preclusion or estoppel is a legal doctrine that is imported from municipal law with a wide recognition in the realm of public international law. This principle entails that a representation of fact or truth, through an act or declaration, made by one party precludes that party from denying said fact or truth in certain circumstances to the detriment of the other party that relied on the same.

118. According to the ICJ in *Cameroon v. Nigeria*, in order for a party to establish estoppel against another party, it must establish the following:

An estoppel would only arise if by its acts or declarations Cameroon had consistently made it fully clear that it had agreed to settle the boundary dispute submitted to the Court by

bilateral avenues alone. It would further be necessary that, by relying on such an attitude, Nigeria had changed position to its own detriment or had suffered some prejudice[.]<sup>82</sup>

119. Accordingly, when assessing estoppel, one must take into consideration several requirements.
120. First, the party to be precluded must have made clear and consistent acts or declarations to the other party.
121. Secondly, the other party must have relied on said acts or declarations.
122. Thirdly, the reliance of the other party would have caused it prejudice if the representing party was allowed to renege on its past and consistent acts or declarations.
123. In respect of the burden of proof, it is well established that the burden of proof lies with the party invoking the estoppel or preclusion defence.<sup>83</sup>
124. As to the general standard of proof for estoppel, the *South China Sea Arbitration* tribunal ruled that: “Estoppel may be invoked where (a) a State has made clear and consistent representations, by word, conduct, or silence; ...”.<sup>84</sup> Accordingly, the representation, through words, acts, and/or omissions, must be fully clear, consistent and unequivocal in representing the State’s position.<sup>85</sup>
125. Moreover, the ICJ in the case of *Malaysia v. Singapore* ruled that in order to establish reliance, the party invoking it must prove a distinct act of reliance by it on such representation:

Regarding the second submission, the Court points out that a party relying on an estoppel must show, among other things, that it has taken distinct acts in reliance on the other party’s statement (North Sea Continental Shelf, Judgment, I.C.J. Reports 1969, p. 26, para. 30). The Court observes that Singapore did not point to any such acts. To the contrary, it acknowledges in its Reply that, after receiving the letter, it had no reason to change its behaviour; the actions after 1953 to which it refers were a continuation and development of the actions it had taken over the previous century.<sup>86</sup>

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<sup>82</sup> **RLA-11**, *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria)*, Preliminary Objections, Judgment, 18 June 1998, 1998 ICJ Rep. 275, para. 57; see also **RLA-23**, *South China Sea Arbitration (Philippines v. China)*, Award on Jurisdiction and Admissibility, 29 October 2015, XXXIII RIAA 1, paras. 250–252; **CLA-9**, *North Sea Continental Shelf (Federal Republic of Germany/Denmark)*, Judgment, 20 February 1969, 1969 ICJ Rep. 3, para. 30.

<sup>83</sup> See *Chevron Corporation and Texaco Petroleum Company v. The Republic of Ecuador (I)*, Final Award, 31 August 2011, PCA Case No. 2007-02/AA277, paras. 138–142; see also *Pac Rim Cayman LLC v. The Republic of El Salvador*, Award, 14 October 2016, ICSID Case No. ARB/09/12, para. 8.48.

<sup>84</sup> **RLA-23**, *South China Sea Arbitration (Philippines v. China)*, Award on Jurisdiction and Admissibility, 29 October 2015, XXXIII RIAA 1, para. 250.

<sup>85</sup> See *Duke Energy International Peru Investments No. 1 Ltd. v. Republic of Peru*, Award, 18 August 2008, ICSID Case No. ARB/03/28, para. 249.

<sup>86</sup> See *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)*, 23 May 2008, ICJ Rep. 12, para. 228; see also **CLA-9**, *North Sea Continental Shelf (Federal Republic of Germany/Denmark)*, 20 February 1969, 1969 ICJ Rep. 3, para. 30.

126. Accordingly, distinct acts of reliance are required, such that the mere continuation of a prior conduct or understanding would not qualify as distinct acts of reliance.

## **B. THE ANALYSIS**

127. In its defence, the United Kingdom invoked estoppel on the understanding that Rwanda made a clear and consistent representation, through its note verbale dated 14 November 2024, that it forgoes further ETIF payments, and that the United Kingdom relied on this by “refraining from exercising its right unilaterally to terminate the Asylum Partnership Agreement, and thus the 2024 Finance Agreement including its payment obligations, before the ETIF payment for ‘Year 2’ fell due”.<sup>87</sup>

128. Rwanda, on the other hand, submits that it never made a clear or consistent representation to the United Kingdom regarding the forgoing of further ETIF payments. Rwanda argues that: “The doctrine of estoppel requires ‘clear and consistent acceptance’ ... In any event, the Parties went through several drafts, and Rwanda rejected the UK’s proposed terms on several occasions. This confirms that there is anything but clear and consistent acceptance”.<sup>88</sup>

129. Having carefully reviewed the Parties’ submissions and the evidence on record, I will focus my analysis below on whether or not all the requirements of estoppel are met in the instant case.

### **1. The Clear and Consistent Representation**

130. The United Kingdom, in its estoppel defence, relies on two incidents which, in its opinion, constitute a clear and consistent representation by Rwanda. The first is Rwanda’s note verbale dated 14 November 2024, mentioning that the proposed arrangements are acceptable, and the second is Rwanda’s non-response to the United Kingdom’s e-mail dated 15 November 2024 mentioning that the notes are agreed and signed.<sup>89</sup>

131. Regarding the first incident, my detailed analysis and view as set out in this Opinion show that the note verbale dated 14 November 2024 does not evince Rwanda’s unequivocal acceptance to forgo further ETIF payments. Thus, there is no clear and consistent representation by Rwanda in this respect.

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<sup>87</sup> Statement of Defence, para. 155.

<sup>88</sup> Reply, para. 38.

<sup>89</sup> Statement of Defence, para. 155(a); Tr. (Day 2), pp. 221:10–223:6.

132. In respect of the second incident, which the United Kingdom refers to as reinforcing the first incident,<sup>90</sup> I am of the view that this e-mail does not support the United Kingdom's estoppel defence. As stated above,<sup>91</sup> this e-mail records the United Kingdom's own understanding; it says nothing about Rwanda's position. Rwanda's silence in response to that e-mail, when considered in the context of the Parties' practice and the contemporaneous record, cannot be treated as a deemed acceptance or a reinforcement of a representation that the November 2024 Notes Verbales amended the 2024 Finance Agreement, such that further ETIF payments are forgone against nothing. The absence of a reply does not negate or change Rwanda's consistent approach of proceeding on the basis of the United Kingdom's characterisation of the note as political in nature just one week earlier.<sup>92</sup> This is also consistent with Rwanda's continuing understanding and expectation that the wider, interlinked DVA, together with the termination steps remained to be finalised. Furthermore, the penultimate line of the United Kingdom's e-mail dated 15 November 2024 expressly refers to the DVA proposal,<sup>93</sup> which reinforces Rwanda's understanding that any agreement to forgo further ETIF payments was contingent upon reaching a comprehensive final deal, including on the DVA, as borne out by the contemporaneous evidence.
133. Accordingly, neither Rwanda's note verbale dated 14 November 2024 nor the United Kingdom's e-mail dated 15 November 2024 amount to a clear and consistent representation by Rwanda as to its position of forgoing any and all further payments under the 2024 Finance Agreement.

## 2. The Reliance

134. In respect of the "reliance" requirement, it presupposes the existence of a "representation". While it is my considered view that Rwanda made no such representation through the note verbale dated 14 November 2024 or by not responding to the United Kingdom's e-mail dated 15 November 2024, and so no reliance can be invoked, I will assume, *only for the purpose of completing my analysis*, that Rwanda made a clear and consistent representation to the United Kingdom regarding the forgoing of further payments under the 2024 Finance Agreement just to be in a position to address the reliance requirement.
135. In its submissions, the United Kingdom states that its reliance is manifested through "refraining from exercising its right unilaterally to terminate the Asylum Partnership Agreement, and thus the 2024 Finance Agreement including its payment obligations, before the ETIF payment for 'Year

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<sup>90</sup> Statement of Defence, para. 155.

<sup>91</sup> See para. 99 above.

<sup>92</sup> **R-29**, E-mail from Jennifer Stockill to Grace Nyinawumuntu et al, "Draft NVs for UK", 6 November 2024.

<sup>93</sup> **R-39**, E-mail from Kristian Armstrong to Clementine Mukeka et al, "RE: Closing off the Note Verbale", 15 November 2024.

2<sup>o</sup> fell due”,<sup>94</sup> and/or that it did not accelerate its legislative process to terminate the Agreement before any amounts fall due.<sup>95</sup>

136. In its submissions, Rwanda asserts that there was no reliance, and that it was the United Kingdom that elected not to accelerate its legislative process to terminate the Agreement for internal political reasons not due to any alleged representations by Rwanda.<sup>96</sup> Rwanda expressly concluded its arguments on the issue of reliance by stating that: “Ultimately, whatever political calculus laid behind the United Kingdom’s decision not to terminate, the choice was entirely its own. It fell to the United Kingdom to weigh the political benefits of delay against the legal risks that delay entailed”.<sup>97</sup>
137. Having considered the Parties’ written and oral submissions, the evidence on record, and also the responses to the Tribunal’s question posed in respect of the reason underlying the lengthy termination process which took approximately 18 months,<sup>98</sup> it is worth recalling the United Kingdom’s response to the Tribunal’s question. The United Kingdom stated as follows:

The answer to that is it was the legislative process. The piece of legislation known as the Border Security Asylum and Immigration Act of 2025 came into force on 2 December 2025. That’s at R-50 in the record. The entry into force date is on the first page of the exhibit. The relevant section is Section 40 on page 36. That’s the one that repealed the Safety of Rwanda Act, which was being seen as the domestic impediment to termination of the treaty on the international plane. Fourteen days after that statute came into force, the United Kingdom issued notice to Rwanda of termination of the treaty.

The Tribunal will see that the December 2025 legislation covered a wide range of matters. The Tribunal is aware from the discussions between the parties in 2024, in the late part of 2024, that the United Kingdom had made Rwanda aware of the choice between legislation in the near term dealing solely with the repeal of the Safety of Rwanda Act, together with prompt termination of the notice of treaty. That was the first option. Or the second option was the Safety of Rwanda Act being repealed as one small part of broader legislation but on the slower timetable of that broader legislation, with delayed formal termination notification pursuant to the treaty, and at the same time, because of that delay, an agreement in the interim that Rwanda would forgo any further ETIF payments. The parties together chose that second option.<sup>99</sup>

138. Having also considered Rwanda’s response to the same question and its position that this was exclusively the United Kingdom’s choice and that it fell to the United Kingdom to weigh the political benefits of delay against the legal risks that the delay in the legislative process of

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<sup>94</sup> Statement of Defence, para. 155(b).

<sup>95</sup> Tr. (Day 2), p. 223:7–19.

<sup>96</sup> Tr. (Day 3), pp. 280:5–282:22.

<sup>97</sup> Tr. (Day 3), p. 282:17–22.

<sup>98</sup> **C-28**, United Kingdom’s Note Verbale 111/2024, 8 July 2024.

<sup>99</sup> Tr. (Day 3), pp. 333:24–336:6.

terminating the Agreement entailed,<sup>100</sup> it appears to be common ground that the legislative process in the United Kingdom is quite lengthy and takes time, but the United Kingdom argues that accelerating that process could have been an option if the 2024 Finance Agreement was not amended through the exchange of the November 2024 Notes Verbales.

139. However, it is not clear what acceleration measures could have been taken and whether they could have been taken. Also, there is no evidence on record (a) to support a finding other than the reason underlying the delay in terminating the Agreement being the lengthy legislative process; and (b) to prove that the United Kingdom's approach regarding the realistic timing of termination would have been different or that it would have actually pursued a different course of action, in case the 2024 Finance Agreement was not amended through the exchange of the November 2024 Notes Verbales. There is also no clear and convincing evidence that the United Kingdom relied on Rwanda's alleged representation as pleaded and addressed above, noting that I had already addressed the absence of that representation in the first place.
140. It is also noted that the United Kingdom took no step and did not pursue a different course of action either before or even after the receipt of Rwanda's note verbale of 25 February 2025, even though a risk did exist that payments may fall due under the ETIF if the United Kingdom's interpretation of the November 2024 Notes Verbales proved to be incorrect.
141. All the above indicates the absence of reliance by the United Kingdom on Rwanda's alleged representation. There is no clear and convincing evidence to support a finding that there is a distinct act of reliance.

### **3. The Prejudice**

142. Having considered the Parties' submissions in respect of prejudice, it is clear that the United Kingdom's prejudice is that the 2025 ETIF payment fell due before the official termination of the Agreement,<sup>101</sup> and it is also clear that Rwanda's position is that it never made a clear and consistent representation to forgo further ETIF payments under the 2024 Finance Agreement and that there was no reliance, hence there can be no prejudice to the United Kingdom, noting that it was the United Kingdom that elected not to accelerate its legislative process for internal political reasons.<sup>102</sup>

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<sup>100</sup> Tr. (Day 3), pp. 280:5–282:22.

<sup>101</sup> Statement of Defence, para. 155(b).

<sup>102</sup> Tr. (Day 3), pp. 280:5–282:22.

143. In respect of the asserted prejudice, I am of the view that what the United Kingdom submits can indeed qualify as a possible financial prejudice, but, as stated above, this is fully dependent on establishing that there is both a “representation” and a “reliance”, and I had already concluded that there is neither. Thus, there can be no prejudice.
144. Moreover, as already stated above, the United Kingdom neither took protective steps nor pursued an alternative course—whether before, or indeed after, receiving Rwanda’s note verbale of 25 February 2025—despite the risk that further ETIF payments might yet fall due if the United Kingdom’s interpretation of the November 2024 Notes Verbales proved to be incorrect.<sup>103</sup>
145. Thus, in those circumstances, that risk can hardly be said to have been a decisive impediment, and the United Kingdom must be taken to have understood and appreciated that it may be required to make further ETIF payments until the termination of the Agreement takes effect. This severs any direct causal link between the contended prejudice and Rwanda’s conduct.
146. Accordingly, and for the reasons set out above, I consider that the United Kingdom’s estoppel (or preclusion) defence cannot succeed. It cannot operate to bar Rwanda from claiming the Year 2 ETIF payment under the 2024 Finance Agreement, which fell due prior to the termination of the Agreement. This entitlement to the Year 2 ETIF payment is addressed further below.

#### **IV. WHETHER OR NOT RWANDA IS ENTITLED TO FURTHER ETIF PAYMENTS UNDER THE 2024 FINANCE AGREEMENT**

147. The majority of the Tribunal dismisses all of Rwanda’s claims and so it finds that no amounts are due to Rwanda under the 2024 Finance Agreement. This is on the premise that the 2024 Finance Agreement was validly amended by the exchange of the November 2024 Notes Verbales. As stated above, and for the reasons set out in this Opinion, I respectfully disagree.
148. I am of the view that (a) the 2024 Finance Agreement was not amended by the exchange of the November 2024 Notes Verbales; and (b) the United Kingdom’s estoppel (or preclusion) defence cannot succeed to bar Rwanda from claiming any sum that fell due under the 2024 Finance Agreement prior to the termination of the Agreement.
149. Thus, I will proceed with analysis to ascertain whether and to what extent certain amounts are due and payable under the 2024 Finance Agreement.

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<sup>103</sup> See para. 140 above.

150. In its submissions, Rwanda requested the full payment for Years 2 and 3 under the 2024 Finance Agreement, and submitted that the termination of the Agreement took effect after the 2026 calendar year had started. This, on Rwanda's case, makes both payments due according to the 2024 Finance Agreement.<sup>104</sup>
151. On the other hand, the United Kingdom claims that Year 2 is not due and payable as the November 2024 Notes Verbales constitute a binding amendment of the 2024 Finance Agreement, and, in all circumstances, Year 3 is not due and payable as the Agreement was terminated and that termination was effective as of March 2026, and the Year 3 payment was set to fall due on 23 April 2026. Thus, the termination took place and was effective before any Year 3 amounts fell due.<sup>105</sup>
152. Accordingly, in analysing any amounts due to Rwanda under the 2024 Finance Agreement, which in my considered view was not amended by the November 2024 Notes Verbales, I will address the following: (a) the Year 2 payment status under the 2024 Finance Agreement; and (b) the Year 3 payment status under the same.

**A. THE YEAR 2 PAYMENT STATUS**

153. Pursuant to paragraph 2.3 of the 2024 Finance Agreement, the amounts due under the ETIF and their respective due dates are established as follows:

2.3.1 The payment schedule for the Economic Transformation and Integration Fund are intended to be annual payments totalling:

- Year 1: £50million
- Year 2: £50million
- Year 3: £50million

2.3.2 Year 1 has been paid. Year 2 and year 3 payments will be due annually within 10 days of 13th April in each year. In the event of a pause to the operation of the Agreement resulting from a court order, as provided for in Articles 23(2) and 23(3) of the Agreement, the payment dates for the purpose of this paragraph may be deferred by the duration of the pause.<sup>106</sup>

154. Moreover, paragraph 5 of the 2024 Finance Agreement covers the amounts due in the event of termination of the Agreement and states the following:

5.1 This Note Verbale will cease to have effect at the same time as the Agreement.

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<sup>104</sup> Statement of Claim, para. 93; Tr. (Day 1), pp. 102:22–107:1; Tr. (Day 3), pp. 310:1–311:7.

<sup>105</sup> Statement of Defence, paras. 158–168; Tr. (Day 2), pp. 225:9–230:1.

<sup>106</sup> C-22, 2024 Finance Note, paras. 2.3.1–2.3.2.

5.2 If cessation is initiated by the United Kingdom and takes place after the Economic Transformation and Integration Fund has been paid for that year, no monies in respect of that year's payment would be recoverable. The United Kingdom would continue to honour payments relating to Relocated Individuals already transferred as part of the asylum partnership. After cessation of the Agreement, no payments of the Economic Transformation and Integration Fund will be payable for subsequent years.<sup>107</sup>

155. Thus, the date of termination is plainly material to determining what amounts, if any, remain due and payable. In this case, the United Kingdom served its notice of termination of the Agreement on Rwanda on 16 December 2025.<sup>108</sup> Under the Agreement, termination takes effect three months after notice is given, with the result that the effective date of termination is 16 March 2026.<sup>109</sup>

156. Against that timeline, and taking into account that the Year 2 payment fell due on 13 April 2025, it is my view that the Year 2 ETIF amount of £50 million is due and payable to Rwanda. That obligation crystallised well before termination took effect by approximately eight months.

#### **B. THE YEAR 3 PAYMENT STATUS**

157. In respect of the Year 3 ETIF payment, Rwanda argues that this amount is also due and payable. In Rwanda's submissions, paragraph 5.2 of the 2024 Finance Agreement provides that, where termination is initiated by the United Kingdom, no further payments are to be made in respect of "subsequent years". Rwanda submits that, in this context, "year" bears its ordinary meaning of a *calendar year*, a construction it says accords with the Agreement as a whole. Rwanda further emphasises that the phrase "subsequent years" is not capitalised and therefore cannot properly be read as a cross-reference to the defined "Years" in the ETIF payment schedule, which are understood to run from 13 April in each year.<sup>110</sup>

158. The United Kingdom, by contrast, submits that termination took effect on 16 March 2026, whereas the Year 3 payment would not have fallen due until 13 April 2026. On that basis, the United Kingdom contends that no amount is payable in respect of Year 3, as the relevant payment obligation had not crystallised before the Agreement came to an end. The United Kingdom further argues that the phrase "subsequent year" must be construed by reference to the ETIF payment schedule, under which each "Year" is defined as commencing on 13 April of the relevant calendar

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<sup>107</sup> C-22, 2024 Finance Note, paras. 5.1–5.2.

<sup>108</sup> C-35, United Kingdom's Note Verbale 159/2025, 16 December 2025.

<sup>109</sup> C-19, Asylum Partnership Agreement, art. 23.

<sup>110</sup> Statement of Claim, paras. 93(d)–(e); Reply, paras. 39–43.

year. Accordingly, in the United Kingdom's submission, the Year 3 payment falls outside the scope of any payment obligation surviving termination.<sup>111</sup>

159. In my view, a proper construction of paragraph 5.2 of the 2024 Finance Agreement requires that it be read in its broader contractual and factual context, including by reference to the Agreement, the earlier MoU, and the 2022 Finance Arrangement concluded between the Parties.<sup>112</sup> Both the MoU and the 2022 Finance Arrangement were signed and entered into force on 13 April 2022,<sup>113</sup> thereby marking the commencement of the partnership between the United Kingdom and Rwanda. This understanding is reinforced by Article 23 of the Agreement, which provides for termination on 13 April 2027. Taken together, these instruments demonstrate that, within the framework of the Agreement, the Parties consistently treated 13 April as the relevant annual reference point.<sup>114</sup>
160. It is also appropriate to construe paragraph 5.2 of the 2024 Finance Agreement, which addresses the payment consequences of termination, in conjunction with paragraph 2.3 thereof, which governs the applicable payment schedule and due dates. When paragraph 5.2 is read in that context, the phrase “subsequent years” can only sensibly be understood as referring to years commencing on 13 April, rather than calendar years commencing on 1 January. That interpretation accords not only with the agreed due date for ETIF payments, but also with the wider contractual framework, under which 13 April was the date on which the Partnership itself was inaugurated through the MoU.
161. Rwanda's alternative claim for a *pro rata* calculation in respect of the Year 3 amount is likewise not supported. As a matter of contractual construction, the Parties provided for such a calculation only where termination was initiated by Rwanda, not by the United Kingdom. That mechanism cannot therefore be extended to circumstances for which the Agreement does not provide.<sup>115</sup> In any event, for the reasons set out above, “subsequent years” refers to years commencing on 13 April, not calendar years beginning on 1 January. It follows that Year 3 had not commenced, and no Year 3 payment obligation had fallen due, by the time termination took effect.

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<sup>111</sup> Tr. (Day 3), pp. 345:5–346:23.

<sup>112</sup> C-22, 2024 Finance Note, para. 5.2.

<sup>113</sup> C-9, MoU; C-10, 2022 Finance Arrangement.

<sup>114</sup> C-19, Asylum Partnership Agreement, art. 23.

<sup>115</sup> C-22, 2024 Finance Note, para. 5.3.

162. Accordingly, the Year 3 ETIF payment is not payable to Rwanda, whether in whole or in part. The Agreement terminated before any payment obligation in respect of Year 3 had crystallised, and there is no contractual basis for either a full payment or a *pro rata* allocation of that payment.

## V. RWANDA'S CLAIM UNDER ARTICLE 18 OF THE AGREEMENT

163. Article 18 of the Agreement states that “[t]he Parties shall make financial arrangements in support of the relocation of individuals under this Agreement”.<sup>116</sup>

164. While I concur, in principle, with my co-arbitrators’ conclusion dismissing Rwanda’s claims that the United Kingdom breached Article 18 of the Partnership Agreement, I reach that conclusion on different grounds.

165. The majority of the Tribunal finds that the 2024 Finance Agreement was validly amended by the November 2024 Notes Verbales, and, in light of the United Kingdom’s July 2024 notification to Rwanda that no further relocations to Rwanda would be undertaken, the majority considers it “out of touch with reality” to conclude that the United Kingdom remained under an obligation to enter into new financial arrangements.<sup>117</sup> I disagree with the finding that the 2024 Finance Agreement was validly amended by the November 2024 Notes Verbales. I have already explained that there was no concurrence of wills in respect of the exchanged November 2024 Notes Verbales and so the 2024 Finance Agreement stands unamended and in effect until the United Kingdom notified Rwanda of its termination on 16 December 2025, which took effect on 16 March 2026.

166. For the purpose of my analysis and view in respect of Article 18 of the Agreement, it is worth recalling that: (a) Rwanda in its Reply submits that “[t]he breach of Article 18 would be a live issue only in the event of the Tribunal concluding that the obligation to pay in the 2024 Finance Note was extinguished with binding effect in November 2024”,<sup>118</sup> and (b) Rwanda in its oral submissions asserted that “the breach of Article 18 case arises really only as a sort of ‘further in the alternative’ scenario”.<sup>119</sup>

167. Thus, Rwanda considers that claim to be relevant if a finding is made that the 2024 Finance Agreement has been amended or extinguished. I do not make that finding.

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<sup>116</sup> C-19, Asylum Partnership Agreement, art. 18.

<sup>117</sup> Award, paras. 203–204.

<sup>118</sup> Reply, para. 44.

<sup>119</sup> Tr. (Day 1), pp. 108:25–109:2.

168. Accordingly, I support the view that the obligation under Article 18 of the Agreement has been discharged by concluding the 2024 Finance Agreement through the June 2024 notes verbales, whereby the Parties agreed upon the relevant financial arrangements.<sup>120</sup> It is on this basis that Rwanda's claim alleging a breach of Article 18 cannot be upheld and does not constitute a live issue.
169. As stated above, this conclusion rests on my finding that the November 2024 Notes Verbales did not amend the 2024 Finance Agreement, with the result that the 2024 Finance Agreement remained in force from 21 June 2024 until the effective date of termination of the Agreement on 16 March 2026.<sup>121</sup>
170. Accordingly, I am of the view that Rwanda is entitled to the Year 2 ETIF payment amounting to £50 million, and so Rwanda's alternative claim alleging a breach of Article 18 of the Partnership Agreement cannot succeed.

## VI. CONCLUDING REMARKS

171. The edifice of treaty law rests upon the cardinal and sacred distinction between a State's political and/or in principle willingness to entertain a proposition and its unequivocal juridical consent to be bound by one. To elide that distinction is to erode the very foundation upon which sovereign consent is constructed and concurrence of sovereign wills established. The exchange of the November 2024 Notes Verbales, when carefully considered under Article 13 of the VCLT and in the context of the contemporaneous evidentiary record, the Parties' past practice and the very wording of the November 2024 Notes Verbales, evinces nothing more than an acknowledgment of the United Kingdom's request and an acceptance to conclude certain reciprocal obligations in the context of a wider arrangement to terminate the Agreement. Nothing in the November 2024 Notes Verbales bears the hallmarks of a final, unequivocal and unconditional expression of consent to forgo ETIF payments without consideration.
172. Where the instruments themselves are equivocal, and where the contemporaneous record, including the United Kingdom's own characterisation, on 6 November 2024, of its note verbale as a "political NV", reinforces that equivocality, it is not possible to supply the consent that the Parties themselves did not furnish. Accordingly, I am of the view that the 2024 Finance Agreement remained unamended and in force until the effective date of termination on 16 March 2026, and

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<sup>120</sup> C-22, 2024 Finance Note; *See also* C-23, Rwanda's Note Verbale 051/09.16/North. E/24, 21 June 2024.

<sup>121</sup> C-35, United Kingdom's Note Verbale 159/2025, 16 December 2025.

that the Year 2 ETIF payment of £50 million crystallised as a binding obligation due and payable by the United Kingdom to Rwanda.

173. This conclusion leverages the powerful textual comparison between the mirror-image June 2024 exchange and the materially divergent November 2024 exchange. Consent ought to be measured against the yardstick of the Parties' own established practice. In the present case, the yardstick is plain: in June 2024, barely five months before the exchange at issue, the Parties concluded the 2024 Finance Agreement through notes verbales that fully mirrored one another. Rwanda provided the three-fold confirmation the United Kingdom itself had stipulated: it confirmed the acceptability of the proposed arrangements, it recorded the Parties' understanding, and it specified an effective date. By any metric, the November 2024 Notes Verbales stand in stark and irreconcilable contrast to this established paradigm. Rwanda neither confirmed a shared understanding, nor mentioned an effective date, nor reproduced the full wording of the Technical Annex. These differences are not merely linguistic or stylistic; they are substantive, and they evince a clear unwillingness on Rwanda's part to accord the two sets of instruments equal legal standing.
174. When a sovereign conspicuously departs from a form of expression it had employed only months earlier to signify binding consent, that departure should not be ignored. To do so would be to subordinate the text to an inference drawn from ambiguity, and thereby to set a precedent that diminishes the standard Article 13 of the VCLT was designed to safeguard.
175. Moreover, where two sovereign States have committed, through a Technical Annex annexed to their own exchange of instruments, to "continue to discuss arrangements for formal termination ... including financial arrangements related to termination"<sup>122</sup> neither may be heard to say that the obligation to discuss has been extinguished by the very instrument that created it.
176. Accordingly, and for the reasons set forth in this Opinion, I respectfully dissent from the majority's conclusions on Rwanda's Financial Arrangements Claim, and I provide separate reasons for dismissing Rwanda's alternative claim under Article 18 of the Agreement. However, I concur with the majority of the Tribunal on other issues, including in respect of the Article 19 claim.
177. In my considered view, the Award ought to have rendered the following dispositions: (a) declared that the November 2024 Notes Verbales did not constitute a binding amendment of the 2024 Finance Agreement—the concurrence of wills required under Article 13 of the VCLT being

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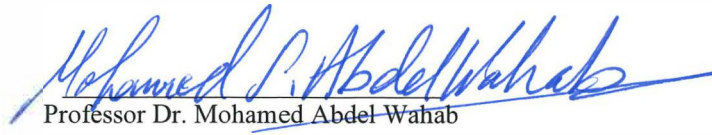
<sup>122</sup> **R-31**, Attachment: "DRAFT technical annex NV", 6 November 2024.

manifestly absent; and (b) declared that the sum of £50 million in respect of the Year 2 ETIF payment remains due and payable to Rwanda.

178. Be that as it may, I will say in closing that it stands as a testament to the strength of the international legal order that both Rwanda and the United Kingdom chose to entrust their dispute to the disciplined framework of international arbitration. In doing so, both sovereigns reaffirm the vital principle that even amidst complex geopolitical tensions that plague the world, States willingly submit to the rule of law. This choice is not merely procedural; it is profoundly symbolic. It reflects a world where reason triumphs over discord, and where the rule of law operates as a shared language of peace that transcends political divides. This belief and confidence in the functionality and operability of the international legal order affirms that justice, peace, diplomacy and law remain the hallmarks of human progress.

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Done at The Hague, this 15th day of May 2026,

  
Professor Dr. Mohamed Abdel Wahab