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The PRESIDENT: Please be seated. Mr. Cahier.

Mr. CAHIER: Mr. President, Members of the Court, it is not without emotion that an international jurist pleads before you, and I wish to tell you that it is an honour and a privilege for me to appear before the Court in this case between Libya and Chad.

The task falling to me today is to examine the period from 1919 to the conclusion of the 1935 Treaty between Italy and France. The period is fairly fertile in events since treaties were concluded between the protagonists of our history, Great Britain, France and Italy, States which engaged in negotiations on an ever larger scale. I nevertheless have no desire to overtax your attention, for two reasons. First, Libya and Chad have dwelt on those events at some length in their pleadings and, second, they have hardly modified the existing situation in regard to the boundary delimitation that is the subject of the dispute before you.

But what was the situation in 1919? My colleagues speaking earlier have demonstrated to you that, between the French and Italian colonial possessions in Libya, the boundary was not delimited apart from the line from the Mediterranean to Ghadamès. All the rest of the boundary line was uncertainty, even if France and Italy thought they had rights in the region, but rights not expressed precisely and which deserved to be, for the sake of arriving at a genuine delimitation of the boundary. The situation was to be completed by the conclusion, in 1915, of a more precise instrument, namely the London Agreement that provided for some colonial compensation for Italy. In 1919, therefore, the war was over, the allies had won and it might have been supposed that in that great global negotiation leading to the Treaty of Versailles France would

attempt, in the light of the London Agreement, to delimit that Libyan boundary with Italy. As we have seen, negotiations no doubt took place in May 1919, but the French proposals (described as scanty by Tittoni, the Italian Minister for Foreign Affairs in his speech to Parliament on 29 September 1919) proved insufficient and certainly not such as might compensate the effort made by Italy in the war fought side by side with the Allies.

That, Gentlemen, is the legal landscape we discover when - if you will allow me the expression - the curtain rose in 1919. From the chronological point of view, we should first examine the Treaty between Great Britain and France, since it was concluded on 8 September 1919, while that between France and Italy came on 12 September 1919. The reason I prefer to deal with the second before the first is that the latter hardly concerns the present dispute. The point is that its preamble indicates that it was concluded in pursuance of Article 13 of the Treaty of London and that its purpose was "determination" of the boundary between Tripolitania and the French possessions of Africa in the sector from Ghadamès to Toummo, a sector not featuring in the present dispute.

I wish moreover to emphasize the term employed in Article 1 of that Agreement, namely *fixing* of the boundary. This proves once more what the Libyan Government has always argued: that in this sector there was no boundary delimited since, otherwise, the term used would not have been *fixing* but *modification*.

12 That Exchange of Notes being extremely precise and perfectly clear (the Court will find the text in the Memorial of Libya, International Accords and Agreements, Ann. 18), there would be no cause to dwell on it

if the opposing party had not, in accordance with a method rather to its liking, striven to give it a meaning that in no way derives from the text.

Chad considers, in the first place, that the 1919 Treaty, deciding that Toummo constitutes the south-westward end-point of Libya, confirms Italy's acceptance of the boundary of Tripolitania shown on the map appended to the Anglo-French Declaration of 1899 (MC, p. 203).

That assertion is surprising, to say the least. The 1919 Agreement contains no reference to the map. Now, the Treaty cannot confirm something that it does not mention.

What is more, needless to recall, the map was not appended to the 1899 Declaration.

As my colleague, Mr. Sohier, has indicated, that map did not in any way and could not establish a boundary, particularly since none of the Parties to the Agreement had a sovereign right over the territory.

But the imagination of our honourable opponents is fertile indeed when they assert that it can be deduced from the 1919 Agreement that, from Toummo, the boundary forms a bend as it runs north-eastward and cuts the Tropic of Cancer at longitude 16° East of Greenwich, that is, the starting point of the Anglo-French limit of 1899 (MC, p. 201, and CMC, p. 355).

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I have read and re-read the Franco-Italian Agreement of 1919 several times and have failed to find the slightest indication of a boundary delimitation east of Toummo. It is not even a matter of being able to say that a text does not have to be construed when it is clear; in this case there is quite simply no text to construe. The delimitation of the boundary goes from Ghadamès to Toummo and stops there.

Beyond that point everything remains to be done. The Treaty itself recognizes this when stating that:

"the Government of His Majesty the King of Italy and the Government of the Republic have reached an agreement on the following points, while reserving other points for future consideration".

Those "other points" necessarily concerned delimitation of the boundary to the east of Toummo since the Agreement makes no mention of it and it was the only part remaining to be delimited, the part between Ghadamès and the Mediterranean having been delimited in 1910.

According to the Government of Chad, the 1919 Agreement, by being set in the context of the compensation promised to Italy in Article 13 of the Treaty of London, shows that Italy recognized the territorial *status quo*, even though questioning it politically (MC, pp. 201-202). That assertion is hardly correct. Italy did not recognize the territorial *status quo*, for it was heir - as the Libyan pleadings have shown - to the rights of the Ottoman Empire in the region. That being said, those rights were not clearly established and did not enable a boundary to be precisely delimited. There consequently existed a territorial dispute between France and Italy in the region, as moreover recognized in Article 13 of the Treaty of London.

14 For, after mentioning the principle of compensation in favour of Italy, it adds:

"particularly as regards the settlement in her favour of the questions relative to the frontiers of the Italian colonies of Eritrea, Somaliland and Libya and the neighbouring colonies belonging to France and Great Britain".

If precise frontiers had existed at the time, the Treaty would of course not have mentioned "questions relative to the frontiers"; it would have sufficed to insert the principle of compensation in regard to

frontiers. If the Treaty cites "questions relative to the frontiers", this is because some frontiers have yet to be delimited and there is uncertainty about the rights of the Parties in some regions.

15 The purpose of Article 13 of the Treaty of London was therefore to enable Italy, when delimitation was effected, to rely thereon in order to obtain a boundary line to its advantage and, in the event of doubt as to the reciprocal rights of the Parties, to have such rights established in its favour. Hence Italy, in the negotiations within the Supreme Allied Council and its Commission, adopted the compensation stance. Those negotiations, it must be added, occupied only four meetings held, to be precise, on 15, 19, 28 and 30 May 1919. It is hard to see how, in such a short space of time, the Parties could have engaged in an in-depth legal examination of their respective rights in the region.

What it came to in reality was a *global political negotiation*, and the fact that Italy sought a mandate over Togo proves this. Now by adopting a political stance, that based on Article 13 of the Treaty of London, Italy did not renounce any of its rights and it did not legally recognize any *status quo*. If it could reach an agreement, so much the better, as happened with the 1919 Treaty for the Ghadamès-Toummo boundary line; if not, too bad. Italy was subsequently to negotiate, as the 1919 Treaty moreover indicates, "while reserving other points for future consideration".

It is in this way that the Commission understood it since in its report, after mentioning the Italian rejection of the French proposals regarding the boundary of Libya, it adds: "Italy thereby intends to keep the African colonial question open between it and France." (ML, Italian Archives Annex, p. 28). That being so, inasmuch as Article 13 of the Treaty of London had not been fully applied - as the French Government realized since an internal note of the French Ministry for Foreign

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Affairs states that "Italy will always be able to rely on Article 13 of the Treaty of London, a terrain on which it is very difficult to refuse to talk" (MC, Ann. 148) - the situation regarding the southern boundary of Libya was not modified by the 1919 Treaty between France and Italy. There were no boundaries separating the two colonial Powers before 1919; nor were there any in 1919. Italy and France each retained any rights they had in the region, but from 1915 onwards Italy possessed a further right, that arising from Article 13 of the Treaty of London.

The only effect, therefore, of the September 1919 Treaty was to delimit the boundary in the Ghadamès-Toummo sector and nothing else. Seeking to give it a consequence on the southern boundary is forcing reality, for there is nothing of the sort in the text or the context, or in the circumstances of the Treaty's negotiation.

While I have been able to be brief as regards consideration of the 1919 Treaty between France and Italy, I must dwell at greater length on the Treaty of 8 September 1919 concluded between Great Britain and France. A curious treaty it was since it concerned the southern boundary of Libya and so was bound to encroach on Italy's rights, or at the very least on the rights that Italy believed it possessed in the region. Italy was not associated with or even informed of the existence of that Agreement, which was - to say the least - improper and unfriendly since it was directly concerned by its object. That proves that the two Parties cannot have had clear consciences about Italy. A funny way it was of applying the Treaty of London, and strange "compensation"!

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For a full grasp of the scope of that Treaty, we must go back a moment to the 1899 Declaration. It will be recalled that, according to its Article 2, the course of the boundary of French territory could not in any event go beyond the 23rd degree of longitude. On this point, the 1919 Agreement extends that boundary to the 24th degree of longitude.

That part of the Agreement is now shown on the screen (text No. 59 of the green file).

Its geographical effect can be seen on Map No. 58.

But what is more, Article 3 of the 1899 Declaration provided that, north of the 15th parallel, the French zone would be limited by a line which, running from the intersection of the Tropic of Cancer and the 16th degree of longitude, would descend south-eastward as far as the 24th degree of longitude, which it would follow as far as its junction north of the 15th parallel. Now, according to the 1919 Agreement, and by way of interpretation, that line would take a south-eastward direction as far as the 24th degree of longitude, at the point of intersection with the latitude 19°30' N. That passage of the Treaty can now be seen on the screen (text No. 61 of the green file).

The difference between the 15th parallel and that of 19°30' is not insignificant. Map No. 28, which is in your file and now appears on the screen, shows the line resulting from the 1899 Declaration, that given in the *Yellow Book*, and that of 1919. The difference between these lines is striking. Furthermore, that line which in 1899 strictly followed a south-east orientation becomes in 1919 an east-south-east line.

According to Chad, the line resulting from the 1919 Agreement differs not at all, or very little, from that of the 1899 Declaration. Furthermore, the 1919 Agreement is claimed to do no more than construe the 1899 Declaration, which is said to result from the treaty passages I have just shown you. Two assertions, two errors: one of fact, the other of law.

Let us first take the error of fact, namely that the frontier line resulting from the 1899 Declaration is supposedly identical, or almost so, to that deriving from the 1919 Treaty. Examination of the map before you (Map 28) shows that there is a considerable divergence between the

1899 line and that of 1919. More concretely, the new boundary line (CML, p. 185) has the effect of according France a territory of some 180,000 km², which is equivalent to the combined areas of Switzerland, the Netherlands, Belgium and Austria. Admittedly we are talking about desert territories and, when set against the immensity of the African continent, the size of the above European territories pales into insignificance. All the same, a sizeable chunk of territory is involved and it is hard to understand how, in the face of the most elementary truth, Chad can assert that the 1899 line is equivalent, or almost so, to that of 1919. The figures are there.

Chad further claims that the 1919 Treaty construes that of 1899. I have nothing against that assertion, in that two States may, by way of authentic interpretation, modify a treaty. But that of course only holds good in the case of their mutual relations. Legally speaking, the whole reasoning is flawed when applied to third States.

The principle of the relative effect of treaties, whether or not interpretative, is well established in international law. It has always been recognized in authoritative legal opinion and confirmed in international case-law. Examining the effects of the 1898 Treaty of Paris, concluded between Spain and the United States, Max Huber, in his famous arbitral Award in the *Island of Palmas* case, stated that:

"it is evident that whatever may be the right construction of a treaty, it cannot be interpreted as disposing of the rights of independent third Powers." (RIAA, Vol. II, p. 842.)

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The principle derives from that of the independence and equality of States, which has so often been recognized in many resolutions of the General Assembly of the United Nations. It is moreover reaffirmed in Article 34 of the 1969 Vienna Convention on the Law of Treaties.

And if there is one provision of the 1969 Convention that codifies a customary rule, it is well and truly that one.

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The rule of the relative effect of treaties is not questioned on the other side of the bar; our colleagues representing the Government of Chad are too good jurists for that. On the other hand, they contend, and on this point they cannot be followed, that the delimitation resulting from the 1919 Agreement was opposable to Italy, while recognizing that the latter State was in a third-party position vis-à-vis that Agreement.

I shall try to summarize their reasoning as faithfully as possible. First, this opposability is claimed to result from the fact that the 1919 boundary line was similar to that of 1899 recognized by Italy. Now the Libyan Government has put paid to that assertion. The two lines differ, I repeat, considerably.

The Government of Chad then argues that, even if the lines differ, that of 1919 is still opposable to Italy. I have some difficulty on this point in following the reasoning of our opponents.

The first argument still derives from the alleged recognition by Italy of the Anglo-French Agreement of 1899. My colleague Walter Sohler has refuted that assertion and there is no need to revert to the matter.

According to the second argument, Turkey possessed no sovereign right outside the limits of Tripolitania, so that it could not transfer to Italy rights it did not enjoy (RC, p. 59).

Libya has argued on various occasions, and will show again, that the Porte possessed at the time rights that went beyond the limits of Tripolitania. But in any case, if the Court - as we believe it - will arrive at the conclusion that the 1955 Treaty between Libya and France did not delimit Libya's southern boundary, it will be for it, in its duty of delimitation, to determine the rights of Turkey in the region. The Government of Chad moreover recognizes the existence of an Ottoman presence in 1908 (RC, p. 64), and it is a fact that at that time no French troops were present.

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There can be no doubt - and this is not questioned by our opponents (RC, p. 59) - that by the Treaty of Ouchy of 15 and 18 October 1912 Italy succeeded to Turkey in respect of its territorial rights over the territory that was to become Libya. No doubt the Turkish rights, still not being precise, could lend themselves to discussion and negotiation, but what is certain is that neither France nor Great Britain was entitled in 1919, by an agreement between them, to dispose of the rights that Italy possessed as the successor State. In no way could the 1919 Treaty be opposable to Italy, which was unaware of it and which, as soon as it learnt of it, constantly rejected it.

Probably conscious of the fragility of its argument, the Government of Chad developed a new one in its Reply (p. 56). According to this new argument, Article 16 of the 1923 Treaty of Lausanne sanctioned the renunciation by Turkey of all rights and title whatsoever over or respecting the territories situated outside the boundaries laid down in the Treaty. Again, according to Chad:

"this renunciation was not intended only for Italy; it also relates to the British Empire and France, likewise Parties to the Treaty. From this it can be concluded that Turkey's improbable rights to the territory occupied by France have, in any event, been extinguished just as are those it could have had in respect of the British or Italian colonies including, in the latter case, Libya" (RC, p. 59, para. 2.60),

and the Reply adds that the 1912 Treaty, ending the war between Italy and Turkey, was *res inter alios acta* as against France and Great Britain, creating no obligation towards those two countries.

22 Even if it had two crutches to hold it up, this argument would not stay on its feet. First of all, it is beyond dispute that the 1912 Treaty of Ouchy had the effect of transferring to Italy Turkey's sovereignty over Libya, even if the boundary of that territory had not been entirely delimited. Not only did the international community of the

time take note of it, but France and subsequently Great Britain also gave it express recognition. The former by means of a unilateral declaration, formulated without any reservation, then through the Agreement with Italy of 28 October 1912 (ML, International Accords and Agreements, Ann. 11).

The two States, France and Great Britain, went back to that recognition through Article 10 of the London Agreement of 1915, which reads:

"All rights and privileges in Libya at present belonging to the Sultan by virtue of the Treaty of Lausanne are transferred to Italy." (ML, Vol. II, Ann. 2, No. 12.)

The recognition by those two States of the Italian rights over Libya arising from the 1912 Treaty is therefore clear and unconditional. It is extraordinary, to say the least, that Chad should today be arguing that that accord was *res inter alios acta* as against Great Britain and France.

To complete this aspect of the problem, I would indicate that Chad's interpretation of Article 16 of the 1923 Treaty of Lausanne is mistaken. For Article 16, as I have already said, provides:

"Turkey hereby renounces all rights and title whatsoever over or respecting the territories situated outside the frontiers laid down in the present Treaty ..."

But what are the frontiers laid down in the present Treaty? They are the boundaries provided for in Article 2 concerning Bulgaria and Greece, and in Article 3 concerning Syria and Iraq; together with the cession of islands in favour of Greece (Art. 12) and Italy (Art. 15).

23 The renunciation of all rights and title by Turkey, given the position of Article 16 in the context of the Treaty, can only concern those territories. There is not a word therein on Libya. That goes without saying because, Turkish sovereignty having been transferred to Italy in 1912, Turkey could not renounce rights it had been without for over ten years.

Continuing our examination of the 1923 Treaty, we see that in Article 22 it contains a provision concerning Libya, which has to be read in conjunction with Article 10 of the London Agreement of 1915. Under the latter, as we have seen, Italy was substituted in Libya to the rights and privileges at present belonging to the Sultan by virtue of the 1912 Treaty of Ouchy.

What is certain is that in 1915 Great Britain and France agree that all the rights of the Ottoman Empire over Libya are transferred to Italy. There is no longer any reservation. And this is a far cry from Chad's interpretation.

There is nevertheless room for conjecture as to what the terms "rights and privileges at present belonging to the Sultan" meant in 1915, since Italy had succeeded to the Ottoman Empire in Libya in 1912. The answer is simple, as the Memorial of Libya and my colleague Professor Condorelli have shown: the 1912 Treaty accorded the Sultan certain privileges. He retained, for example, a personal representative and some authority in religious affairs regarding the Muslims. While, by virtue of the 1915 Treaty, the rights were transferred to Italy, the Treaty of London was obviously not opposable to Turkey. Hence Article 22 of the Treaty of Lausanne of 1923:

24 "Turkey hereby recognises the definite abolition of all rights and privileges whatsoever which she enjoyed in Libya under the Treaty of Lausanne of the 18th October, 1912".

This provision, as we can see, is concerned with recognition of the transfer to Italy of the residual rights that Turkey still possessed in Libya under the 1912 Treaty. As to France and Great Britain, they had already recognized such transfer in 1915. Examination of the relevant instruments thus shows the artificial nature of Chad's legal construction.

In 1919, as in 1923, Italy possessed the full legal title inherited from Turkey. It was therefore legally justified in protesting against the Anglo-French Treaty of 1919, which encroached on its claims. It was moreover to protest on several occasions, as we shall be seeing.

I wish to emphasize, and Chad acknowledges as much (MC, p. 190, para. 182), that this Italian opposition to the 1919 Convention was constantly reiterated until the conclusion in 1935 of the Laval-Mussolini Treaty.

25 This attitude is symptomatic: no State, no government would protest for fourteen years against an agreement which, by virtue of the relative effect of treaties, is not opposable to it if it were not convinced of being quite within its rights. Such justification may arise from either of the following grounds:

(1) First, Italy never recognized the 1899 line beyond which France undertook not to go;

(2) Even if that were the case, the Agreement of 1919 is altogether different from that of 1899.

I consider that, in the interests of a better appreciation of those protests, the reasoning of the Italian Government should be examined, as expressed in its notes of protest.

From the outset, the first Note of the Italian to the French Government, of 12 December 1921, is extremely clear; after showing that the 1919 line is different from that of 1899, it adds:

"The above considerations make it impossible for the Royal Government to recognize the Anglo-French Convention of 1919."
(MC, Anns. 98/99.)

The Italian Note of protest to the British Government of 10 December 1921 was drafted in more or less the same terms (ML, British Archives Annex, p. 137).

That the 1899 line differed from the 1919 one is reaffirmed in a new Italian Note addressed to the French Government on 27 March 1924 (MC, Ann. 104). However, this latter Note goes further, owing to the fact that the 1919 Convention used the term *boundary*.

Chad makes much of the use of this term in the Convention. In its view, if the 1899 Declaration only delimited zones of influence, the 1919 Convention consolidated the proposed line into an actual delimitation of a frontier (MC, p. 193).

26 The result is that this alleged authentic interpretation, in 1919, of the 1899 Declaration had the effect not only of modifying the course of the line indicated, but also of modifying the nature of this line. In 1899, two States recognized their mutual territorial aspirations, but no more than that; in 1919 - again in the opinion of Chad - those two States carried out a genuine territorial partition at the expense of Italy, a third State in relation to this agreement. And today it is maintained that this territorial change and this change in the nature of the 1899 line was opposable to Italy. The latter immediately detected the trap. In its diplomatic Note of 27 March 1924, it stated:

"The Declaration of 21 March 1899 represented nothing more than an apportionment of spheres of influence, whereas the 1919 Convention ... is an actual delimitation of a frontier. The spirit of those two diplomatic documents is accordingly different, and one has to accept that the 1919 Convention fundamentally modified the status quo arising from the Declaration of 1899...

The Government of Italy, for its part, considers itself fully entitled to refrain from recognizing the existence of the Convention of 8 September 1919." (MC, Ann. 105.)

In my view, there is accordingly no possible doubt that Italy recognized neither the change in the course of the line, nor its transformation into a boundary. None of the arguments on which Chad bases its contention that the 1919 boundary line was opposable to Italy stands up to an analysis of the facts.

Consequently, the Government of Chad cannot rely on Italy's alleged acceptance of the line arising out of the 1899 Declaration as resulting in the opposability of the 1919 line, since the latter modifies both the course of the former line and its very nature.

27 The argument that the 1919 Convention does not modify the 1899 Declaration but interprets it according to the original intention of the parties (MC, p. 194) is equally unfounded.

Italy had no reason to be concerned with the parties' intention in concluding the 1899 Declaration, an intention of which it obviously could not be aware, not having participated in its negotiation. Only the text of the Declaration could be of concern to Italy; but this text - whatever may be said about it - in no way foreshadowed that of the 1919 Convention, which - as we have seen - departs from it and is accordingly *res inter alios acta* for Italy.

The Italian point of view was to be reiterated on several occasions, in particular at the time of the French military incursions into Tibesti. In its Note of protest of 19 May 1930 (MC, Ann. 125), the Italian Government reminded the French Government that the latter had, in 1902, recognized that the 1899 Declaration between France and England marked, for the French sphere of influence in relation to Tripolitania and Cyrenaica, a limit which the Government of the Republic did not intend to overstep. This Note reverted to the fact that Italy had never recognized the Convention of 8 September 1919, as it had profoundly modified the 1899 Declaration, both in its legal and in its territorial content. The Note went on to say:

"this point is established without any prejudice whatsoever to the rights arising in Italy's favour out of Article 13 of the Pact of London of ... 1915".

Hence, over the years, the Italian position remained consistent: the Convention of 8 September 1919 is not opposable to it.

28 What did France reply to this? It will come as no surprise to you that the French contention corresponds broadly to that of Chad, as set forth in its pleadings. There were numerous French diplomatic notes in reply to the numerous Italian ones.

The French contention is clearly set forth in the Note of 7 February 1923 (MC, Ann. 102). It first of all refers to the Exchange of Letters of 1 November 1902, in which it is observed that

"one should take the limit to French expansion ... to be the frontier of Tripolitania as shown on the map annexed to the Declaration of 21 March 1899, completing the Franco-British Convention of 14 June 1898".

Furthermore - according to the French Government - the course of the north-eastern line, being indicated by dots, was not a definitive one. This is particularly so since paragraph 3 of the 1899 Declaration, before describing the line, stated: "It is understood, in principle."

It was further the French Government's view that the 1919 Convention in no way modified the provisions of the 1899 Convention, as is apparent from its last paragraph, which says so in so many words. And, after analysing the new line, the Note goes on to say:

"This interpretation, so close to the provisional line on the 1899 map, slightly enlarges the French zone of influence at the expense of the Anglo-Egyptian domain. However, the spirit of the London Declaration of 1899 is respected - and the text of that instrument did provide for that interpretation."

Let us not overlook that this Note recognizes the very *slight* enlargement of the French zone of influence. But, in its Note of 21 June 1924 (MC, Ann. 107), the French Government dismisses the Italian argument that this slight territorial increase in favour of France amounted to about 180,000 sq. km.

"A few hundred kilometres at most", the French Note maintains. In its Note of 5 March 1930 (ML, Italian Archives Annex, p. 70), the French Government asserts:

29 "the line which, to the east of Toummo, marks the limit of the French possessions is the line defined by the Franco-British Agreement of 9 September 1919 interpreting the Franco-British Declaration of 21 March 1899, recognized by Italy under the terms of the Franco-Italian Agreement of 1 November 1902".

30 Up to this point, there is some consistency in the French position, even if it is legally unfounded. But then, three months later, the French Government changed its position. It did so by the Note of 25 June 1930 (MC, Ann. 127). According to the latter, the 1902 Agreement between France and Italy made it clear that the territory closed to French expansion was delimited by the boundary of Tripolitania, shown on the map appended to the 1899 Declaration. And the Note goes on to say:

"However, an examination of the said map shows that the territory in question runs from Toummo towards the north-east up to approximately 25° latitude north, and thereafter runs due north. The line defined by Article 3 of the Franco-British Declaration of 1899 coincides with this boundary at its intersection with the Tropic of Cancer but does not cross it, so that the territories which it divides between France and Great Britain are situated entirely outside the area reserved for Italy."

It follows from this that the line arising out of the 1919 Agreement could not prejudice any Italian right.

Hence this line - allegedly opposable to Italy under the 1902 Agreement - this line, as I was saying, has disappeared; it no longer has the slightest importance, as in any case it was situated outside the area reserved for Italy. This is a real conjuror's trick which deserves applause.

In any event, the French stance undoubtedly wavered. I find evidence of this in a letter of 7 August 1928 (ML, French Archives Annex, p. 360) from de Beaumarchais, French Ambassador in Rome, to the

French Minister for Foreign Affairs, Briand, in which the Ambassador gives an account of a conversation he had had with Mussolini about negotiations on, *inter alia*, the Libyan boundary. De Beaumarchais proposed that the oasis of Djado should be incorporated into Libyan territory, but under two conditions:

(1) Recognition by Italy that France had fulfilled the requirements of the Treaty of London of 1915; and

(2) Recognition by Italy of the 1899 Agreement relating to the Tripolitanian boundaries. Finally, the Ambassador added that he had pointed out to Mussolini that "it was necessary to definitively determine the boundaries of our respective possessions".

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We must be dreaming. France, which maintained in various diplomatic notes that Italy had recognized the so-called partitioning of influence between France and Great Britain, is now asking for such recognition, and not of the 1919 Agreement - which would have been natural, since Italy had never recognized it - but of the 1899 one. This is not a run of the mill French internal administrative Note, but an official demarche by the French Ambassador to the Italian Head of State. To tell us today, as Chad does, that the French position was an invariable one and that this famous 1899 line was opposable to Italy from 1902 onwards is to distort reality.

But, independently of these repeated changes in the French position, the argument that the 1919 Treaty, whose origins go back to the Treaty of 1899, was situated entirely outside the area reserved to Italy, should be rejected. One has to choose: either the 1902 Agreement concerned both Tripolitania and the line stemming from the 1899 Agreement, or it concerned Tripolitania alone. In the former case, it scarcely needs saying that the line stemming from the 1919 Treaty encroached upon

Italy's rights, since not only was the course modified to the disadvantage of that State, but its very nature was modified. Or the 1902 Agreement concerned Tripolitania alone, but in that case the French argument overlooks the fact that in 1912 Italy had succeeded the Sublime Porte in the region with respect to all its rights. This succession was recognized by France in 1912 and by France and Britain in the Treaty of 1915.

32 Say what one will, this alternative cannot be circumvented. Regardless of which of the two solutions one chooses, the inescapable conclusion is that the 1919 Agreement affected Italy's rights and that Italy was therefore justified in its protests and its refusal to recognize it.

Mr. President, Members of the Court, in its written pleadings Libya has shown deep divergences between the British and French attitudes regarding the protests lodged by Italy after the Agreement of 1919.

As to Chad, it has sought to minimize them in order to reach the conclusion that the position of these two States was in fact one and the same. However, facts are facts and the divergence exists, as I shall now underline by analysing the British stance.

As I have just indicated, on 10 December 1921, Italy addressed a note of protest to the British Government stating that it could not recognize the 1919 Agreement, for the same reasons as those set out in the memorandum of 12 December 1921 addressed to the French Government, and already analysed.

Contrary to France, Britain is much less sure of its case in relation to the 1919 Agreement. Incidentally, you will find internal British memoranda examining this problem in the annexes to the Libyan Memorial (British Archives Annex, pp. 138-149). From the outset (p. 138), it is stated that:

"In this long and very complicated note the Italian Ambassador has put his finger on a certain discrepancy between our Convention with France of March 21st, 1899, and September 8th, 1919 relating to the frontier between British and French possessions in North-East Africa."

On the following page, this internal memorandum acknowledges that, at the time of the negotiations for the 1919 Treaty, it was not known whether its effects on Italian territory had been taken into account, but it is acknowledged that the effect of the Treaty was to extend the French territories in the region. And the note adds:

"On the other hand we are parties to the Anglo-French Convention and as such, the Italians have a right to protest to us."

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The same internal memorandum goes on to state, and this shows the embarrassment of the British administration, that it is necessary to consult the French Government and that Italy could be told, in reply, that the course of the 1899 line gave a general indication of the frontier, which was interpreted and clarified in 1919. But the author of the memorandum is under no illusion, for he adds: "The Italians are not likely to accept this argument."

And taking the Italian claims seriously, he adds:

"Moreover, if we should prove to be wrong and the Italians right we should be in the position of having ceded to France an area to which we had no title." (ML, British Archives Annex, p. 143.)

Mr. President, Members of the Court, I do not think too much importance should be attached to internal memoranda of national administrations, since their probative force at the international level is relative; however, they can give an indication of the circumstances in which decisions with genuine international repercussions are taken.

In the event, these domestic memoranda merely show that the British administration is not quite sure how to reply to the Italian memorandum,

that it is not sure of its rights, that it accepts that, in 1919, there was a change in relation to the 1899 Agreement, since it recognizes that territory was ceded to France.

At all events, and this is what interests us, the official British reply to the Italian memorandum does not seek to justify the 1919 Agreement, saying that the course of the line of the 1899 Agreement gave only a general indication of the frontier, which had therefore been interpreted and clarified; as we have seen, this would have been in accord with the French argument. No, the British memorandum is on more solid legal ground and based upon a solution recommended within the administration (ML, British Archives Annex, pp. 147-149).

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This British reply of 5 February 1923 to the Italian protest deserves to be quoted in detail (it will be found in the Memorial of Libya, Italian Archives Annex, pp. 38-40). It conforms to the Libyan position. Indeed, according to this memorandum, there was no question that the Declaration of March 1899 and the Treaty of 1919 "Could in any way dispose of territory belonging to a third power", and adds that the Declaration of 1899:

"merely deined the limits of two spheres of political influence ... The situation is not in any way changed by the convention of 1919 ... This being the case, the convention does not and could not dispose of any Italian territory at all and if any of the area comprised between the two lines referred to in the Anglo-French declaration of 1899 and the agreement of 1919 respectively is in fact Italian territory, the rights of your Excellency's government over that portion of the area are unaffected by the convention".

In conclusion, the British memorandum adds that:

"If the Italian Government have any rights of sovereignty in the area in question they can only have been inherited from the Turkish Government."

The British Government was subsequently to adhere to its analysis of the legal situation in the region.

Libya has shown in its pleadings how far the British position diverged from the French one. Chad has sought to minimize this divergence, though it is quite unmistakable.

France considers that the Treaty is no more than an interpretation of the Declaration of 1899, that it does not alter much in the case and that, anyway, Italy is bound by the 1902 Agreement. On the other hand, Britain reserves all Italy's potential rights. The Agreement of 1899 and the Agreement of 1919 "could not dispose of any Italian territory at all" and, further on, neither of these two conventions "could in any way dispose of territory belonging to a third Power."

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Moreover, it will be noted that it is State succession that forms the basis of the British position. If Italy has rights, their origin can only be those possessed by Turkey. In its diplomatic memoranda, France is silent on this point. Having said this, the British memorandum adds: "The question whether any of this area is Italian territory is one of fact, in which the onus of proof lies on the Italian Government."

There is no doubt that the burden of proof falls upon the party asserting the existence of a fact. But here, in my pleading, the problem is not whether Italy had or did not have rights in the disputed area, the problem is the effect of the 1919 Treaty on the rights Italy claimed to possess. Now, contrary to France, which considers that this Treaty can be invoked against Italy, Britain is of the view that it could have no effect on any possible Italian rights. This is what must be stressed today.

The divergence between France and Britain is important also as regards the nature of the line. It will be recalled that, among other grounds, Italy had justified the inopposability to it of the Treaty of 1919 by reason of the change in the nature of the line.

How does Britain reply to this argument, since France does not? Again in the memorandum quoted, the Italian Government points out that the 1899 Declaration merely defined the limits of two political areas of influence adding that: "The situation is not in any way changed by the convention of 1919."

36 Members of the Court, this is a long way from the French thesis, a long way from a frontier, for we are still in the context of an apportionment of areas of political influence; and I believe the term *political* should be noted. At all events, in the view of the British Government, there was never any territorial apportionment. And we are not claiming anything else. Libya maintains that, in 1919, no frontier delimitation was made, and that if it had been, it was not opposable to Italy.

In order to explain this divergence of interpretation between France and Britain, Chad has put forward an argument which is surprising to say the least. We are told, you are told, Members of the Court, that the British interpretation is explained by the fact that, ultimately and contrary to France, Britain was not particularly interested in the region (CMC, pp. 321-322). A curious argument. If my understanding is correct, the interpretation given by France to the Treaty of 1919 should be preferred to that given by Britain, because the former had major interests in the region which is the subject of the present dispute. This is a novel method of interpreting Treaties which will be sought in vain in the 1969 Vienna Convention on the Law of Treaties. In fact, it is the opposite interpretation that should be adopted, given the self-evident truth that an uninterested State will offer a more objective interpretation.

In addition, when one is confronted by divergent interpretations, it is the one most in keeping with the elementary principles of international law that should be adopted.

The British interpretation has the merit of simplicity. It is supported by two pillars:

(1) The Declaration of 1899 resulted in an apportionment into two areas of political influence;

(2) The Treaty of 1919 could not alter this state of affairs in any way, nor prejudice any possible rights that Italy possessed in the region as heir to the rights of the Sublime Porte.

37

The first argument complies with the principle that two States cannot share a territory over which they have no right. Let us not forget that in 1899, neither England nor France was present in the region concerned.

The second argument adheres to the least disputed principles of international law, namely, the principle of the relative effect of treaties and the principle of the succession of States in territorial matters.

The Chadian interpretation, on the other hand, is the product of veritable legal acrobatics. According to this interpretation, Italy having in 1902 recognized the 1899 apportionment of areas of political influence, in 1919 it must recognize: (a) a genuine frontier delimitation, which was the logical consequence of this political apportionment; (b) a change in the course of the 1899 line, since this line was uncertain.

I have already said and I reiterate that to allow the thesis of our honourable opponents is to fly in the face of the principle of the relative effect of treaties. To accept it is to abandon one of the most solid rules of international law.

Thus, I believe I have shown that the Treaty of 8 September 1919 between France and Britain does not have the effect of establishing a frontier which can be opposed to Italy. In 1919, as before, the situation has not changed, and there is still no frontier delimitation in the region, which question forms the subject of the dispute before you.

38 I shall pause only briefly on the 1924 agreement between Britain and France and that of 1934 between Britain and Italy. What happens in 1924? In accordance with the Declaration of 1899, a Franco-British Commission had the task of delimiting the frontier between French Equatorial Africa and the Anglo-Egyptian Sudan on the ground, in conformity with the indications given in paragraph 2 of that Declaration, as amended by the Convention of 1919. The Agreement of 10 January 1924 takes note of the work of that Commission. Although the Commission had followed the indications in paragraph 2 of the 1899 Declaration, the demarcation of the frontier should have ceased at the point of intersection between latitude 15°45' and 24° longitude East. But the 39 Commission continued well beyond that point since, according to the 1924 Agreement (CM, Sec. VIII, para. g, Ann. No. 10):

"From the intersection of the wadi and the 24th meridian the frontier follows that meridian northwards up to the point where it meets the parallel of Latitude 19° 30' North".

Hence, the 24th meridian, which was to have been a limit of the French political zone, becomes an actual frontier, complying in this respect with the 1919 Agreement, the point reached by the line departing from the Tropic of Cancer is fixed at parallel 19°30', which, as we have already seen, substantially encroached upon the rights that Italy claimed to have in the region.

It will therefore come as no surprise that, in a diplomatic memorandum of 28 February 1924 to the British Government, Italy protests both against the Treaty of 1919 and against this demarcation of the frontier (LM, British Archives Annex, p. 180).

At first sight, there is certainly a contradiction between the British position conveyed to Italy in the British diplomatic memorandum of 1923, according to which the 1919 Agreement cannot possibly affect the rights of the latter in the region and this 1924 Agreement. The reasons for this contradiction escape us, Members of the Court, but this contradiction is of virtually no consequence legally.

In the context of international relations, where Italy is concerned, all that counts is the British attitude to it, namely that the agreements between Britain and France cannot possibly prejudice Italy's rights in the region. In any case, by virtue of the principle of the relative effect of treaties, the 1924 Agreement, like the Agreement of 1919, is not opposable to it, all the more so since Italy protests.

40 France and Britain can therefore delimit, demarcate as many frontiers as they like, yet these measures are completely devoid of legal validity since they encroach upon the rights of another State. Moreover, the demarcation ceased at the 19°30' parallel and does not continue westwards, which shows that, in the view of France and Britain, this segment did not constitute a frontier.

The aim of the Treaty of 20 July 1934 between Britain, Egypt and Italy is to delimit the frontier between Sudan and Libya and its purpose is to make it clear that the Sarra Triangle belongs to Libya. The negotiations which preceded this Agreement have been described in detail in the Libyan Memorial (pp. 303-314) and there is no point in going over them again. They show that Britain recognized that, in 1899 and 1919 there was nothing but a delimitation of zones of influence between France

and itself and that Italy was presenting itself as the successor State to the rights of Turkey. But what seems to me more important still is the actual text of the Treaty.

"Starting from the point of intersection of 25th meridian east of Greenwich with parallel 22° north, the frontier follows the 25th line of meridian in a southerly direction as far as its intersection with parallel 20° north; from this point it follows parallel 20° north in a westerly direction as far as its intersection with 24th meridian east of Greenwich; from this point, it follows the 24th meridian east of Greenwich in a southerly direction as far as its junction with the frontier of French possessions". (LM, International Accords and Agreements Annex, No. 24).

This provision of the Treaty must be read in association with a passage in the Official Communiqué of the three governments, which is now being projected on the screen (No. 62 in the Green File). Let me draw your attention to the terms "still to be fixed", which shows that in the minds of these governments, the frontier line with the French possessions has still to be delimited.

41 But one of the signatories is not just anyone. It is the British Government, bound by the Agreements of 1919 and 1924 with France.

By expressing itself as it does when concluding the Treaty of 1934, the British Government shows once again that it has never sought to encroach upon Italy's possible rights. The limit of French possessions is not determined. According to the Treaty, it should be situated somewhere along the 24th meridian in a southerly direction. But where? It is a mystery.

Hence, at least according to the historical background to this question, three points are possible along the 24th meridian. Either the point of intersection with the 19°30' parallel. But surely not for Italy, which had protested about the 1919 Agreement. Or the one resulting from the Yellow Book, namely 19°, or lastly, the 1899 course of

the political zone of influence, which leads to the 15°35' parallel. But other lines are also possible bearing in mind Turkey's rights in the region.

Members of the Court, there may well be a degree of incoherence in the British and French positions regarding a possible delimitation of the possessions as between France and Britain in the region. My purpose here is simply to show you that these incoherences can only be explained by the fact that there was no delimitation and that, if Britain and France, through the 1919 and 1924 Agreements, had wished to arrive at one, this delimitation was not opposable to Italy. The 1934 Agreement is additional proof of this.

42 Examination of the period between 1919 and 1934 shows that the legal situation regarding the delimitation of the frontier between France and Italy in the area in question, through the two Treaties of 1919 and those of 1924 and 1934, remained without effect. There was no frontier in 1919, and there is still no frontier in 1934.

You now have before you a geographical map (Map No. 63 in the Green File), which shows in 1934 the frontiers resulting from the Agreements. To the west, the frontier is delimited as far as Toummo, as it is in the east between Italy, Egypt and the Sudan. Everything still remains to be done in the south between Italy and France.

Mr. President, Members of the Court, it remains for me to consider the Franco-Italian negotiations leading to the conclusion of the Treaty of 1935; they have been examined in detail in the Libyan written pleadings and, not wishing to overburden my statement, may I, most respectfully, refer you to those pleadings (ML, pp. 280-302 and 314-323).

Thank you Members of the Court for your attention. May I now ask you to give the floor to my colleague Luigi Condorelli, after the morning break perhaps.

Le PRESIDENT : Je vous remercie Monsieur Cahier. Je pense qu'il convient peut-être maintenant de prendre une pause avant l'intervention de M. Condorelli jusqu'à la fin de la matinée. Je vous remercie beaucoup.

The Court adjourned from 11.10 to 11.30 a.m.

43
Le PRESIDENT : Monsieur Condorelli.

Mr. CONDORELLI:

Introduction

Mr. President, Members of the Court, in taking the floor before you again, I should like to begin by announcing the topics to which my pleading will relate today.

First of all, I intend with your permission to suspend the historical sequence of events for a short while and to refer to the geographic maps of Libya from Italian sources. My aim is to determine whether it is true, as Chad asserts, that these maps confirm the acceptance by Italy of the 1899 or the 1919 line as the southern frontier of Libya, or whether by any chance these maps do not prove the exact opposite.

After this study of the maps, in the second part of my pleading I shall take up the history of the dispute at the exact point at which Professor Cahier stopped in his pleading a moment ago. My task will be to present to the Court the Rome Agreements of 7 January 1935, with a view to showing that, even though the 1935 Treaty did not finally enter into force in the absence of an exchange of ratifications, the

Mussolini-Laval Agreements proved quite clearly and definitively a conclusion which was in any case already self-evident in view of all the proofs provided by the study of earlier events, namely, that before 1935 no frontier had been defined to separate the French and Italian possessions east of Toummo.

In the third part of my statement I shall then examine some of the events that occurred after 1935, in order to show that the subsequent practice of the Parties concerned later confirmed the absence of a frontier in the region in question.

44 Finally, in the fourth and last part, I shall deal with the Treaty of Peace of 1947 and its effects on the present dispute.

PART I

"THE ITALIAN MAPS

1. Concerning the Chadian argument that Italy recognized the map appearing in the *Livre jaune*

Mr. President, Libya's previous pleadings have shown that Italy never recognized either the line in the map published in the *Livre jaune* of 1899 or that of the Franco-British Convention of 1919, and in particular never agreed to consider either of these lines as the southern frontiers of Libya. This demonstration will now be supplemented by the study of maps of Italian origin which fully confirm its results.

It is true that Chad in its Reply claims the contrary to be the case. Its argument is that after 1902, Italy itself adopted the map in the *Livre jaune* and used it in its negotiations with Great Britain, being perfectly aware of the fact that the map in question had not been annexed to the 1899 Declaration.

45 But let us at once examine the basis of this argument. On page 55 of its Reply, Chad gives a map which now appears on the screen. This is apparently a partial extract from the map in the *Livre jaune*, except that the inset identifying the various boundaries has disappeared and Italian wording has been added in two places, in particular with regard to the legend "Anglo-French Declaration of 21 March 1899". As you can see, this legend follows the east-south-east line which, both in the map in the *Livre jaune* and in this one, misrepresents the due south-east line of Article 3 of the Declaration. You can therefore see that it is the same line that appears in both cases.

Let us now go back to the map which appears in the Chadian Reply. The fact that a map contains words in Italian hardly proves anything. To derive from it any indication of the Italian position, it should be proved that this is an official Italian map and that it has been used by Italy to imply recognition of both the boundaries traced on it, particularly the one of interest to Chad. But our opponents carefully refrain from proving anything of the kind in that connection.

Where does this map come from? Its provenance is indeed unknown. Chad found it annexed to a Foreign Office memorandum concerning certain discussions in 1911 between Great Britain and Italy on the frontier between Libya and Egypt (RC, Ann. 23). This memorandum contains a reference to an Italian diplomatic note, but it is not stated whether this note was accompanied by a map; in any case, Chad has not annexed the Italian note. But even if it were admitted for the sake of argument that the map in question was really submitted by an Italian embassy, it would quite obviously have related to a document used to illustrate Italy's position concerning a frontier which had nothing to do with

France, in the context of negotiation with a State other than France. Moreover, there is no mention of the nature of the various lines traced on this map.

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Members of the Court, you may well ask why Chad is making so much of an element as dubious as a map of uncertain origin, with an ambiguous content and coming from the archives of a third country. Why does Chad rather not base its analysis on the many official Italian maps of before and after 1912? The answer is simple and devastating for our opponents: it is that all the Italian maps without any exception, radically contradict the allegations of the opposing Party. Indeed, just like the British maps which were shown to you by my colleague, Mr. Sohler, the Italian maps show that the line of Article 3 of the 1899 Declaration runs due south-east, not east-south-east, and clearly establish that no border line is concerned. In a moment, I shall have the pleasure of showing these maps and commenting on them, particularly since, oddly enough, Chad seems to be unaware of their existence.

Before doing so, however, I shall say a few words about an argument, not cartographical but related, that the Chadian Reply has derived from replies to a parliamentary interrogation given on 12 December 1914 by the Under Secretary of State for the Colonies, Mr. Gaetano Mosca, at a meeting of the Italian Parliament (RC, Ann. 28). The question was whether an oasis near Ghât which had been occupied by the French belonged to France or to Italy, and the representative of the Italian Government indeed referred in the grounds for his reply, both to the Franco-British Declaration of 1899 and to the map "drawn up subsequently" to the Declaration, in order to justify the Italian point of view. According to Chad, this is supposed to prove the importance which Italy attached to the 1899 Declaration.

47 Frankly, Mr. President, it is hard to see the logic of this argument, which bears no relation to the territory that is the subject of the present dispute. First of all, Mr. Mosca does not specify the map to which he is referring. Secondly, it is perfectly obvious that Mr. Mosca is referring to the area of Ghât, or an oasis near Ghât, which is in the western part of Libya, on the Algerian side, not in the south: the reference to the map, be it the one in the *Livre jaune* or any other, therefore relates only to the western parts of Tripolitania, not to the southern boundary; in other words, the line to which Mr. Mosca refers is not that of Article 3 of the 1899 Declaration, but the undulating line surrounding Tripolitania, which is not mentioned in any provision of the Declaration and which has never been a frontier in the legal sense, since, as you have heard, it served as a simple geographic indication of a boundary which France had undertaken not to cross. It should be borne in mind in this connection that Mr. Mosca could not have referred to such an undertaking, since it derived from the 1900-1902 Agreements which were still secret at that time and which, as Libya has shown, had nothing to do with southern Libya, but related to the west. And we should also remember that in 1912 Italy still believed what France had wrongly told it in 1902, namely, that a map was annexed to the 1899 Declaration, whereas that was not the case.

48 To tell the truth, the Chadian Reply contains the curious assertion that a sentence of the statement by the Italian Under Secretary of State implied his "perfect knowledge of the circumstances in which the 1899 map had been prepared" (RC, p. 36, note 6). But this argument is not very serious, since it is based on a mistranslation of the original Italian: Mr. Mosca referred to a map (the one in the *Livre jaune*?) prepared

"pursuant" ("in seguito" in Italian) to the 1899 Declaration, and not "after" this Declaration, as Chad alleges (wrongly only on page 36, since the correct translation is given two pages further on). The term is therefore not "after", but "pursuant to" ("à la suite" in French) and this term does not necessarily imply a sequence in time, and in the case at issue the words serve to establish the connection between the Declaration and the map: the fact is that Mr. Mosca never suspected that the map allegedly annexed to the 1899 Declaration was in fact a fanciful invention of French diplomats!

2. The official Italian maps

I now come to the official Italian maps, which can well enlighten us about Italy's opinions on the question of Libya's southern border. Here we have on the screen the map of Africa published by the Italian Ministry of Foreign Affairs in 1906, or four years after the Franco-Italian Agreement of 1902. (The map appears in the Libyan Reply, and under No. 69 on your file.) Several of the lines appearing on this map are identified: first, the line representing the Ottoman claims of 1890, then a line surrounding Tunisia and going as far as Ghadamès (the reason for this line is that the map antecedes by several years the 1910 Treaty on the Frontier between Tunisia and Libya); to the east we see, *inter alia*, the Butros Ghali-Cromer line of 1899, separating Egypt from the Anglo-Egyptian Sudan along the 22nd parallel: we can also see the lines of the 1899 Anglo-French Declaration, in which the line of Article 3 is represented as running due south-east; and with regard to the line of Article 2, two parts of it are marked, whereas the one between the 11th and 15th parallels of northern latitude is still to be defined.

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Members of the Court, you will notice that the undulating line which surrounds Tripolitania in the map in the *Livre jaune* does not appear on this map. The general profile of Tripolitania, Cyrenaica and Fezzan is shown in yellow, whereas the area to the south and west of the line in Article 3 of the 1899 Declaration is shown in white, with a legend in Italian reading: "area claimed by France and by Turkey".

Mr. President, this map alone shows how erroneous are the Chadian allegations concerning the significance and effects of the Franco-Italian Agreements of 1900-1902. One glance shows us visually, first of all, that in 1906 Italy in no way recognized that a frontier of Tripolitania had been established in 1902. Secondly, Italy noted that the Tripolitanian hinterland was still the subject of a dispute between France and the Porte, and that this dispute should therefore be regarded as remaining to be settled. Thirdly, it is obvious that in 1906 Italy was convinced that the line in Article 3 ran due south-east, and consequently attached no importance whatsoever to the east-south-east line appearing in the map in the *Livre jaune*. Fourthly and finally, from the Italian point of view this last-named line was certainly not supposed to represent a delimitation between Ottoman possessions and those of France, since the territory to the south-west was said to be claimed by both countries.

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Let us now turn to another map now shown on the screen, that published by the Italian Ministry of Foreign Affairs in 1912, which Libya has given in its Reply and which appears on your file as No. 70. Among the lines drawn in different colours, there is the frontier between Libya and Tunisia which was the subject of the 1910 Agreement and which runs as far as Ghadamès. Here again, we do not see the undulating line surrounding Tripolitania in the map of the *Livre jaune*, but above all the line of Article 3 of the 1899 Declaration is once again represented

as running south-east. The same applies in connection with this line in the 1917 map of the Ministry for Colonies, which Libya reproduced in its Reply under the symbol LR-16.c and which you can now see on the screen and in No. 71 of your file.

It is surprising, Mr. President, that none of the official Italian maps that I have just shown appear among the 162 or so maps in the cartographical atlas accompanying the Chadian Counter-Memorial, and that in spite of the fact that, for example, the 1906 map is specifically mentioned in the documents produced by both Parties to this case. It is even more surprising that, as we have seen, Chad on the contrary refers to a truncated copy of the map in the *Livre jaune*, a copy the source of which is unknown and the probative force of which seems to depend on the fact that some Italian words appear on it!

51
But let us go on looking at the maps, turning to another official map that that is being shown on the screen, the one published by the Italian Ministry for Colonies in 1926 (No. 72 on your file). It is now ten years later, and the western frontier of Libya has been established up to Toummo, since meanwhile the Franco-Italian Agreement of 1919 has been concluded, as Mr. Cahier has told you. But nothing is shown east of Toummo, since no delimitation was traced previously. It will be seen that on this map the line of Article 3 of the 1899 Declaration no longer appears, but the frontier with Egypt established in 1924, or two years earlier, naturally appears in eastern Libya.

Let us turn to yet another map, the official Italian Map 2 of 1937, reproduced in the Libyan Counter-Memorial and in No. 73 of your file. This time we see the line of the Treaty of Rome of 1935, which I shall go on to discuss in a moment. I have taken the liberty of drawing your attention to this map and slightly anticipating the following considerations in order to complete the cartographical analysis without

interruption, and also to point out that the one we now see on the screen is indeed the only the Italian official map which does appear in the Chadian cartographical atlas: it is indeed an extraordinary coincidence that our opponents have found in their search of the archives only one official Italian map which was harmless to their cause, and have not come upon any one of those which are seriously prejudicial to their arguments.

52 And now let us go on to the last two maps, first, the one dated 1939 which you see here and which corresponds to the one published in the Libyan Counter-Memorial as map No. 54, and then the one of 1941, which appears as No. 74 in your file. I do not need to dwell at length on these two maps, for like the 1926 map which I showed you a few moments ago, they do not contain any lines east of Toummo: since the Treaty of Rome never finally entered into force, it was only natural to indicate again the absence of any frontier in the region.

3. The incident of the Italian school map of 1930

Mr. President, Members of the Court, so far I have spoken about the official Italian maps, but there is another map, this one quasi-official but very interesting, which should be considered briefly, and that is the school map of 1930, which was the basis of a most instructive diplomatic incident between France and Italy. Here it is on the screen (Map LR 16E). Its history is recounted in great detail in the Libyan's submissions (LM, paras. 5.278-5.279 and Maps Nos. 78 and 79; LM, paras. 6.200-6.205 and Map LR 16E; LR, Vol. II, Supplementary Ann. No. 5.10), so that I need only give you a short recapitulation.

Briefly, the problem was the following: in December 1930, the French Ambassador in Rome was informed that a map of Africa used in Italian schools showed Libya as comprising both Tibesti and a vast area to the south and to the east of that locality, the effect resulting from

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the colouring of the said area, identical to that used for the remainder of the Libyan territory. The French protested, and after an exchange of very detailed correspondence between different ministries concerned, the Italian Government reacted to that protest by adopting the solution of leaving the area in question white, in recognition of the fact that the frontiers in the area have not yet been internationally defined" (text of the telegram of 22 December 1930 from the Ministry of Foreign Affairs, signed by Mr. Guariglia: LR, Vol. II, Ann. No. 5.10). In the same telegram, it is indicated that the solution was one currently adopted for both official and tourist maps. It may be gathered that France had never before reacted against maps indicating the absence of the frontier in the area and that in order to satisfy it the 1930 school map was to be modified to confirm that the frontier had indeed not yet been defined. It will be noted that the solution adopted must have been accepted by France, since it did not give rise to any further protests.

Mr. President, the 1930 incident thus clearly confirms what may be deduced from the official maps, namely, the absence of a frontier in the region which is the subject of the present dispute. Moreover, the incident shows that France had no objection to raise against maps indicating the absence of a frontier.

But one last remark that needs to be made concerning this episode is that the modification of the school map, as decided upon at governmental level, clearly shows the extent of the area claimed by Italy. Unfortunately, Libya was unable to find a copy of the modified map in colour, but only the black and white copies which were published in the Libyan Memorial (Maps Nos. 78 and 79). It may be supposed, however, that the effect of whitening in accordance with the instructions of the Ministry of Foreign Affairs the area to the east and south of Toummo

54 which appeared in greenish yellow on the 1930 map must have been that which is now appearing on the screen. Let us now superimpose on the amended map the line claimed by Libya before your Court: here it is on the screen. It is interesting to note how close this line is to the lower edge of the area that the 1930 school map indicated as belonging to Libya, and which the map modified by the Italian authorities indicated as claimed simultaneously by Italy and France. I should like to point out that this map with the superimposition of the line of the Libyan claim appears on No. 77 of your file.

4. Conclusion concerning the Italian maps

Mr. President, Members of the Court, I have completed the first part of my statement and it only remains for me to draw what I believe to be the necessary conclusions.

The first is that none of the Italian official and quasi-official maps, those immediately following the 1900-1902 Agreements or later ones, show any southern border for Libya: Italian cartographers express with perfect consistency the firm and constant conviction of the Italian Government that the frontier had never been defined in the disputed region, with one sole exception: the 1935 line appeared in maps for a short period, only to disappear when it became clear that the Laval-Mussolini Treaty was not going to enter into force.

The second conclusion is that a certain number of Italian maps up to 1917 do show the line of Article 3 of the 1899 Declaration, but clearly specify that this line does not represent a frontier and that it was due south-east, and not east-south-east. None and absolutely none of the official Italian maps reproduce the line of the map in the 1899 *Livre jaune*, and it is absolutely untrue that Italy "accepted" this map, as Chad alleges!

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Mr. President, I should like to point out that in its Judgment of 1986, the Chamber of your Court which settled the frontier dispute between Burkina Faso and Mali carefully examined the probative value of maps when they were not the subject of a specific agreement between the parties to a territorial dispute. The Chamber noted that the weight of maps as evidence might vary according to their technical reliability and the neutrality of their sources, but stressed that in all cases the proofs in question were to be auxiliary or confirmative in character: indeed, maps "cannot in themselves alone be treated as evidence of a frontier" (p. 583, para. 56). In this context it must certainly be admitted, for the same reasons, that the maps I have just shown can also not be considered in themselves as evidence of the absence of a frontier in the disputed region. Indeed, Libya carefully refrains from claiming anything of the kind, since it recognizes that the Italian maps, however technically reliable they may be - and they are indeed reliable - are certainly not neutral, but translate the Italian point of view into cartographical images. Yet it is precisely because they are not neutral that these Italian maps are valuable here in connection with the precise identification of the Italian position. Indeed, the official Italian maps, in view of their absolute consistency throughout the period under consideration, irrefutably prove that Italy has never recognized either the existence of a frontier in the region or the east-south-east direction of the line arising from Article 3 of the 1899 Declaration. In other words, these maps provide no decisive proof of the absence of the frontier, but certainly prove decisively that Italy has never recognized the existence of such a frontier.

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PART II

THE ROME AGREEMENTS OF 1935

1. The importance of the Rome Agreements

Mr. President, the time has now come for me to pass to the second part of my pleading today, relating to the Rome Agreements of 1935. The Parties' submissions show a fundamental divergence of views on the significance of these Agreements and on their impact on the settlement of the present dispute. Nevertheless, there is a complete convergence of views on one point - and that is already something - namely, that these Agreements are of capital importance because their text, their context and the circumstances in which they were concluded bring to light the way in which the Parties regarded the situation prevailing in the region concerned in 1935, where the state of the frontiers was concerned. This importance is certainly not diminished by the fact that ratifications were not exchanged, but on the contrary is enormously enhanced thereby.

It would obviously serve no useful purpose to question now what the state of the frontiers before 1935 would have been if the "African Treaty" had entered into force and had thus settled the dispute. It was precisely because that did not happen that a study of the 1935 Agreements is exceptionally useful, since this study enables us to ascertain whether France and Italy considered in 1935 that they were moving a pre-existing frontier, or whether, on the contrary, the two countries recognized that they were establishing a frontier for the very first time. I repeat, there is a complete convergence of views between Libya and Chad on the manner in which the problem arises, although they disagree completely on the solution of that problem.

57 In order to give the Franco-Italian Treaty of 1935 its proper due, it should of course be borne in mind that none of the international instruments preceding that Treaty were explicitly designed to define the frontier in the disputed area. Our opponents will surely not deny, something that is clear from the evidence itself, namely, that in all the century old history of the present dispute, the 1935 Treaty is indeed the only instrument under which the two States claiming sovereignty over one or another part of the territory to be delimited in pursuance of negotiations specifically concerned with delimitation, have plotted a well determined line, geographical point by geographical point, specifically expressing their will thus to define "the frontier separating Libya from French West Africa and French Equatorial Africa east of TOUMMO" (Art. 2 of the Treaty). You can see on the screen the line that was negotiated in 1935.

Mr. President, Members of the Court, before proceeding to analyse the 1935 Agreements, I should like to make two preliminary remarks.

The first is terminological. I am now speaking of the "Agreements of Rome" in the plural, and of the "Rome Treaty" - or the "African Treaty" - in the singular. The reason for this is that the Treaty in question is one, certainly the most important, but only one, of the eight instruments which were signed on the same day by the Italian Head of Government, Mussolini, and by the French Minister of Foreign Affairs, Laval. It should not be forgotten that the two States had wished to settle on that occasion, by a global arrangement, all the colonial disputes outstanding between them. Another of those instruments, the General Declaration, makes this perfectly clear when it stresses that "... the conventions [in the plural] of today's date having ensured the settlement of the main questions that previous agreements had

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left outstanding between them ...". I would draw your attention to the word "outstanding": France and Italy thus solemnly declared that there were questions outstanding between the two countries, questions which had not been previously settled and which were to be settled now.

My second remark is that the Treaty of Rome is the only one of the eight instruments signed on the same date, the entry into force of which was subject to the exchange of ratifications, under its Article 7. Chad has shown in its Memorial that the other instruments, on the contrary, entered into force immediately upon their signature, since they were all agreements in simplified form. May it please the Court to note that Libya fully recognizes the accuracy of that analysis: this point may therefore be regarded as settled, in view of the agreement existing between the Parties on this particular subject.

2. The text of the 1935 Treaty

The time has come to take a close look at the text of the Treaty and to note once again something which strikes one as soon as one reads the first paragraph of Article 2 and compares it with the first paragraph of Article 4. To make my remarks clearer, I have asked these two texts to be shown on the screen.

In Article 2, concerning the frontier between Libya on the one hand and French West Africa and French Equatorial Africa, on the other hand, it is indicated that this frontier will be "determined" in the manner specified in the rest of the Article: the question is therefore one of "determining" and not of moving or modifying a pre-existing frontier. In Article 4, on the other hand, the expression used is completely different, for there, in connection with the frontier between Eritrea and French Somaliland, the reference is to the modification of a previous frontier, since one line is to be substituted for another.

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The wording is very significant. It is clear that the terms were chosen with the greatest care, in order to emphasize the conviction of France and Italy that the operations conducted in the two cases were quite different in nature - delimitation in the case of Libya and rectification of the frontier in the case of Eritrea. But that is not all: the text before you clearly explains the legal reasons justifying the choice of the terms. In the case of Eritrea, it is specified that a modification of the frontier is concerned, since a different delimitation was established previously by two specifically mentioned treaties - the Rome Protocol etc. In the case of Libya, on the other hand, the reference had to be to delimitation because the frontier in the area had not been previously determined by any treaty, Toummo being, as explicitly stated in Article 2, the "terminal point of the line fixed by the Paris Agreement of 12 September 1919".

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The provisions of the 1935 Treaty are of such - how shall I put it? limpid clarity - that one is almost moved to pity our opponents, forced as they are to defend a really indefensible argument. Yet their competence is quite remarkable: in its Reply Chad presents a textual argument, only one, it is true, but one which purports to prove that there was indeed a frontier in the disputed region in 1935 and that the 1935 Treaty moved this frontier in favour of Italy. The argument is based on a passage of Article 2 in which it is stated that the borderline is so plotted that such and such locality "remains in French territory": if these localities "remain" in French territory under the 1935 Treaty, Chad maintains, it is because there was previously another which was more favourable for France.

The argument is extremely subtle, but it is so subtle that it becomes practically evanescent if it is studied closely. It can easily be countered by pointing out that Article 2 describes and specifies the

effect that will arise from the delimitation provided therein: in other words, it specifies that at certain points the line must be drawn in such a way that the places cited will be situated on one or the other side of the line, but this in no way indicates where they would be if the delimitation concerned were not established. To sum up, the language of Article 2 is typical of a delimitation treaty, indicating that the line must be plotted on the map in such a way that, the frontier once established, certain localities will "remain" in the territory of one of the States, and others in that of its neighbour.

61
Moreover, the accuracy of this analysis is confirmed by a perusal of the official Press Release of 8 January 1935, in which the two parties explained the object and purpose of the Treaty. The Release contains the following phrase concerning the line provided for in Article 2: "this line leaves Aozou and Ouezenti in Italian territory and Bardai and Tekro in French territory". Here is something which definitively demolishes the Chadian argument, since it is clear that here again the effect of a newly drawn line is being described, and the wording leaves no room for argument on the question to whom the localities mentioned belonged before the delimitation - unless Chad, hoist with its own petard, if I may say so, prefers to admit, for the sake of consistency with its own argument, that this phrase from the Press Release implies a recognition by France that Aozou and Ouezenti already belonged to Libya before the conclusion of the Treaty, since that instrument "left" them on the Italian side ...!

Mr. President, the text of the 1935 Treaty expresses the intention of the Parties with the utmost clarity: these Parties were perfectly aware that they were delimiting a frontier in the region for the first time. The line of Article 2, on the map which was submitted to the

62 Italian Parliament with the text of the Treaty for purposes of authorization of ratification, bore the legend "Nuovo confine meridionale" in Italian (New southern frontier), which was undoubtedly correct, since a perfectly new frontier was indeed involved. Nevertheless, our opponents do not agree at all, and are making truly superhuman efforts to derive from this terminology an argument which seems tenuous to say the least. According to Chad, Italy's reference to a "nuovo confine" ("new frontier") is tantamount to the implicit admission that an old frontier was henceforth to be replaced by a new one, in the case of Eritrea as in that of Libya. But unfortunately this syllogism, although apparently impeccable, is really quite unsatisfactory, since it takes no account of the fact that the adjective "new" has a number of meanings, in Italian as in French and English, and perhaps in other languages. May I be permitted to invite our opponents to take a look, for instance, in the most famous of the great dictionaries of the French language, the Littré, where they will find that "nouveau" ("new") can certainly mean "autre, qui a changé" ("other, which has changed"), but can also mean "qui est ou apparaît pour la première fois" ("which is or appears for the first time") (Littré, *Dictionnaire de la langue française*, Paris, Hachette, 1881, Vol. III, p. 757).

3. The press release

I have just quoted the press release of 8 January 1935: this is clearly a document of great interest, since it clarifies the meaning of the Treaty of Rome. It is useful to note, at this juncture, that in this press release, the object and purpose of the Treaty is described using terms which are partly different, but whose meaning is quite identical: it is still a question of the

63 "determination" of the Libyan frontier, whereas, for Eritrea, the word used is "rectification": this provides yet more confirmation, were it needed, the merits of the interpretation of the text of the Treaty that I put forward a moment ago. But what is even more suggestive, since on this occasion we are concerned with a fresh proof, is the fact that the press release describes the strip which, 40 years later, would generally be referred to as the "Aouzou strip" as "territories thus recognized as belonging to Libya". Here is what is said so limpidly and effectively: the Treaty of 1935, contrary to what Chad would have us believe, did not attribute French territories to Italy, but recognized as Italian territories situated in a non-delimited area whose appurtenance to Italy France had previously contested.

I still have to indicate what probative force can be attributed to the press release. To answer this question, it should first be noted that this is the official joint press release distributed to the press following the official ceremony of signing the Rome Agreements, and which was published by the press in both countries. It goes without saying that it is well known that press releases of this kind are duly negotiated by the delegations of the parties concerned. Our press release therefore constitutes a public and official declaration by France and Italy, by means of which the two States explain jointly and by common accord what the purpose and meaning of the 1935 Treaty is.

Your case-law is highly instructive on the legal nature of this type of document. In your Judgment of 19 November 1978 in the *Aegean Sea Continental Shelf* case (*I.C.J. Reports 1978*, p. 39, paras. 95-96) your Court observed that "[there is] no rule of international law which might preclude a joint communiqué from

constituting an international agreement ..."; to establish whether this is or is not the case, your Court said that everything "depends on the nature of the act or transaction to which the Communiqué gives expression" whereas the form is not very important. And the Court concludes, in this case, that

"in determining what was indeed the nature of the act or transaction embodied in the ... Communiqué, the Court must have regard above all to its actual terms and to the particular circumstances in which it was drawn up".

64 In two other well-known Judgments, your Court has established that, ultimately, "the sole relevant question is whether the language employed in any given declaration does reveal a clear intention ..." of the author or authors. This is in the *Case concerning the Temple of Preah Vihear, Judgment, I.C.J. Reports 1961, p. 32*; and in the *Nuclear Tests, Judgment, I.C.J. Reports 1974, pp. 267-268, para. 45*).

65 In our case, things could not be clearer, considering the terms, the circumstances and the purpose of the press release of 1935. Without a shadow of doubt, the intention of France and Italy was to officially explain the meaning and scope of the 1935 Treaty. The communiqué therefore occupies pride of place in the interpretation of this Treaty, since it constitutes an agreement aimed at elucidating the legal significance of another agreement concluded at the same time by the same Parties. In other words, we are in the field of authentic interpretation; more precisely, we are faced with this authentic interpretation of a contextual nature which is discussed in Article 31, paragraph 2 (a), of the 1969 Vienna Convention on the Law of Treaties. I would point out that the Vienna Convention gives pride of place, as regards the interpretation of a treaty, to the context, and that the latter means in the first place "Any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty."

Let me say, in conclusion, that it is difficult to imagine an international instrument which better fits this definition than the press release of 8 January 1935.

4. *The exposé des motifs*

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So far, I have left aside the most explicit and definitive confirmation of all, that which, so to speak, crowns the demonstration I have just made. I adopted this approach in order to underline from the outset the strangeness of the remark on page 80 of Chad's Reply, according to which what results from the *exposé des motifs* I am now going to discuss and that accompanies the French draft legislation authorizing the ratification of the 1935 Treaty is "the only discordant note" in relation to Chad's position. A curious remark if one thinks of the coherent bundle of evidence and clues I have gathered and illustrated so far and which can be added to those stemming from the *travaux préparatoires*!

After all that the written Libyan pleadings have emphasized on this point, I have no need to dwell at any further length on this *exposé des motifs*. May I say that, through the document in question, the French Government indicated why it was asking its Parliament to adopt the legislation authorizing the ratification of the Treaty of 1935. In other words, the Government wished to persuade the French Parliament to say yes, by showing it the advantages of the Treaty and the problems it would have dispensed with: an operation which, moreover, was wholly successful since the French Senate unanimously voted in favour, whereas the Chamber of Deputies did so with the crushing majority of 55 votes to 9. What was the Government's argument? It was borrowed, practically verbatim, from a Quai d'Orsay memorandum of 1935 (ML, French Archives Annex, Vol. 3, p. 426). This is the wording used in the essential passage of the

exposé des motifs that I should like projected on the screen and an extract of which is included in No. 67 in your file. The relevant passage is worded as follows:

"the 1919 Agreement left Italy and France without a formally agreed frontier east of Toummo, since Rome had always refused to recognize that the line of demarcation fixed by the Franco-British Accords of 1899 and 1919 between the French and British zones of influence could, for Italy, serve as a physical frontier between sovereign territories".

A little further on in the same document, it is pointed out that, from 1928 onwards (the date of the occupation of the Fezzan by Italian troops during the war against the Senûsiya),

"it seemed that the absence of frontiers would be an obstacle to the local authorities of the two countries as regards co-ordinating their action to police and monitor the tribes" (translation by the Registry).

67
These are official admissions, made by the French Government to its Parliament on 26 February 1935, admissions which completely destroy the Chadian thesis, just as, moreover, they destroy the entire convoluted edifice that France had claimed to erect on the basis of the Franco-Italian Agreements of 1900-1902. In fact, as will be noted, in 1935 the French Government publicly and explicitly recognized the complete accuracy of the argument presented by Libya to your Court: more precisely, it recognized

primo: that, prior to 1935, there was no "formally agreed frontier", east of Toummo, and even, quite simply, that there was (second passage) an "absence of frontiers", which implies among other things that France was in no way alleging that, owing to the absence of agreements, the frontier might have resulted from something else, from *effectivité* or some other factors, - there was an absence of frontiers;

secundo: the French Government also publicly and officially acknowledged in 1935 that Italy "had always refused to recognize", as a "political frontier", not only the line resulting from the Franco-British

Agreement of 1919, but also that envisaged by the Franco-British Declaration of 1899! In short, France fully recognizes (and does so in 1935!) that the Franco-Italian Agreements of 1900-1902 cannot be interpreted as implying acceptance by Italy of the line of 1899 or 1919 as frontier. This is exactly the opposite of what Chad is today alleging before your Court, and Chad should be asked how it can maintain with such assurance a thesis so clearly demolished by such a host of decisive and mutually corroborative proofs.

68 I shall now conclude my examination of this *exposé des motifs* and would like to do so by briefly recalling international case-law relating to the probative force of this type of internal government document issued to national parliaments. It is true that, the arbitration tribunal have ruled, on 12 February 1985, on a dispute between Guinea and Guinea-Bissau, it considered that, strictly speaking, these documents were not part of the *travaux préparatoires stricto sensu*, yet nevertheless took them into consideration quite clearly as *travaux préparatoires* in the broad sense (RDGIP, 1985, p. 515, para. 70). However, your Court, without concerning itself with arguments about vocabulary, did not hesitate to consider that "the intention ... is put beyond doubt" by the explanations given by a government in the *exposé de motifs*" accompanying a national *projet de loi* (Aegean Sea Continental Shelf, Judgment, I.C.J. Reports 1978, p. 27, para. 66). Essentially, what is decisive is therefore the fact that the intention should be clearly expressed, as indicated in your Judgment quoted earlier. In our case, the intention of the French Government is perfectly clear on the subject of the reasons which, in my view, render ratification of the 1935 Treaty highly desirable: it is because this Treaty finally established a frontier where - as the French Government publicly assured - there had hitherto been an "absence of frontiers".

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5. The fate of the 1935 Treaty

I come now to the end of the second part of my statement. I wish to recall that the fact that the 1935 Treaty failed to come into force was due to a decision of the Italian Government, which, despite all the pressures to which it was being subjected by France, considered that the territorial sacrifices envisaged by Italy, especially as regards Libya, were not justified inasmuch as France had not fulfilled its obligations regarding the Ethiopian affair, particularly in that it had not stood up for Italy before the League of Nations as a result of the general indignation provoked by Italy's aggression against Ethiopia. I note that there is no disagreement between the Parties as to the reasons why no ratifications were exchanged, so that there is no point in dwelling at length on this point. Needless to say, the fact that it did not come into force in no way detracts from the importance of the Treaty for present purposes, which is that it constitutes evidence that in 1935 France officially recognized that no prior treaty had validly delimited the frontier to the east of Toummo.

As for the question as to how far the 1935 Treaty should be taken into account by the Court when, having ascertained the non-existence of a boundary in the area that is the subject of the dispute, it will face the task of carrying out the delimitation, I shall have the honour of presenting Libya's views on Tuesday of next week.

PART III

EVENTS BETWEEN 1935 AND THE END OF THE WORLD WAR

1. General

I now come to the third part of my oral statement for today, which covers the period from the 1935 Rome Agreements to the end of the Second World War. In outline, the period could be split into two sections.

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The first, up to the end of 1938, is marked by a climate of expectation: on either side, preparations go ahead for the entry into force of the 1935 delimitation, steps are taken with a view to that, or worries arise over the uncertainty created by the protracted procedures for the exchange of ratifications.

The second section, which runs from 1939 to the Peace Treaty of 1947, sees France and Italy draw back to their pre-1935 positions. France, for instance, having been unable to persuade Italy to exchange ratifications, was to affect forgetfulness of everything it had openly conceded in 1935 and, with quite remarkable aplomb, resumed its traditional claim that the east-south-east line of the *Livre jaune* of 1899, as construed by the Anglo-French Convention of 1919, formed the southern boundary of Libya. For its part, Italy was to uphold the idea that the boundary had still to be determined in the light both of the Ottoman title and of the Italian rights based on the London Agreement of 1915.

It must straight away be recalled that no fresh negotiation was to take place between the States, both being soon drawn into the turmoil of the Second World War. The existing situation as to the question of the southern boundary therefore underwent no further modification, at least up to the time of Italy's exit from the stage. Two episodes from that period deserve highlighting, however, since they clearly confirm the absence of delimitation.

2. The Jef-Jef incident

The first of those episodes was that called by Chad the Jef-Jef incident of 1938, a minor incident that the other side has striven to blow up quite out of proportion in order to infer some significance clearly not present. Chad makes out the episode to prove that Italy

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recognized the sovereignty of France over the Aozou strip, whereas in reality the only inference one can make is that the two States were sticking to their respective positions. What is more, the incident took place at a time when the fate of the 1935 Treaty still hung in the balance and not, as Chad has the nerve to claim, at a time when it had become clear that the Treaty would never enter into force.

The whole story arises from the drilling work on a well that Italy had decided to carry out in April 1938 in a place situated in the part of the contested zone recognized by the 1935 Treaty as Italian. You can see on the screen where Jef-Jef is exactly. That work, started off with labourers, was interrupted by the French forces before being resumed briskly by the Italian military and completed without the French forces daring, this time, to intervene to halt it. Diplomatic notes were nevertheless exchanged in order to specify the respective points of view (MC, p. 214 *et seq.*; CML, p. 374 *et seq.*). Regardless of the language used on either side, Italy clearly achieved its aim of formally establishing sovereignty in the zone by carrying out civil engineering works and leaving marks indicating that the place concerned lay within Italian territory (see File on the Jef-Jef incident, CMC, Vol. IV, p. 541). But it is also true that on the French side this conduct of Italy was questioned, though with extreme moderation, in the name of continuity of French sovereignty in the zone pending the possible entry into force of the 1935 Treaty. It is certain, however, that France, while keeping a very low profile, did not bow to the Italian point of view; it is also certain that no document testifies to any Italian assent to France's attitude. On the contrary, the Counter-Memorial of Libya has shown (p. 374 *et seq.*) that Italy maintained its convictions and position regarding the ownership of the territory in question.

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Chad, in particular, completely distorts reality when it claims that the Italian Aide-Mémoire of 3 May 1938 implied recognition by Italy of the 1919 line as the southern boundary of Libya. If such had been the case, Italy would have had to apologize for violating the territorial sovereignty of France. Yet Italy made no such apology. On the contrary, Italy was the one to protest against the decision of the French military to prevent continuation of the work; and it was Italy which, without the slightest hesitation, notified France that the work was going to resume, and had no thoughts at all about seeking any permission! Furthermore, that work was indeed continued and completed without hindrance. Given such an attitude on Italy's part, one might have expected strong and immediate reactions from France. The Quai d'Orsay in fact took a month and a half to respond, on 20 June, with an extremely conciliatory note in which, after a reminder of France's position of principle, it promptly declared the incident closed since the work had been completed (MC, p. 215). To see in all that a form of assent to France's positions on the part of Italy is a matter, it seems to me, of the most unbridled fantasy.

It is true that in the Italian Aide-Mémoire of 3 May the place in question was described as being situated

"in the zone between the present boundary of Libya and the boundary resulting from the Mussolini-Laval Agreement of 1935".

73 But this undeniably clumsy drafting is far from justifying the whole construction that Chad would like to base upon it. For the expression "present boundary" was taken from the report of the Governor-General of Libya, Balbo, noted as the stoutest defender of Italy's territorial rights over the Libyan *hinterland*. Without any doubt, the words in question referred to the existing *de facto* situation on the ground of the Italian and French armed forces, and not to the *de jure* situation.

Needless to say, both Governor Balbo and the Italian Government knew perfectly well that just a few years before, on 9 June 1934, Italy had firmly protested against the establishment of a French fortified post at Tekro, well to the south of Jef-Jef, just as it had protested in a perfectly constant manner, between 1921 and 1934, against the Anglo-French Convention of 1919. That is the diplomatic and political context in which the 1938 document must quite obviously be construed.

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4. The discussions of 1941 on the demilitarized zone within the framework of the Armistice Commission

It falls to me now to say a few words about a second episode, that of the exchange of letters between General Grossi, President of the Franco-Italian Armistice Commission of 1941, and the French authorities on the subject of the 200 km demilitarized zone to be established along the Libyan boundaries, in accordance with the 1940 Armistice Convention between the two countries. I shall only say a few words about it because the Parties have already covered the subject thoroughly in writing and, above all, because it would be pointless to dwell on a topic from which, with the best possible goodwill, no useful argument can be derived for settlement of the present dispute.

True, Chad is not in agreement since, on the contrary, it attempts the impossible to extract from the relevant material fanciful evidence of instances of assent on the part of Italy. But in reality an unbiased perusal of the material in question suffices to show, at the end of the day, that the two States had simply reverted to their traditional positions in view of the fact that the Rome Treaty of 1935 had finally not entered into force.

The whole story may be summarized thus. Noting that the boundary had never been determined, General Grossi proposed to France, on 12 March 1941, that the demilitarized zone be computed from the 1935

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line. In the eyes of the Italians, that line could be provisionally used pending a future delimitation, since it was the only one resulting from an instrument negotiated by Italy (even though the 1935 Treaty had not entered into force). The French authorities took a long time to react. After a somewhat confused internal debate complicated by the current situation (since the Vichy Government was in control), the response finally came two months later, on 14 May 1941. It comprised the counter-proposal to use the 1899-1919 line instead, since for France that line had been accepted by Italy in 1900-1902, whereas Italy had "objected to" the 1935 Treaty.

As we can see, there is nothing particularly new up to here. Forgetting the explicit admissions it had made in 1935, France resumed its traditional position with which we are familiar. But where things take quite a different turn, at least as Chad sees it, is on the occasion of the Italian response to the French counter-proposal. According to the Counter-Memorial of Chad, that response was a veritable capitulation, no more no less, Italy having been incapable of questioning the worth and soundness of the French argument.

What inventiveness! Quite frankly, it is hard to understand how the other side can read so many things into a short letter of 14 July in which General Grossi states: (1) that the question of the boundary lies outside the competence of the Armistice Commission and will find its place among the problems to be cleared up after the war; and (2) that for the application of the armistice that question is of no practical importance and can therefore remain unsettled. Is that a capitulation? But it is quite the opposite! For on two occasions the letter states that for Italy the southern boundary of Libya has not been delimited, despite what France claims. Why otherwise would General Grossi rank the boundary question among the issues to be cleared up after the war? Why

76 otherwise would he affirm that for the time being the question can remain "unsettled"? In short, it is clear that through General Grossi's letter the Italian authorities were definitely questioning France's position that the southern boundary of Libya had already been established, by the mere fact of explicitly indicating that for Italy that boundary remained to be determined in the future.

One conclusion stands out: after the period of the Rome Agreements France, by overlooking the explicit recognition of 1935 that no boundary had ever been delimited in the disputed region, resumed its old argument that the boundary already existed since Italy had supposedly accepted in 1900-1902 the line of 1899-1919. Italy, for its part, never bowed to the French contention and held fast to its position, namely that the delimitation remained to be established and should be effected with due regard to its territorial rights, as accruing to it from the Ottoman heritage and under the London Agreement of 1915.

PART FOUR

The 1947 Peace Treaty and the southern boundary of Libya

1. General

77 The time has come to begin the fourth and last part of my statement of today. I shall now discuss the international instrument that brought about Italy's exit from the scene, namely the 1947 Peace Treaty. At the end of the Second World War the Peace Treaty dismantled the Italian colonial empire; Italy thus departed from Libya, having been compelled to renounce all its African possessions, including every right and title to them, as provided in Article 23, paragraph 1, of the Peace Treaty. In accordance with Article 23, paragraph 2, Libya continued under French and British administration pending its "final disposal", as provided in the Treaty (that is, accession to independence). And, as you are aware, the

decisions relating to the matter were ultimately taken by the United Nations General Assembly, failing the decision that the four Powers were unable to make within the one-year time-limit laid down in the Treaty. Sir Ian Sinclair will deal with this whole matter tomorrow morning.

In this final part of my statement I intend to discuss briefly the effect of the Peace Treaty on the question of the boundaries of Libya. This subject has been dealt with at length in the pleadings of the Parties, so that it will suffice to bring out its essential elements.

The first point to be made is that the Peace Treaty did not provide for the intangibility of the boundaries of Libya and the other former Italian colonies; on the contrary, it laid down that the boundaries in question could be the subject of an "adjustment", this is the term used, "adjustment", by common agreement of the four Powers within a time-limit of one year. This provision is readily explained if regard is had, in particular, to the fact that France, on the one hand, and Egypt, on the other, were planning to put forward territorial claims at the expense of Libya, which was why the Peace Treaty provided for the possibility of modifying, of adjusting, if necessary, the boundaries of the territory in question.

Second observation: the Peace Treaty did not transfer to the Powers sovereignty over Libya, as Chad incorrectly maintains in its Reply; the Peace Treaty granted the Powers only the right to continue to "administer" Libya, as well as the right to take certain important measures within a short time-limit.

78 There can be no question that Italy's sovereignty was extinguished by virtue of Article 23. This did not, however, involve a transfer of sovereignty, but a period of waiting and suspension which was to be closed only by the decision on the final disposal by Libya. In any

event, there is no point in going into this question more fully since - as will be seen shortly - it is of no particular significance, whatever Chad may say.

2. The failure to notify the Franco-Italian treaties concerning Libya under Article 44 of the Treaty of Peace

One of the topics discussed in the Parties' submissions concerning the Treaty of Peace is the question of the consequences of the fact that none of the Franco-Italian treaties concerning Libya were notified by France to Italy under Article 44 of the Treaty of Peace. This Article provides that bilateral treaties not notified by the Power concerned to Italy "shall be regarded as abrogated". In view of this specific legal rule, Libya maintained that after the war, and therefore in 1955, the Franco-Italian treaties on which Chad bases its claims could not be considered to be in force.

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But Chad does not share this view, believing that the treaties in question did not have to be notified because after the war Italy was no longer concerned, having lost all its rights and titles in relation to Libya. Yet this reasoning is too hasty, since it fails to take into account the very clear wording of Article 44, which provides for the abrogation in the event of non-notification of "all such treaties", namely, all "pre-war bilateral treaties with Italy". In other words, each Allied or Associated Power must know that if it "desires to keep in force or revive" any pre-war bilateral treaty with Italy, it must notify such a treaty. It is clear that the rules of Article 44 were designed to apply to all the treaties covered by the definition provided, without any exception and it must therefore be presumed that France did not notify the two Franco-Italian treaties of 1900-1902 and 1919 because it did not want them to be kept in force.

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Moreover, this assumption is wholly justified when one thinks that, through another provision in the same Treaty, in Annex XI, the Four Powers, as I have said, reserved the right to "adjust", in other words to modify the Libyan frontiers. France, in fact, had aspirations in that regard, as I pointed out a few moments ago. This being so, it was completely logical for France not to notify the treaties with Italy that it considered to be related to the Libyan frontiers: not because these treaties no longer concerned Italy, but because, for France, it was more appropriate, precisely, to dispose of them in order to pave the way for the "adjustments" it was seeking to obtain. Allow me to point out that, on page 123 of its Memorial, Chad openly admitted that it is indeed in this manner that France's conduct is to be explained. Subsequently, in its Reply, realizing that the truth is harmful to its case, Chad sought - a little tardily if the truth be told - to change its plans.

It is certain that France ardently wished to modify the Libyan frontiers to its advantage, both in the west and in the south (MC, Ann. 212); through Annex XI of the Peace Treaty, France had provided itself with the means to make these modifications quite legally, if it managed to obtain the consent of the other Powers or, later, that of the General Assembly; it goes without saying that, to be consistent, France had to exclude the entire set of bilateral provisions which fixed these frontiers (or which it had almost always said it was convinced fixed them, with the remarkable exception of 1935). This was precisely the point of the decision not to notify these provisions, thereby bringing about their abrogation (subject to seeking to revive them at a later day if need be).

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It should be noted that these motives led France to notify neither the Franco-Italian Agreement of 1919 (which effectively drew a frontier whose modification was strongly desired by the French), nor the

Agreements of 1900-1902. In reality, as we well know, the above-mentioned instruments had not delimited any frontier, particularly in the region which concerns us. But France initially maintained the contrary, and continued to do so for decades, changing course in 1935, then returning to the point of departure subsequently. It would therefore have been wholly logical to notify the Agreements in question, since the French territorial aspirations also related, in the post-war period, to the territories situated north of the 1899 line and the 1919 line.

Mr. President, Members of the Court, I now come to my final point.

3. Effect of the Peace Treaty on Article 13 of the 1915 London Treaty

The foregoing considerations did not touch upon the question of the survival of the obligation provided in Article 13 of the 1915 Treaty of London because the régime of Article 44 referred only to bilateral and not to multilateral agreements. The fate of Article 13 following the succession from Italy to Libya is therefore governed by the pertinent principles of general international law, in the absence of a *jus speciale* of a conventional nature established in the Peace Treaty. It is then necessary to refer, as Libya has demonstrated, to the principles set forth in Article 11 of the Vienna Convention on Succession of States in respect of Treaties and to note that, to the extent that Article 13 of the 1915 Treaty lays down an obligation that devolves upon France to the advantage of Italy and that affects the settlement of a question relating to the delimitation of the boundary of Libya, the fact of Italy's loss of sovereignty over Libya cannot extinguish the obligation in question, which remains in force for the benefit of Libya.

Chad does not agree with this analysis, which Libya has developed at length in its Counter-Memorial; Chad's thesis on this point is that, on the contrary, the obligation of France to Italy deriving from Article 13

ended with the Peace Treaty by reason of Italy's renunciation of its colonial rights and titles. But this thesis fails to answer the real question. It is indeed an incontrovertible fact that in 1947 Italy lost the right to benefit under Article 13; that goes without saying, and Libya is careful not to dispute it. But this in no way rules out the fact that Libya, once it came into existence, inherited the legal title deriving from Article 13, as it without any doubt inherited all the other Italian and Ottoman titles capable of affecting the settlement of the question relating to the delimitation of the boundary.

Clearly, Chad cannot blow hot and cold at the same time. In other words, either Chad argues that Libya is in no degree the successor of Italy concerning Libyan territory, in which case it must accept the consequence that Libya neither enjoys the territorial rights of Italy nor is bound by the like obligations laid upon the latter; or Chad acknowledges that Libya succeeded to Italy concerning Libyan territory, in which case it cannot escape the consequence that the colonial heritage received by Libya comprises not only constraints and obligations but also advantages and rights.

83 4. Conclusion

In conclusion, it may be observed that at the end of the Italian period, as at the start, the territory of Libya was not delimited in the south, as France moreover explicitly recognized in 1935. After 1947, therefore, that delimitation had still to be effected with due regard to the relevant legal arguments and titles, as received by Italy from the Ottoman Empire and as transmitted by Italy to Libya. Italy had not only not renounced any of its titles but had collected (and hence transmitted to Libya) a fresh title arising from Article 13 of the London Agreement of 1915.

Thank you, Mr. President.

Le PRESIDENT : Je vous remercie beaucoup, Monsieur Condorelli.
L'audience reprendra demain à 10 heures et nous entendrons alors
sir Ian Sinclair. Je vous remercie beaucoup.

The Court rose at 1 p.m.

Non-Corrigé
Uncorrected

APPENDICES

Traduction
Translation

GR 93/17(translation)/Corr.
(English only)
5 July 1993

Page 34, 14th line, for "boundary" read "limit"

Page 38, 2nd line, delete the word "the" following "only"

Page 39, 5th line, before the final word "the" insert inverted commas

Page 41, 2nd line from foot, for "pure" read "prove"

Page 44, 8th line from foot, for "West" read East"

Page 51, 4th line, for "a formerly" read "an";
9th line from foot, delete "formerly"

Page 52, 6th line from foot, for "Judgment" read "case-law";
4th line from foot, for "my" read "its", and
for "render" read "rendered"

Page 53, 9th line, for "as a result of" read "in the face of"

Page 63, 6th line, for "logical" read "illogical"
