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Le PRESIDENT : Veuillez vous asseoir. Je donne la parole à
M. Sohier.

M. SOHIER : Monsieur le Président, Messieurs de la Cour, à la fin de l'audience d'hier, j'avais terminé une analyse assez détaillée des accords de 1900-1902. J'avais essayé de démontrer que la seule conclusion que l'on pouvait tirer était que dans ces accords, l'Italie n'a reconnu aucune frontière de la Tripolitaine, ni aucune sphère d'influence française jusqu'à une telle frontière.

La déclaration Prinetti (1901)

M. Pellet a tenté de ranimer la théorie du Tchad relative aux accords de 1900-1902 en se référant à un discours du ministre français des affaires étrangères, Delcassé, prononcé devant le Parlement français en janvier 1902, quelques semaines après l'intervention faite par M. Prinetti, ministre italien des affaires étrangères devant le Parlement italien, en décembre 1901. Il a laissé entendre que la Libye se gardait de mentionner le discours de Delcassé, en mettant plutôt l'accent sur un mot précis qui figurait dans celui Prinetti, un mot qui ne figurait pas dans l'accord de 1900 (CR 93/23, p. 23-24).

Dans ma première intervention, je me suis efforcé d'expliquer soigneusement à la Cour (CR 93/16, p. 50-51 et p. 54-56) pourquoi le discours de Prinetti revêtait une signification juridique directe pour interpréter l'accord de 1900 selon les normes codifiées par la convention de Vienne de 1969. En effet, la partie du discours de Prinetti qui se rapportait à l'accord de 1900 avait été concertée mot pour mot entre les Gouvernements italien et français. Elle constituait donc, pour citer l'article 31, paragraphe 3, de la convention, un "accord ultérieur intervenu entre les parties au sujet de l'interprétation du traité ou de l'application de ses dispositions". Ce n'était pas l'affaire d'un seul

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petit mot, comme l'a dit M. Pellet : toute la déclaration de M. Prinetti montrait clairement que l'accord de 1900 concernait la partie occidentale de la frontière de la Tripolitaine, le secteur confinant à la partie orientale des possessions africaines de la France.

Cette thèse a été illustrée sur une carte que vous revoyez maintenant sur l'écran. Prinetti a identifié "la sphère d'influence française" mentionnée dans la lettre de 1900 comme étant les possessions africaines de la France, à l'est desquelles se trouvait le vilayet de Tripoli. La déclaration de Prinetti, établie d'un commun accord, montrait bien que la sphère française évoquée dans la déclaration unilatérale de Barrère en 1900 était seulement la partie colorée en bleu sur la carte.

Pourtant, M. Pellet a essayé plutôt de donner de l'importance au discours de Delcassé, prononcé peu après. Il a affirmé que les textes des deux allocutions avaient été soigneusement coordonnés. Cette affirmation n'est étayée par aucun élément de preuve. Le discours de Prinetti avait fait l'objet d'un accord mot pour mot. Mais celui de Delcassé n'a pas du tout été concerté avec l'Italie. C'était un discours politique, servant ses propres intérêts, visant à répondre aux critiques adressées au Gouvernement français pour avoir négligé les intérêts de la France dans la déclaration de 1899 et, en tout état de cause, c'est une description inexacte et exagérée des effets de la déclaration. L'on ne peut accorder à ce genre de discours aucune signification juridique pour interpréter soit la déclaration de 1899, soit l'accord de 1900, conformément aux règles énoncées dans la convention de Vienne.

M. Cassese a fait une dernière tentative pour ranimer les accords de 1900-1902 dans son analyse de l'accord Tittoni-Poincaré de 1912. Il a commencé du mauvais pied, en disant que l'objet essentiel de l'accord de 1912 était de confirmer l'accord de 1902, en se fondant pour cela sur

la mention de cet accord qui figure dans le préambule de l'accord de 1912. Il a considérablement aggravé son cas en affirmant à tort que l'accord de 1912 avait été signé avant que la souveraineté italienne sur la Tripolitaine ait été reconnue, et que le ministre des affaires étrangères, Poincaré, avait, avant d'accorder cette reconnaissance, insisté pour que la question de la souveraineté territoriale soit tirée au clair.

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Sauf son respect, M. Cassese se trompe sur les faits et les conclusions. La France avait inconditionnellement reconnu la souveraineté italienne sur la Tripolitaine à la suite du traité d'Ouchy, quelques jours avant l'accord de 1912. Cet accord était la contrepartie de la France pour cette reconnaissance, et il consistait en une clause réciproque de la nation la plus favorisée, énoncée au deuxième paragraphe de cet accord. Le projet d'accord élaboré par la France ne comportait aucune mention de l'accord de 1902 - celle-ci a été ajoutée par l'Italie, comme l'a observé M. Cassese à juste titre, et ce ne pouvait donc guère être le principal objet de l'accord de 1912, qui était dû à une initiative de la France.

Il est vrai que Poincaré avait initialement songé à saisir cette occasion pour éclaircir la question de la frontière de la Tripolitaine avec l'Italie - contre les conseils de Barrère - mais les éléments de preuve produits dans la présente affaire établissent qu'il renonça ensuite à cette idée. La question fut laissée pour une négociation séparée avec l'Italie, qui devait commencer en 1914, mais qui n'eut jamais lieu à cause du déclenchement de la première guerre mondiale.

M. Cassese a oublié de mentionner les travaux préparatoires cités dans la réplique de la Libye (par. 6.99 et suiv.), qui démontrent que Poincaré a reconnu qu'au-delà de Ghadamès, il n'existait pas de frontière de la Tripolitaine. Cet élément est une preuve de plus de ce que

l'affirmation du Tchad - que la ligne sinueuse en pointillé figurant sur la carte du *Livre jaune* encerclant la Tripolitaine était une frontière - est dénuée de fondement. C'est une preuve de plus que cette thèse est dépourvue de fondement.

La conclusion à laquelle a abouti l'exposé de M. Cassese était que par la référence - on pourrait dire le renvoi - à l'accord de 1902 qui figurait dans l'accord de 1912, l'Italie et la France étaient convenues de reconnaître comme frontière méridionale de la Libye la ligne figurant sur la carte du *Livre jaune* que, selon lui, l'Italie avait reconnue en 1902.

013 C'est une sorte de triple renvoi : de 1912 à 1902 à 1900. L'erreur, c'est que l'accord de 1900-1902 ne reconnaissait pas de frontière de la Tripolitaine. Et dans ces accords, l'Italie ne reconnaissait pas non plus de sphère d'influence française, sauf pour le Maroc.

Monsieur le Président, Messieurs de la Cour, deux cartes françaises officielles ont été publiées en 1912, et elles sont toutes deux produites dans la documentation de la présente affaire.

Voici à l'écran la carte de 1912 qui figure dans l'atlas cartographique du Tchad. J'appelle l'attention de la Cour sur le haut de cette carte, dont voici maintenant l'agrandissement sur l'écran, qui montre les régions de Ghat et de Toummo. Vous y voyez une ligne jaune en pointillé - interrompue au sud sur une partie importante de cette courbe - qui paraît ressembler à une partie de la ligne sinueuse en pointillé de la carte du *Livre jaune*. Comme le montre la légende, elle n'est pas représentée comme une frontière. Cette carte française établit que la France ne considérait pas la ligne sinueuse en pointillé comme une frontière à cette époque.

La déclaration franco-britannique de 1899

J'en viens maintenant à la déclaration de 1899, mais seulement pour réfuter l'argumentation de M. Pellet, car nous avons consacré beaucoup d'attention à la déclaration lors du premier tour. Je m'attacherai à deux questions : *premièrement*, dans la déclaration, une sphère d'influence française était-elle reconnue au nord du 15^e parallèle ? *Deuxièmement*, quelle était l'orientation que l'on entendait donner à la ligne décrite à l'article 3 de la déclaration ?

Une limite à une zone française

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Le Tchad affirme qu'à l'article 3 de la déclaration de 1899, la Grande-Bretagne a reconnu une sphère d'influence française jusqu'à la ligne est-sud-est décrite à l'article 3. Au lieu de répondre aux arguments de la Libye montrant que cette thèse est fausse, M. Pellet s'est attaché à parler de prétendus changements d'avis de la Libye sur ce point ainsi qu'à des contradictions supposées entre les déclarations faites par les conseils de la Libye devant la Cour. Je tiens à assurer à la Cour que la Libye n'a cessé d'affirmer que l'article 3 de la déclaration de 1899 n'a pas délimité de frontière ni délimité ou reconnu de zone d'influence. Quant à l'exposé de M. Cahier, qu'évoquait M. Pellet en formulant ses accusations, il traitait des échanges entre l'Italie, la Grande-Bretagne et la France dans les années 1920 et 1930, où, en effet, les termes utilisés étaient parfois inexacts dans le contexte d'une protestation contre la convention de 1919. Ce à quoi l'on s'intéressait, à cette époque, c'était au changement d'orientation de la ligne sud-est et aux allégations inexactes de la France selon lesquelles la ligne de l'article 3 avait été transformée par magie en frontière, et non à la reconnaissance supposée par l'Italie d'une sphère d'influence française.

A propos du texte de l'article 3 de la déclaration de 1899, M. Pellet a laissé entendre que la Libye se fondait sur ce qu'il a appelé une "distinction subtile" entre le mot "zone", qui est celui qui figure dans l'article, et l'expression "sphère d'influence". Eh bien, j'ai fait l'effort d'expliquer pourquoi, au cours des derniers jours de la négociation, l'expression "zone française" a été retenue, et non "sphère d'influence française". La distinction n'est pas "subtile" du tout : bien au contraire, le terme "zone", comme je l'ai expliqué en détail, a été soigneusement choisi afin d'éviter toute reconnaissance d'une sphère d'influence française.

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Il est inutile de répéter cette explication, que le Tchad préfère tout simplement ignorer. Il est évident que le choix de l'expression "zone française" n'était pas fortuit. Dans d'autres contextes, les expressions "zone" et "sphère d'influence" sont souvent interchangeables. Mais pas ici. Les travaux préparatoires confirment que le choix du mot "zone" était délibéré, et que ce mot n'était pas censé signifier l'équivalent de "sphère d'influence française". Tout cela a été soigneusement exposé par la Libye lors du premier tour.

Des citations des travaux préparatoires pertinents se trouvent dans la transcription de ma dernière intervention (CR 93/16, p. 36-38). Il est clair et incontestable que les Français voulaient éviter de reconnaître la moindre sphère d'influence britannique, et que les Britanniques ne voulaient pas accepter de texte qui indiquât la moindre reconnaissance ou définition d'une sphère d'influence française.

Le texte de l'article 3 prévoyait que la ligne sud-est qu'il décrivait était la "limite de la zone française". Pas "zone d'influence", pas "sphère d'influence" : la "zone" française. Et l'article 3 ne comportait aucune expression de reconnaissance de la moindre zone ou sphère. Le contexte de l'article 3 établit que le choix

du mot "zone" visait expressément à distinguer la limite d'une zone française établie par la ligne sud-est d'une limite ou frontière d'une sphère d'influence française.

Je voudrais faire ici une autre observation sur le contexte de cet article 3 et l'indication claire que l'emploi du mot "zone" n'était pas simplement une négligence de rédaction ou un choix de mots peu réfléchi. Il ressort des travaux préparatoires que ceux qui étaient chargés de la rédaction proprement dite étaient, du côté britannique, lord Salisbury et lord Sanderson, et, du côté français, Cambon et Delcassé. Ils étaient assistés de lord Everett du War Office, à Londres, et de Lecomte, à Paris. Everett et Lecomte étaient des hommes d'expérience. Ils avaient tous deux fait partie de la commission qui avait délimité la zone d'influence de 1890 pour en faire une frontière entre les territoires britanniques et français dans la convention de 1898. Ils avaient donc directement participé à l'élaboration et à la rédaction de la convention de 1898 comme de la déclaration de 1899. On ne peut pas raisonnablement croire que le changement de terminologie, au profit de l'expression "zone française", n'a pas été délibéré dans la version finale de l'article 3; et les raisons de ce choix ont été énoncées dans mon intervention précédente.

La direction de la ligne de l'article 3

Je vais maintenant reprendre une fois de plus la question de la direction de la ligne définie à l'article 3 de la déclaration de 1899. Dans ma première plaidoirie, la Cour s'en souviendra, j'ai expliqué pourquoi l'orientation de la ligne présente une telle importance pour le Tchad. Si, et tel est assurément le cas selon la Libye, l'orientation de la ligne de l'article 3 était le sud-est, ce qui ressort du texte de l'article - et le sud-est est une direction cartographique précise -

alors, au lieu que les "actes internationaux" énumérés à l'annexe I du traité de 1955 indiquent tous une seule ligne, comme l'affirme le Tchad, ils indiquent deux lignes, très différentes, comme on le voit sur l'écran.

La ligne de l'article 3 de 1899 était définie comme une ligne sud-est. Ce qu'il est convenu d'appeler l'"interprétation" de cette ligne donnée dans la convention de 1919 a modifié en termes exprès sa direction pour en faire une ligne est-sud-est. La carte du *Livre jaune* représentait encore une troisième ligne. Aucune de ces lignes n'était une ligne frontière.

Comment peut-on soutenir que les "actes internationaux" énumérés à l'annexe I n'aient produit qu'une seule ligne ? Si, comme le Tchad l'a soutenu dans son mémoire, la ligne de 1919 doit avoir la priorité en cas de conflit entre les deux lignes en vertu du principe *lex posterior priori derogat* (voir contre-mémoire de la Libye, par. 3.125-3.126 et 4.197), alors pourquoi diable l'article 3 et l'annexe I ne l'ont-ils pas dit tout simplement en stipulant que les parties acceptaient la ligne de 1919 comme frontière méridionale de la Libye ? Bien entendu, cela n'aurait toujours laissé aucun fondement pour le "segment ouest" de la frontière revendiquée par le Tchad, qui s'étend du tropique du Cancer dans la direction de Toummo.

Or, qu'a trouvé à dire M. Pellet au sujet de l'orientation de la ligne (CR 93/23, p. 37-45) ? D'abord, il n'a fait que répéter un argument du Tchad déjà réfuté par la Libye (CR 93/16, p. 26), à savoir qu'il résulterait de l'inclusion des mots "en principe" dans l'article 3 que la définition de la ligne "dans la direction du sud-est" (*to the south-east*) n'était pas censée faire d'elle une "ligne sud-est mathématique". Mais il résulte du contexte de l'article 3 que les mots "en principe" n'ont pas été utilisés à l'article 3 pour modifier la

définition de l'orientation de la ligne, à la différence de l'article 2 de la déclaration, où ces mots ont bien modifié la définition de la frontière de l'article 2.

M. Pellet a ensuite tenté d'étayer cet argument en se fondant sur les mots qui définissent l'orientation de la ligne à l'article 3 : "dans la direction du sud-est". Cette question d'interprétation textuelle a été examinée en détail lors du premier tour. Je ne mentionnerai ici que quelques considérations pertinentes.

Premièrement, il n'y a rien d'imprécis dans la formule "dans la direction du sud-est" et il ressort du contexte de l'article 3 que l'on entendait employer ainsi un terme précis. Des termes semblables d'orientation géographique apparaissent tout au long de la convention de 1898 et l'on peut en trouver aussi dans la déclaration. Je ne répéterai pas mon analyse détaillée de ce point (CR 93/16, p. 31-32), sauf pour mentionner un exemple. A l'article 1 de la convention de 1898, les mots mêmes dont il s'agit - en l'occurrence "dans la direction de l'est" - furent employés pour définir une ligne que l'on entendait nécessairement tracer droit à l'est, car elle suivait un parallèle.

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Deuxièmement, dans la note verbale italienne du 27 mars 1924 adressée par l'ambassadeur d'Italie en France au ministre français des affaires étrangères (mémoire du Tchad, annexe 104) pour protester une fois encore contre la convention de 1919, l'ambassadeur d'Italie a formulé une observation qui avait directement trait à l'orientation de la ligne définie à l'article 3 de la déclaration de 1899 : il a fait observer que le texte de l'article 3, du point de vue de l'Italie, définissait une ligne précise. Celle-ci devait, a-t-il dit, suivre "non pas ... une direction quelconque sud-est, mais bien la direction du sud-est".

Troisièmement, les travaux préparatoires confirment que les mots "dans la direction du sud-est" étaient censés signifier précisément cela : une ligne tracée rigoureusement vers le sud-est. C'est ce qu'illustre la proposition présentée par lord Salisbury le 19 mars, qui aurait "poussé", selon le terme de Cambon, la frontière de l'article 2 jusqu'au 18^e parallèle. On voit sur l'écran la carte utilisée lors du premier tour pour décrire cet incident. Si la frontière de l'article 2 est repoussée vers le nord jusqu'au 18^e parallèle, l'orientation de la ligne allant de là à son point d'aboutissement sur le tropique du Cancer n'était plus nord-ouest (à ce stade, évidemment, ils parlaient dans le sens du sud au nord et non du nord au sud), elle n'était plus nord-ouest, mais ouest-nord-ouest. Dans les négociations, je l'ai dit, on envisageait à ce moment la ligne comme tracée du sud au nord.

Dans le projet de lord Salisbury, la ligne proposée était décrite comme étant tracée "dans la direction du nord-ouest". Lord Salisbury - et Cambon - et ceux qui les conseillaient à Londres et à Paris - ne pouvaient guère être aussi naïfs en matière de directions géographiques que M. Pellet l'a donné à entendre.

La preuve inattaquable du fait que les négociateurs britanniques connaissaient la différence entre le sud-est et l'est-sud-est, c'est la note de lord Sanderson à lord Salisbury, qui figure une fois de plus à l'écran. M. Pellet n'a donné lecture à la Cour que d'une seule phrase de cette note : "Je ne pense pas que cela ait beaucoup d'importance." La réelle signification de cette note ne résidait pas dans cette phrase mais dans la direction que l'on entendait donner à la ligne. Lord Sanderson a fait observer à lord Salisbury que la ligne figurant sur la carte du *Livre jaune*, dont il venait de recevoir un exemplaire, était erronée. Je pourrais ajouter ici que lord Sanderson n'était pas alors l'ambassadeur britannique à Paris. Il ne fut jamais l'ambassadeur

britannique à Paris. Il fut le bras droit de lord Salisbury pendant les négociations pour élaborer les projets. Il se trouvait à Paris quand il envoya cette note parce qu'il était venu parapher le traité. Eh bien, dans sa note à lord Salisbury, lord Sanderson déclara que la ligne était orientée vers l'est-sud-est c'est-à-dire ESE et non SE, vers le sud-est. Il a ajouté, à propos de la carte, "par ailleurs" - autrement dit, sauf pour cette erreur - elle semble équitable. Cela revient à dire : "ils ont commis une erreur dans la direction de la ligne".

Par la suite, le War Office britannique publia des cartes officielles qui représentaient la ligne de l'article 3 comme une ligne sud-est rigoureuse ou vraie. Aucune protestation française n'a été consignée.

Toutefois, le Tchad a introduit dans sa réplique une note de 1923 d'un certain MacMichael du service britannique du Soudan qui semble contester cette conclusion (réplique du Tchad, vol. 2, annexe 43); cette note affirmait que les premières cartes du War Office publiées jusqu'en 1914 avaient représenté une ligne plutôt est-sud-est que sud-est. Alors, soutenait MacMichael, le War Office, en procédant à une révision générale des cartes, interpréta l'article 3 de la déclaration de 1899 d'une façon littérale, erronée, et modifia la ligne portée sur les cartes officielles britanniques pour en faire une orientée rigoureusement vers le sud-est. Le Tchad n'a pas commenté cet élément de preuve dans sa réplique, ni pendant le premier tour de plaidoiries, bien que la Libye l'ait expressément invité à le faire avant de commenter elle-même la note de MacMichael. Il incombe donc maintenant à la Libye d'en dire quelque chose.

Il est clair que MacMichael, en poste au siège du service du Soudan à Khartoum, n'avait qu'une connaissance incomplète des cartes britanniques publiées. Lors du premier tour, la Libye a projeté sur

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l'écran la carte de la *Royal Geographical Society* de 1899, publiée peu après la signature de la déclaration de 1899. Elle représentait la ligne de l'article 3 comme suivant rigoureusement une direction sud-est. La Libye a aussi trouvé, dans un ouvrage publié, une reproduction d'une carte du War Office de 1906 (voir la *Map of Africa by Treaty* de Hertslet, imprimée par *His Majesty's Stationery Office*; voir aussi Robinson et Gallagher, *Africa and the Victorians*, 2^e éd., 1981, avec les cartes à la fin). Sur cette carte de 1906, maintenant projetée sur l'écran, la ligne de l'article 3 est figurée comme orientée strictement vers le sud-est.

Je voudrais présenter quelques autres observations au sujet de cette carte. Comme la Cour peut le voir, la ligne sinueuse en pointillé y figure, mais il est clair qu'à l'ouest du point de départ de la ligne de l'article 3 du tropique du Cancer, cette ligne n'est pas présentée comme une quelconque frontière (cette partie juste là). Toutefois, à l'est et au nord du tropique, la ligne sinueuse en pointillé est marquée par le même symbole que les lignes des articles 2 et 3 de la déclaration de 1899, un symbole défini dans la légende comme une frontière dont le relevé restait à faire. Pourrions-nous avoir de nouveau la carte entière afin de montrer la légende ? La légende est juste là; la ligne qui suit le tracé et va tout du long jusqu'à la Méditerranée correspond à cette ligne sur la légende; cette ligne est définie comme une frontière dont le relevé reste à faire.

Cela, semble-t-il, n'a aucun sens; ni la France ni la Grande-Bretagne ne considéraient la ligne sud-est de l'article 3 comme une frontière en 1906 et le Tchad ne lui attribue pas davantage un tel caractère. Fait remarquable, cette frontière dont le relevé restait à faire est représentée comme britannique tout du long jusqu'à la Méditerranée, de sorte qu'elle ne saurait guère justifier l'argument

selon lequel, dans les accords de 1900-1902, une sphère d'influence française a été reconnue jusqu'à cette ligne. La carte, et ce fait reste inexpliqué, semble indiquer qu'il y avait une sphère d'influence britannique jusqu'à cette ligne, c'est-à-dire exactement ce qu'en 1899 les Français voulaient éviter de reconnaître. Toutefois, cette carte de 1906 reflète le point de vue officiel britannique sur la direction de la ligne définie à l'article 3 de la déclaration de 1899 et confirme le même point de vue figuré sur la carte de 1899 de la *Royal Geographical Society*.

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Les éléments de preuve versés aux débats en l'espèce ne contiennent aucune carte du War Office d'avant 1919 où figure autre chose qu'une ligne rigoureusement orientée vers le sud-est et la Libye n'a vu aucune carte de ce genre. Certes, après 1919, la ligne représentée sur les cartes britanniques a été réorientée vers l'est-sud-est conformément à la convention franco-britannique de 1919.

Je voudrais achever ma discussion de la direction de la ligne de l'article 3 en mentionnant une fois encore l'incident qui s'est produit le 19 mars 1899, quand lord Salisbury a présenté un nouveau projet. C'était juste deux jours avant la signature.

M. Pellet a donné à entendre que c'est la Libye qui a tenté de transformer cet épisode en un événement important (CR 93/23, p. 40) : il oublie que c'est dans le contre-mémoire du Tchad (par. 8.99) qu'il a été présenté comme un "épisode crucial". Une fois de plus, le Tchad semble donc se dérober devant des éléments de preuve auxquels, à un moment, il avait attribué une importance particulière.

L'analyse donnée par la Libye, dans ses écritures, de ce qui s'est passé le 19 mars, telle qu'elle a été résumée pendant le premier tour, a été qualifiée "d'absolument extraordinaire" par M. Pellet. Or, Monsieur le Président, cette analyse n'était rien de plus qu'une analyse des faits.

Comme on s'en souvient, le 19 mars, lord Salisbury a présenté une proposition, formulée dans un nouveau projet, tendant à pousser la frontière de l'article 2 vers le nord jusqu'au 18^e parallèle et, à partir de là, de tracer la ligne de l'article 3 vers l'ouest-nord-ouest jusqu'au tropique du Cancer (autrement dit, selon les termes dont il s'est servi dans son projet, dans la "direction du nord-ouest"). Sa proposition et ce qui s'est passé ensuite vont maintenant être illustrés sur l'écran.

A l'époque, la frontière envisagée dans les projets échangés - la frontière de l'article 2 de la déclaration de 1899 - finissait au 15^e parallèle, mais il restait encore à déterminer en quel point exact vu que la frontière de l'article 2, entre les 11^e et 15^e parallèles, n'avait pas encore été délimitée avec précision.

023
Ce que proposa lord Salisbury, ce fut d'étendre la frontière de l'article 2 (ou de la "pousser" selon l'expression de Cambon) jusqu'au 18^e parallèle et, à partir de là, de tracer une ligne dans la direction du nord-ouest jusqu'au point d'intersection du 16^e méridien et du tropique du Cancer. La proposition avait donc pour objet d'étendre vers le nord la frontière de l'article 2. Il ne s'agissait pas de la ligne tracée entre ce point et le tropique du Cancer, comme l'indique le compte rendu de Cambon, selon lequel ce dernier rejeta la proposition de lord Salisbury car il était "impossible de pousser la délimitation jusqu'au 18^e parallèle".

Le point sur lequel diffèrent les interprétations données de cette proposition par la Libye et par le Tchad, c'est que le Tchad suppose à tort que ce que voulait dire Cambon, c'était que lord Salisbury proposait de faire descendre la ligne sud-est de l'article 3 - vers le sud - tandis que lord Salisbury, comme on le voit sur l'écran, proposait de remonter la ligne frontière de l'article 2 - vers le nord - jusqu'au

18^e parallèle. Comme l'a dit Cambon, lord Salisbury proposait de pousser vers le haut la *délimitation*, jusqu'au 18^e parallèle. La seule *délimitation* en cause concernait la frontière de l'article 2.

Le récit que je viens de faire de ce qui s'est passé lors de cet épisode crucial, pour reprendre les termes du Tchad, se dégage clairement de l'examen du projet même de lord Salisbury. Sa proposition comportait une révision de l'article 2 du projet, qui concernait la *délimitation* de la frontière du sud au nord. Ce qu'il proposait n'était pas de marquer la fin de cette frontière au 15^e parallèle, comme l'avaient fait les projets antérieurs, mais de la prolonger vers le nord jusqu'au 18^e parallèle. Telle était sa proposition.

Bien sûr, la direction de la ligne de l'article 3 dépendait de la question de savoir jusqu'où le segment de l'article 2 s'étendait vers le nord. S'il s'arrêtait au 15^e parallèle, la ligne de l'article 3 était une ligne sud-est rigoureuse. Si on le "poussait" vers le nord jusqu'au 18^e parallèle, elle devenait une ligne est-sud-est.

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Ce que soutient M. Pellet, c'est que lord Salisbury et Cambon, le 19 mars, ont pris comme point de départ un segment de la frontière de l'article 2 qui s'étendait vers le nord jusqu'au 19^e parallèle et qui correspond donc à la ligne représentée sur la carte du *Livre jaune*. Il soutient que Cambon a refusé de "pousser" le point d'aboutissement de la ligne sud-est vers le sud jusqu'au 18^e parallèle.

Toutefois, cette interprétation fantaisiste n'a aucun rapport avec le texte de la proposition de lord Salisbury. Celui-ci décrivait en effet la ligne de l'article 2. Sa description allait du sud au nord comme dans toutes les négociations passées. Il proposait de "pousser" le point d'aboutissement de la frontière de l'article 2 vers le nord, du 15^e au 18^e parallèle. Si M. Pellet avait raison, la proposition manuscrite maintenant projetée sur l'écran ferait apparaître le

chiffre 18° rayé d'une croix et le chiffre 19°, et non 15°, inscrit à sa place. Cette copie de la proposition manuscrite montre en effet quel changement lord Salisbury a accepté de voir apporter à sa proposition. Il a convenu de renoncer à l'idée de pousser la frontière de l'article 2 vers le nord jusqu'au 18^e parallèle et il a accepté le 15^e parallèle comme point d'aboutissement. Les deux Parties étaient donc convenues que la ligne de l'article 3 serait rigoureusement orientée nord-ouest/sud-est.

Cambon rejeta cette proposition car il tenait à ne pas exclure de façon définitive des futures possessions françaises, le cas échéant, les régions situées juste au nord du Darfour. Lord Salisbury a accepté l'objection de Cambon, comme le montre le texte de sa proposition projeté sur l'écran. Le chiffre 18° a été rayé d'une croix et le chiffre 15° a été inséré dans le texte.

L'épisode du 19 mars est donc un élément des travaux préparatoires qui confirme l'interprétation donnée par la Libye de l'article 3, à savoir que la ligne décrite était censée être orientée vers le sud-est et non vers l'est-sud-est comme celle que représente la carte du *Livre jaune*. Il démontre que, le 19 mars, les négociateurs ont convenu que la ligne nord-ouest/sud-est serait tracée entre le tropique du Cancer et le 15^e parallèle. La Libye a discuté en détail pendant le premier tour, de la difficulté de trouver ce point précis, ainsi que des solutions habiles qui permirent de faire face à ce problème.

Le Tchad a beaucoup insisté sur le fait que la Grande-Bretagne n'a pas émis de protestation officielle contre la carte du *Livre jaune*, sur laquelle la ligne de l'article 3 était figurée comme une ligne est-sud-est. Les raisons de cette abstention ont été exposées dans les écritures de la Libye (voir contre-mémoire de la Libye, par. 6.35-6.36).

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Il s'agit toutefois là d'un argument vraiment trivial. L'important est que les cartes britanniques elles-mêmes indiquaient avec clarté comment la Grande-Bretagne concevait la direction que l'on entendait donner à la ligne définie à l'article 3 : droit au sud-est. Il n'y a pas la moindre indication, dans les éléments de preuve présentés à la Cour ou dont la Libye a connaissance, que la France ait jamais protesté contre ces cartes officielles britanniques.

J'aborderai maintenant quelques arguments que M. Cot a fait valoir au sujet de cartes pertinentes du point de vue de la direction que l'on entendait donner à la ligne de l'article 3.

La démonstration cartographique de M. Cot

M. Cot a affirmé quatre fois au moins qu'aucune des cartes publiées après 1919 n'indiquait une ligne dite "mathématique" orientée rigoureusement vers le sud-est pour la ligne de l'article 3 de la déclaration de 1899 (CR 93/25, p. 32-33, 39 et 46). Il n'est pas exact de dire que la ligne orientée rigoureusement vers le sud-est a disparu, comme je vais le démontrer. L'affirmation incorrecte de M. Cot rappelle une remarque de Mark Twain qui, à la lecture de la nouvelle de son propre décès dans les journaux, a dit "La nouvelle de ma mort est fortement exagérée." Il en va de même de la ligne orientée rigoureusement vers le sud-est.

La Cour se souviendra de la démonstration des cartes italiennes donnée par M. Condorelli, qui a révélé que toutes les cartes italiennes sur lesquelles apparaît la ligne de l'article 3 montraient qu'elle suivait une direction rigoureusement sud-est. Ces cartes n'ont pas pris fin en 1919. Le mémoire de la Libye contient trois cartes italiennes publiées en 1926 qui indiquent la même ligne (mémoire de la Libye, cartes 70, 71 et 72). Ces cartes sont maintenant projetées sur l'écran. Elles portent les n^{os} 89, 90 et 91 dans le dossier d'audience.

Les cartes italiennes postérieures omettent complètement la ligne de l'article 3 et mettent en lumière l'absence de frontière méridionale de la Libye. Mais lorsque cette ligne était indiquée sur les cartes italiennes, c'était toujours une ligne orientée rigoureusement vers le sud-est.

Il existe également une carte très récente que M. Cot a complètement passée sous silence dans sa présentation. Cette carte apparaît maintenant sur l'écran. Il s'agit d'une carte qui était jointe aux rapports du sous-comité de l'OUA de 1987 et 1988 et qui figure dans le volume 2 de la réplique de la Libye. Elle porte le n° 88 dans le dossier d'audience. L'orientation de la ligne de l'article 3 de la déclaration de 1899 indiquée sur cette carte est rigoureusement sud-est. Il n'y a aucune indication ni mention dans ce cas, d'une objection quelconque du Tchad à cette carte.

La ligne de l'article 3 de la déclaration de 1899 indiquée sur la carte comme étant une ligne orientée rigoureusement vers le sud-est n'a donc pas disparu après 1919. Elle se portait encore fort bien en 1988.

Résumé : les cartes des frontières

Je voudrais conclure mes remarques en projetant sur l'écran la situation des frontières à la fin de 1912, lorsque fut conclu le traité d'Ouchy et que l'Italie hérita des droits et titres ottomans. C'est la carte que j'avais demandée, vous vous en souviendrez, à la fin de ma dernière intervention mais que l'éminence grise derrière le rideau n'a pas pu montrer. Nous aurons peut-être la même difficulté, car je ne la vois pas encore, mais je crois qu'elle apparaîtra. La voici. On ne voit sur cette carte ni la ligne sinueuse en pointillé entourant la Libye, ni la ligne sud-est de l'article 3 de la déclaration de 1899, car elles n'étaient pas des frontières, et c'est une carte décrivant les frontières

de 1912. Je dirai, à propos de cette carte, que la Libye ne prend pas position au sujet des frontières indiquées sur cette carte qui concernent uniquement d'autres Etats.

La carte projetée sur l'écran indique une certaine évolution. Elle indique les frontières de la Libye telles qu'elles ont évolué jusqu'en 1934 du fait des divers accords internationaux conclus, c'est-à-dire, pour se référer encore une fois à l'article 3 du traité de 1955, les frontières qui résultent des "actes internationaux" mais, dans ce cas particulier, sans égard à la question de savoir si ces actes étaient ou non en vigueur à la date critique.

La première démonstration est la ligne verte de l'accord franco-italien de 1919. Nous voyons maintenant la frontière délimitée en vertu de l'article 2 dans l'accord franco-britannique du 8 septembre 1919. Nous voyons aussi la frontière de l'article 2 prolongée en vertu du protocole de 1924, le protocole franco-britannique. Puis nous avons la frontière de 1925 avec l'Egypte. Et, enfin, la frontière de 1934 avec le Soudan. Telle était, à la veille du traité de 1935, la situation des frontières décrite et reconnue à l'article 3 du traité de 1955. Cette carte porte le n° 63 dans le dossier d'audience. Je n'indiquerai pas les changements apportés aux cartes par le traité de 1935 puisque nous savons que les instruments de ratification de ce traité n'ont jamais été échangés et que la frontière n'est jamais devenue une frontière internationale.

Toutefois, nous avons de nouveau projeté sur l'écran la carte italienne de 1941. Celle-ci illustre la même situation que la carte décrivant les frontières jusqu'en 1934. Il n'y a pas de frontière à l'est de Toummo. Et cette situation n'a pas changé au cours des dix années suivantes, ce qui nous amène à 1951, la date critique.

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La dernière carte projetée sur l'écran illustre l'article 4 de la Constitution de la Libye. Elle porte le n° 4 dans le dossier d'audience et j'invite la Cour à lire avec moi le texte de l'article 4 (n° 11 du dossier d'audience) car il sera projeté sur l'écran.

Voici comment commence l'article 4. Il stipule que les frontières du Royaume-Uni de Libye sont : au nord, la mer Méditerranée; à l'est, les frontières du Royaume d'Egypte et du Soudan anglo-égyptien; au sud, absence de frontières : au sud, le Soudan anglo-égyptien, l'Afrique équatoriale française, l'Afrique occidentale française et le désert algérien; à l'ouest, les frontières de la Tunisie et de l'Algérie. Voilà ce qui était reconnu en vertu de l'article 3 de la déclaration de 1955.

Je vous remercie, Monsieur le Président. Ainsi se terminent mes remarques. Je vous serais obligé de bien vouloir appeler M. Condorelli.

Le PRESIDENT : Je remercie beaucoup M. Sohler de son exposé, et je donne la parole à M. Condorelli.

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Mr. CONDORELLI:

1. Introduction

Mr. President, with your permission I shall begin my presentation today by expressing my admiration for the eminent counsel and friends on the other side of the bar, who have given us some brilliant pleadings. As I listened to them I could not help thinking of the witty rejoinder of Madame de Maintenon, the mistress of Louis XIV, to the impertinent person who had asked her an indiscreet question about the King. The great lady replied in the famous words: "Everything about the great King is great!" *Mutatis mutandis*, I think that we can say much the same about our remarkable opponents: everything about them is remarkable, including their extraordinary capacity for presenting the facts and norms relating to this dispute in so unexpected a light that they end by assuming an

aspect very different from the one hitherto perceived by such undoubtedly ingenuous minds as my own.

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We were even treated to a real *coup de théâtre*, which somewhat complicates my present task, since it involved a considerable change in the argument advanced by the opposing Party with respect to the position of Italy. Indeed, France had maintained since the beginning of this century that through the Franco-Italian Agreement of 1900-1902, Italy recognized that France's sphere of influence north of Lake Chad extended up to the line appearing on the *Livre jaune* map allegedly annexed to the Franco-British Declaration of 1899, and that this line, as "interpreted" by the Franco-British Convention of 1919, was or had become a frontier opposable to Italy, still by virtue of Italian recognition in 1902. Chad in turn had adopted this theory for itself. But on 29 June 1993, at the eleventh hour, everything changed under the very eyes of your Court: Chad declared (CR 93/23, pp. 34 *et seq.*) that Libya was quite right to consider such an argument as untenable, and explained to us its newly-found truth. In actual fact, we are now told, in 1902 Italy did not accept the south-east line as the limit of the French sphere of influence, but only the wavy line surrounding Tripolitania in the *Livre jaune* map. According to Chad, it would therefore be immediately beyond this line that the sphere of influence reserved for France would begin: in those regions, France could have done whatever it liked vis-à-vis Italy, which would consequently have no legal title to protest either against the shifting of the south-east line by the Franco-British Agreement of 1919 or against the transformation of this line into a real frontier.

My colleague Mr. Sohier has already presented the Libyan point of view concerning the Chadian volte-face with respect to the Franco-Italian Agreement of 1900-1902, a volte-face which my eminent friend

Professor Pellet no doubt modestly counts among the "adjustments" on points of detail to which he referred in his latest pleading (CR 93/26, p. 69). I shall therefore not return to this topic, since my task is to reply to the arguments concerning the Italian period (1912-1947) made during the oral phase by the Chadian Party. It is obvious, however, that to carry out this task I shall have to take account of Chad's new thesis, and I shall do my best to overcome the difficulties caused by this sudden change in reference points.

I am slightly relieved, however, by the feeling that I am not alone in this confusion, for I have observed that some of the eminent counsel for Chad have also had some difficulty in changing their opinions so quickly. Thus, for example, on Friday 25 June one of the counsel for Chad stated that:

"The Franco-British Convention of 1919 confirmed the course of the line, setting forth in writing what they had agreed in 1899, and had been accepted by Italy in 1902 on the basis of the map." (CR 93/21, p. 59.)

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But no, my dear and eminent friends, it is not so: the Agent for Chad showed the following Tuesday that that was not the line accepted by Italy in 1902! That same Tuesday, another counsel for Chad maintained in turn that during the negotiation of the Tittoni-Poincaré Agreement of 1912, the French negotiators had not raised the question of the southern boundary of Libya for the obvious reason that it was not open to discussion, since "it had been clearly established by the Franco-Italian Agreements of 1902" (CR 93/23, p. 51). A little further on in the same pleading we also heard that, because of the reference to the 1902 Agreements in the Tittoni-Poincaré Agreement of 1912, "Italy, henceforth holding sovereign rights over Libya, undertook to regard the 1899 map as determining the southern boundary of Libya" (*ibid.*, pp. 51 *et seq.*). But no, gentlemen on the other side of the bar: Italy's undertaking

in 1902, according to Chad's latest theory, related not to the line which, according to France at the time and to Chad today, represented the southern boundary of Libya, but to a different line!

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In any case, nothing really serious or reprehensible has been done: the Chadian Party is certainly entitled to change its arguments as much as it likes and will still have an opportunity next week to remedy any aporias that a last-minute reversal could have caused. Yet it is extraordinary that during the same round of pleadings Chad took great pains to show that the Libyan Party had changed its position over the years and that it deserved to be penalized for this by your Court!

2. The Treaty of Ouchy of 1912

Following these clarifications, I should now like to refer rapidly to the Treaty of Ouchy of 1912, under which the Ottoman Empire ceded Libya to Italy. I shall point out first of all that there is no real disagreement between the Parties concerning the principle *nemo dat quod non habet* and its application in this case: it is clear that Turkey transferred to Italy the entire Libyan territory as possessed by the Porte in 1912, in accordance with the relevant territorial titles, as well as the right to exercise its sovereignty over all the Libyan populations which had until then been subject to Ottoman authority. There is certainly a sharp difference of opinion between Libya and Chad concerning the identification of the "territorial snapshot" at the moment of this succession, but since other members of the Libyan team intend to deal with this question tomorrow, I shall not need to concern myself with it now. I should like, however, to point out with some surprise that Chad makes no mention whatsoever of the arguments that Libya thought it could draw from the interpretation of the provisions of the Treaty of Ouchy, although these arguments are weighty. Moreover, Chad prefers to

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maintain an embarrassed silence concerning the subsequent practice, although this shows that the Porte withdrew from the area which is the subject of the present dispute in pursuance of the Treaty: it therefore interpreted that instrument as entailing the cession of that area also, and even reassured France on that score.

Mr. President, whereas no one could contest Chad's right not to reply to the legal arguments put forward by Libya during the first round of pleadings, that right would be questionable if Chad were to decide to reply to these arguments at the last minute, thus evading a correct judicial debate.

3. Recognition by France of the succession between the Ottoman Empire and Italy

It is true, however, that the Chadian arguments do not relate essentially to the relations between Italy and the Ottoman Empire arising from the Treaty of Ouchy, but to the Franco-Italian relations prevailing at the time when Italy acquired sovereignty over Libyan territory. You have heard the Chadian Party allege that on this occasion Italy renounced the Ottoman heritage, whereas Libya maintains that this was not so. At this stage of the proceedings, I shall refrain from returning to this subject, since Chad preferred to reiterate its pleadings without replying to the Libyan analysis.

I must point out, however, that the statements submitted by Chad on this subject are marked with serious factual errors, which totally distort the account of the relevant events. In the first place, our eminent opponents have forgotten that on 20 October 1912, two days after the conclusion of the Treaty of Ouchy, France recognized Italian sovereignty over Libya unilaterally and without any reservations, whereas the bilateral Tittoni-Poincaré Agreement was signed eight days later, and is therefore subsequent to the said unilateral recognition and is

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independent of it. I must then confirm that the Agreement in question involved no territorial reservation on the part of France: by this I mean that it comprised neither an explicit French reservation (which in any event would have been inconceivable in the case of a bilateral agreement), or an implicit reservation, and it is quite surprising that the Chadian Party stubbornly alleges the contrary to be the case, in spite of the specific proof that emerges from the *travaux préparatoires*. It is true that at a certain point in the negotiations the French *Président du Conseil* wished to obtain assurances from Italy concerning the Algero-Tripolitanian boundary (not the southern boundary), but the *travaux préparatoires* show beyond any doubt that he subsequently abandoned this intention under pressure from the French Ambassador in Rome, Mr. Camille Barrère. In any case, those debates related only to Libya's western boundary, whereas there was never any reference to the southern boundaries of Libyan territory. The Chadian Party recognizes this when it asserts that the reason was that this southern boundary "had been clearly established by the Franco-Italian Agreements of 1902" (CR 93/23, p. 51). These statements are not only erroneous, but they have become laughable, if I may say so, now that Chad has just informed us that, as Professor Pellet said, "a more attentive study" had convinced it that the Franco-Italian exchange of letters of 1902 did not really relate to the southern boundary of Libya (except for a very short stretch), but to another line, the so-called "frontier of Tripolitania" (CR 93/23, p. 34).

I also note that Chad has not replied to the argument advanced by Libya concerning the interpretation of the actual text of the Tittoni-Poincaré Treaty. Under this instrument, the Parties undertake not to hinder any measures that might be adopted in the future by France in Morocco and by Italy in Libya, respectively, and to grant each other

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reciprocal most-favoured-nation treatment; the Treaty clearly explains that these undertakings follow from the 1902 Agreements. Those were the obligations that the two Parties explicitly recognized as arising out of the 1902 Agreements: on the other hand, they deduced nothing from them concerning the Libyan boundaries at the time when Italy was becoming sovereign in Libya, and that serves as the clearest possible proof that the 1902 Agreements were regarded both by France and by Italy as having no relevance whatsoever to the question of frontiers.

4. Chad's "new thesis" is refuted by the conduct of France and Italy after 1912

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Mr. President, it seems obvious to me that the Tittoni-Poincaré Treaty of 1912 lends no support to Chad's new thesis concerning the effect of the Franco-Italian Agreements of 1900-1902: it is not by changing horses in mid-stream that the path chosen by the Chadian Party will be rendered less impracticable, the more so since this new thesis is even more radically contradictory than the old one with the subsequent conduct of France and Italy. You can see this from the map which now appears on the screen: it gives a visual presentation of Chad's new thesis, according to which the Franco-Italian Agreements of 1902 and 1912 did not render opposable to Italy the line of the Anglo-French Declaration of 1899 in any of its three versions (the so-called "mathematical" version, that of the *Livre jaune* and of 1899 and that of the Franco-British Convention of 1919, the three lines which you have seen projected one after the other on the screen). These lines, we are told today, concern only the relations between France and Great Britain, and not Italy in its relations with France. We can therefore erase them and bring on the so-called frontier of Tripolitania, which Chad now tells us was accepted by Italy in 1902 and confirmed in 1912. Beyond this line, which according to Chad delimited the Italian sphere, began the

sphere reserved for France, which Italy - we are told - undertook together with France to respect. But did it indeed do so? And if Italy did not do so, did France protest against such violations of its rights? The reply to these questions is unequivocal and emerges as clearly as can be from the file: it is no, both times, no!

Let us first take Italian penetration into southern Cyrenaica: this took place very gradually and amid thousands of difficulties and reversals because of the fierce resistance of the local tribesmen organized and led by the Sanûssiya, which fought tooth and nail for every metre of Libyan territory. This led the Italian Government, which at that time really controlled only the coast, to treat with the Sanûssiya throughout the period up to 1923, in an attempt to establish a system of shared sovereignty on the Ottoman model. Let us take as an example the El Regima Agreement of 25 October 1920 between Italy and the Sanûssiya, whereby the Emir Idriss (the future King Idriss) was vested by Italy, *inter alia*, with the right to administer independently the southern oases, such as Koufra and Giaraboub, which you will see are situated beyond the so-called frontier of Tripolitania, and with the right to be consulted before the enactment of Italian legislation concerning Libya, in accordance with the provisions of the Treaty of Ouchy. And then, in 1923, the denunciation of all the treaties with the Sanûssiya decided upon by the fascist government caused the outbreak of a new war, and with it the military campaign which very slowly led the Italian forces to capture these southern oases after terrible battles: thus, for instance, after many vicissitudes, Djaraboub fell into Italian hands in 1926, then it was the turn of Koufra in 1931, and so forth.

It is not a love of history that has led me to recapitulate these events: my purpose is to show you that if Chad's very latest thesis were correct, all these actions by Italy would have constituted so many

violations of conventional obligation undertaken by it in favour of France in 1902 and 1912. And yet, as you know, France not only never dreamt of protesting, but on the contrary congratulated Italy on the military successes that it gradually achieved in the region. The Chadian Party will no doubt tell us that France was not interested in these territories, which it had assigned to the British sphere of influence, but, apart from the fact that England had also not protested, is it believable that France should welcome publicly what amounted to violations by Italy of rights which it held vis-à-vis that same Italy?

There were indeed some protests during that period, but oddly enough (for Chad of course!), they did not come from France, but all from Italy. First of all, Italy protested against the Franco-British Convention of 1919 and rejected the possibility that this Convention - *res inter alios* - might give rise to any effect for it. Secondly, as from 1930, Italy asserted the illegality of the conduct of the French authorities when they decided to establish military posts in the Tibesti (at Bardai, Wour and Sherda) or at Tekro and at Nadi Agdébé (MC, Anns. 125 and 140 and Exhibit 36), well to the south of the so-called "frontier of Tripolitania": the arrows on the screen will show you where these places were situated. It had therefore never crossed the mind of the Italian Government that it was committed vis-à-vis France to remain within the line surrounding Tripolitania. Where France was concerned, it certainly rejected the Italian protests, but most of the time it did so in pursuance of the theory which Chad has now abandoned.

In conclusion, things have not changed with either the new or the old Chadian thesis: no international convention before 1935 ever drew a frontier in the region validly and in a manner opposable to Italy; in particular, no international instrument committed Italy to accepting or recognizing any one of the lines on which the Chadian claim is based.

The geographic maps from Italian sources that I had the honour to present to the Court during the first round of pleadings faithfully reflect the legal situation that they describe. I therefore do not need to return to these maps, particularly since no serious criticism has been levelled against them from the other side of the bar.

5. The Italian maps

Nevertheless, certain remarks put forward by an eminent counsel for Chad compel me to make a brief reply. The fact is that our honourable opponents, no doubt overwhelmed by the impact of the Italian cartographic material from official sources - and this is understandable! - have made a rather laughable attempt to reduce its credibility. For lack of other more cogent arguments, they have resorted to an absolutely fantastic scenario; they must be fond of fantastic novels, since we have already listened to a gripping and vivid account of the manner in which meetings of the counsel for Libya unfolded. This time a new chapter can be added to the novel, perhaps entitled "The mad cartographers". Indeed, we are told that the Italian maps are not to be trusted, since they "hardly correspond to the positions taken by the Italian Government", reflecting the "discord between the Italian services" (CR 93/25, p. 31).

You can envisage the scene: between 1906 and 1941, there was at the Italian Ministry of Foreign Affairs a service of mentally deranged cartographers who spent their time erasing from geographic maps the frontiers that their Government had accepted! The Chadian Party no doubt thinks that arguments of this kind - facile if not folkloric - have some chance of being convincing, and indeed it has already largely based its pleadings on the administrative disorder which allegedly prevailed in Italy at the time, or even on what it calls the war between the various ministries, and so on and so forth.

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Since I am speaking of maps, I shall take this opportunity of saying a few words about the case of the school map of 1930. The only real criticism levelled at us by Chad in this connection is for having drawn conclusions, and perfectly logical ones, from two facts. The first is that in response to a protest by France, the Italian authorities decided to adopt the solution of leaving the disputed area (which had previously appeared on the map as part of Libya) uncoloured, in order to show that no delimitation had been agreed upon in the area. The second fact is that we have no knowledge of any subsequent protest on the part of France, and our conclusion is that we are entitled to believe that the solution adopted by the Italian authorities did not seem unacceptable to the French authorities.

Unless I am mistaken, our eminent opponents find that this conclusion cannot be justified unless we can prove that France did not protest again. We are in fact being asked to supply some kind of *probatio diabolica*! All I can say on this subject is that the very careful research conducted by Libya in the French diplomatic archives has not led to the discovery of any later note of protest. We are sure that Chad for its part has conducted equally diligent research, and the fact that it too has found nothing strengthens us in our conclusions. With regard to the Italian documents in the case, they are so numerous and concordant that it is surprising to see Chad casting doubt on what emerges from their analysis.

6. Confirmations of the absence of delimitation that may be deduced from the Treaty of 1935, the press release and the *Exposé des Motifs*

The time has come to return once again to the Treaty of Rome of 1935 which, in the opinion of the Libyan Party, in fact represents nothing more than a confirmation - and a very convincing one - of everything that already emerges clearly from an objective study of earlier events:

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namely, that no limitation had ever before been established in the area in question. The two Parties have dwelt at great length on this question, each developing its arguments: it is for the Court to decide.

I should like to point out, however, that I have been unable to find in the pleadings of the opposing Party a single argument that Libya has not already examined in depth and duly refuted, with the possible exception of the one relating to the word "cession", which is indeed to be found in several French and Italian documents of the period surrounding the Treaty of 1935. My eminent colleague and very dear friend Professor Cassese has laid much emphasis on this important subject, which we should therefore examine, as I shall do shortly. Otherwise, I must admit my surprise at the fact that most of the time the opposing Party repeats without the slightest addition arguments that have already been advanced, omitting to take account of the very well-documented replies that Libya has had occasion to make. This applies, for example, in connection with the term "remain in French territory" appearing in Article 2 of the Treaty, or in connection with the legal status and effects of the press release of 1935 in the light of international case-law.

I also note that our eminent opponents, after accusing us of adopting an approach which they describe as "biased", adopt the same approach themselves without a trace of embarrassment. Thus, for example, in the two passages of the *Exposé des Motifs* of the French Bill approving Ratification of the Treaty of Rome of 1935, on which I commented during the first round and which you now see again on the screen, counsel for Chad carefully picked out the phrase relating to what Italy "had ... refused to recognize", with a view to alleging that France had not endorsed the Italian version; on the other hand, the same Chadian counsel has made no mention of the solemn admission, which is

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completely unambiguous and clearly imputable to the French Government, that there is no conventional boundary to the east of Toummo, as stated in the first passage, and that this lack of boundaries, according to the second passage, hampers the activities of both countries.

In passing, I confess that I entirely fail to see how Chad can continue to criticize (CR 93/24, p. 71) the Italian thesis as summarized in the first passage of the *Exposé des Motifs* still before you on the screen: this thesis, Mr. President, is nothing other than Chad's new thesis which I mentioned at the start of today's hearing! France, perhaps, did not adopt this thesis at the time, but Chad adopted it no later than last week!

7. Confirmations obtained from British documents

Mr. President, I greatly appreciate the invitation of one of Chad's eminent counsel, Professor Cassese, who proposes to offer to the Court the fullest possible picture of elements and factors to facilitate a correct assessment of the significance of the 1935 Rome Treaty: the picture, truth to tell, is now more than full, and the Libyan Party, it seems to me, has had no difficulty being the main contributor to this. However, it is possible to do still more, and for that purpose I should like to recall how Great Britain evaluated the situation as it existed in the 1930s with regard to the southern limits of Libyan territory.

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In this connection I should like to stress again the interest attaching to another press communiqué of the preceding year, the Anglo-Italo-Egyptian communiqué of 21 July 1934 whereby the three countries recognized that the frontier between Cyrenaica and the French possessions in Central Africa was "still to be fixed" (ML, Vol. IV, p. 277). If I revert to this document, which you have already seen since it was presented to you by Professor Cahier, it is first to

point out that Libya produced it already in its Memorial, and not belatedly as an eminent counsel of Chad has incorrectly claimed (CR 93/21, p. 61). The second reason is that this document certainly cannot be accused of using approximate language that confuses demarcation with delimitation: to allege this, as the said counsel of the opposing Party nevertheless did, suggests a complete disregard of the actual contents of the Agreement of 20 July 1934 delimiting the frontier between the Anglo-Egyptian Sudan and Libya, to which this other press communiqué relates and whose meaning it illustrates. The Agreement in question, may I remind you, had failed to identify the end-point, towards the south, of the frontier between the Sudan and Libya, precisely for the reason explained in the communiqué, namely, that the frontier between Libya and the future Chad was "still to be fixed".

But that is not all. In perfectly consistent fashion, Great Britain then clearly indicated that the 1935 Mussolini-Laval Treaty had to be defined as a treaty establishing a boundary in the region for the first time, since "the frontier in this area had previously not been determined and the territory in question was in dispute": the Libyan Memorial (p. 330) cites various Foreign Office documents of the year 1935, all pointing in the same direction.

044 The Chad Party will undoubtedly not fail to make the point that these documents, originating from a third State, could not in any way commit France. Formally, Chad would be right to maintain this, but it would be wrong as to substance: Great Britain knew better than anyone else what it was talking about because - let us not forget it - it had been party to the Agreements of 1900 and 1919, the kingpins of the French claim at the time and of Chad's claim today. At the least, these positions adopted by Great Britain in the 1930s remove all credibility from what a representative of the same country was to say at the

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General Assembly of the United Nations on 14 October 1949. The eminent counsel of Chad who, on 28 June last, recalled with emphasis the opinion of Mr. McNeil that Libya had "well-delimited frontiers" (CR 93/22, p. 57) forgot to mention that the distinguished British diplomat clearly had a very poor knowledge of the brief: in particular, he was unaware of what the Government of His Britannic Majesty had most officially and most publicly declared 15 years earlier. And, as far as I know, our adversaries have not claimed that the definition of the Chad-Libya frontier occurred between 1934 and 1949.

The only argument advanced by Chad in the oral pleadings on the subject of the 1935 Treaty which deserves an attentive response is the argument based on the use made in several documents of the 1930s of the term "cession" in connection with the Treaty: if that was the language used on both sides, we are told, the reason is that both France and Italy recognized that the Treaty envisaged the cession of a portion of French territory to Italy.

In its written pleadings, Libya already furnished a very detailed explanation showing why certain Italian documents speak of "cession": the reason is that the implementation of the Rome Treaty, had it entered into force, would have effectively implied the withdrawal of French military forces from the locations in the area north of the 1935 line where they had recently established themselves, and, simultaneously, the handing back of those locations to the Italians. It is therefore not at all surprising that the Italian side spoke of "cession" in order to describe the set of concerted operations that would have had to take place on the ground; but this in no way signifies that a "transfer" of title to sovereignty over the territory concerned was envisaged, since, on the contrary, for the Italians the territory was an Italian one illegally invaded by the French: it must not be forgotten that Italy had

clearly denounced, by means of a whole series of very precise protest notes, the illegal presence of French forces in the area. It must therefore be ruled out that the Italian documents in question can be interpreted as they are by the opposing Party, which evaluates them in erroneous fashion because it fails to take the historical context into account.

As for the French documents, the explanation for the terms employed is still more obvious and in no way justifies our eminent adversaries' triumphant tone. It suffices to recall that even before the First World War the French authorities had developed the negotiating strategy to be used with Italy in future: France's starting-point, as I have recalled, was the theory according to which the southern frontier of Libya had already been delimited because Italy had, so to speak, "adhered to" the Anglo-French Declaration of 1899 in 1902 and had thus accepted the line appearing on the map allegedly annexed to the said Declaration. According to that theory, then, as I recalled during the first round of pleadings, all that remained was to demarcate the frontier, since the delimitation had already been effected.

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Thanks to the opposing Party's conversion during the last phase of the present procedure, we find that Chad and Libya now agree in considering that the French theory was in effect unfounded, since it is admitted that Italy did not accept the 1899 line. The fact remains that in the 1930s this theory represented the official position of France. It is therefore not at all surprising that it should have been declared on the French side that the Rome Treaty envisaged this cession of a piece of French territory to Italy: which explains the expressions that Chad's counsel have been pleased to collect, as if their number could, by some kind of cumulative effect, give force to a thesis clearly contradicted by so many concordant elements on record.

I may add that informed French circles were well aware of where the truth lay: the Quai d'Orsay note of 1 January 1935, already cited by Libya in its Memorial (ML, p. 324), is the clearest possible proof of this; and the fact, emphasized for no discernible reason by the opposing Party, that the note in question was unsigned obviously robs it of none of its significance. Especially as the language employed in this note is very closely akin to that appearing in the famous *Exposé des Motifs* of 1935 of which I was just speaking again. And it should also be pointed out that Laval himself, in his address to the Senate on 26 March 1935, had made it very clearly understood that the Rome Treaty was not really a boundary rectification agreement but rather a delimitation agreement (ML, p. 329).

If you agree, Mr. President, this might be a suitable moment for the break.

Le PRESIDENT : Je vous remercie beaucoup. Nous allons maintenant faire une pause.

The Court adjourned from 11.25 to 11.40 a.m.

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Le PRESIDENT : Veuillez vous asseoir. Je donne la parole à M. Condorelli.

Mr. CONDORELLI:

9. Subsequent practice: the Jef-Jef incident and the Armistice Commission File

Two episodes subsequent to 1935 have brought down the Chadian Party's wrath on my remarks made on 17 June. Given the minor character of the incidents I shall not revert to them at length, especially as I have heard nothing that might invalidate my earlier analysis. A few

quick comments are called for, however, so as to correct the inaccuracies which have crept into the analysis made by our honourable adversaries.

On the subject of the Jef-Jef episode, the first point I wish to make is that care should be taken not to confuse the dates and to mistake the chronological order of the diplomatic notes exchanged:

two diplomatic notes in all. The Italian note is the first, and it expresses, in very polite language it is true, the Italian Government's displeasure with the French who had interrupted some civil engineering operations conducted by Italy in the zone that 40 years later was to be called the "Aozou strip". The French diplomatic note of 20 June 1938 is therefore the reply to an Italian protest, and not vice versa. This item of information in itself alone gives the story we were told an entirely different colouring.

The second point is that the French military interrupted the Italian workmen's work only once - once only - thereby causing the reaction by Italy, which promptly announced the resumption of the work, this time under military escort. That resumption, contrary to what the opposing Party claims, was not interrupted by the French: the French diplomatic note testifies to this in observing that the incident is closed as the Italians have left for Koufra of their own account, and not because they were removed by force.

049 The third explanatory point is that, contrary to what is claimed on the other side of the bar, it does not in the least emerge that there was a third occasion. If the Chadian party means to allude to the account contained in a French document of 8 January 1939 which it has itself produced (CMC, Vol. IV, p. 545), I may point out that during the very courteous meeting in the midst of the desert referred to in the document, the Italian officer communicated to his French opposite number that he had not received orders to resume the drilling work and would have let

him know if he had. Is this Italy's recognition of French sovereignty over the territory in question?

My fourth point concerns the sketch of the zone sent by Balbo to the Italian Ministry of Foreign Affairs, which the Chadian Party has exhibited (CR 93/24, p. 82), giving it a completely disproportionate importance. We are to believe that a simple sketch, designed exclusively to assist in locating the site in question, supposedly implies Italy's recognition of the French thesis just because the line representing that thesis appears in the sketch. We are to believe, in short, that a mere sketch has the power to sweep away the probative force of the unbroken series of official Italian maps I had the honour to present to you on 17 June. But why, then, for example, does an official map subsequent to our sketch (the 1941 map which you see again on the screen) not carry any indication of a boundary?

There is one last point to be made, in connection with the marks of sovereignty which the Italian soldiers had left at Jef-Jef. You will undoubtedly remember the eminent counsel of Chad chortling as he described the nature of these marks on 30 June last: some paper with a letterhead placed in some barrels, how footling, we are told! No comparison, of course, with the importance of the marks of French sovereignty by which they were replaced: just imagine, some paper with a French letterhead placed in the same barrels (CMC, Vol. IV, p. 540)!

As for the point about the 1942 Armistice Commission, just one comment is called for. I fail to see, I really fail to see how our eminent adversaries can persist in maintaining that Italy supposedly recognized the soundness of the French allegations, when the Italian authorities confined themselves to shelving the question of the delimitation of the boundary together with others to be settled after the end of the war.

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10. The question of the effects of the Treaty of Peace on the Franco-Italian bilateral accords

For purely chronological reasons I should now like to make a few comments on a subject relating to the interpretation of the 1947 Treaty of Peace. I refer to the question of the abrogation or otherwise of the Franco-Italian bilateral treaties which were not notified after the war as required under Article 44 of the Treaty of Peace.

You have heard an eminent counsel of Chad protest against the analysis presented by Libya, using a multitude of arguments to condemn it as radically ill-founded (CR 93/21, p. 76 ff.). I take note of his criticisms. I must, however, remark from the start that the opposing Party's brilliant refutation is addressed not only to Libya but, above all, to Chad itself, which in its Memorial (p. 123) upheld a thesis not fundamentally different from ours. Chad maintained that France had not notified the Franco-Italian agreements relating to the former Italian colonies precisely because it wished to be released from those agreements so as to be able to appropriate substantial portions of the territories concerned. In fact, France hoped to bring this off by using the procedures provided for that purpose under the Treaty of Peace. But its design could not be accomplished because first the other Powers and then the General Assembly did not allow it: they refused to proceed to the redefinition of the boundaries of the former Italian colonies which the Treaty of Peace authorized them to carry out.

The General Assembly could have remodelled the territory of Libya, as of the other Italian colonies, by virtue of the normative power conferred upon it by Annex XI of the Treaty of Peace. Fortunately it did not do so. It took quite another decision, also a binding one, which we know well: the decision to preserve the Libyan boundaries which had been delimited in the colonial period and to delegate to France and Libya,

after the independence of the latter, the task of delimiting the boundaries that had not been defined previously. In other words, it was thanks to the decision of the General Assembly that the bilateral delimitation treaties relating to the former Italian colonies, including the Franco-Italian accord of 12 September 1919 relating to the Algero-Libyan boundary, were maintained in force. On the other hand, the Franco-Italian accords of 1900-1902, just because they were indisputably not boundary delimitation agreements, were not maintained in force by the General Assembly: neither were they, therefore, in force on the date of the independence of Libya.

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General Assembly resolution 289 (IV) remains one of the most decisive proofs of the fact that the southern boundary of Libya had not been delimited before 1950. The importance of this proof is tremendously heightened by the fact that the General Assembly did not consider it necessary to adopt the same decision in respect of the eastern boundaries of Libya because they, for their part, had all been clearly delimited by treaties before Libya's independence, which implies, *a contrario*, clear recognition by the General Assembly that undelimited boundaries between Libya and the French territories did exist.

11. Positive indications to be found in the colonial legacy

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All the comments I have just made contribute remarkably well, I hope, towards upholding the first essential conclusion which Libya has submitted: in the zone in question, no boundary delimitation has ever been established to this day. Allow me now to suppose that the Court will decide that this conclusion is well founded in law. In that event the Court itself will then have to determine the delimitation, weighing up the legal titles on either side and identifying their territorial scope. It was with this hypothesis in mind that, in the first round of

oral pleadings, I respectfully submitted a whole series of legal arguments which in Libya's view, would have to be taken into consideration for that purpose and which are connected with the colonial period. I should like now to revert rapidly to that subject so as to answer the objections raised orally by the opposing Party.

The first fact to be observed is that our honourable adversaries have made no criticism as to the relevance and applicability of the provisions appearing in Annex XI of the Treaty of Peace of 1947, which imposed first on the Four Powers and then on the General Assembly, and now imposes on this Court, the task of delimiting the frontiers of Libya not defined before 1951 "in the light of the wishes and welfare of the inhabitants and the interests of peace and security". Libya is pleased to take note of this absence of disagreement.

Matters stand quite differently, on the other hand, with the relevance of other factors capable of playing a role in this context.

The first of these factors is that of the "colonial legacy". In this connection it is necessary to reject immediately and once again the opposing Party's totally unfounded accusation that Libya is allegedly reopening discussion on the frontiers inherited from colonialism. Libya is accused of wanting to reopen the colonial dispute by claiming - this is plain lunacy - that Chad today must pay the territorial debts France had in the past failed to meet vis-à-vis Italy. That is an unacceptable distortion of the Libyan submissions. Why put such insane and heretical words in Libya's mouth when that country has made it clear from its first written pleading onwards how greatly it desires this Court to determine, above all else, whether a delimitation of the boundary with Chad was or was not carried out in the colonial period? When it has said and repeated that, were the Court to answer that question in the affirmative, the dispute would be settled and Libya would comply faithfully with the decision?

But should your answer be negative, gentlemen of the Court, the Court would then have to select and weigh all data relevant to the settlement of the present dispute, including, in Libya's view, those pertaining to Article 13 of the Treaty of London of 1915. Allow me to specify in the most objective possible manner the conditions in which, as Libya sees it, that provision could play a role in the present case. The first condition is that Article 13 should be capable of being interpreted as applicable for the purposes of determining a frontier for the first time, and not only in respect of cessions of territory. The second is that it should be capable of being interpreted as referring to the question which forms the subject of the present dispute. The third is that it should be possible to deduce from it indications sufficiently precise to be of help in delimiting the boundary. The fourth and last is that the rights and obligations provided should relate to a "boundary régime" in accordance with the principle set forth in Article 11 of the Vienna Convention on Succession of States in respect of Treaties, that is to say, that they should have a territorial character rather than a purely personal one. On each of those questions, as you have heard, the Parties disagree and seek your decision.

I would only add that Article 23 of the Treaty of Peace, that is, the fact that in 1947 Italy renounced all its colonial rights and titles, has - unlike the other factors I have mentioned - no relevance here whatever. Italy's renunciation could not entail the least consequence for Libya, whose successor rights originate in the relevant rules of general international law governing succession in respect of treaties and not in the will of the predecessor State.

12. Indications to be derived from the 1935 delimitation

Far more important in Libya's view is the question whether the 1936 delimitation which never entered into force can offer the Court any

indications that would be useful for the purpose of settling this dispute in the absence of a *uti possidetis juris* line.

We on this side of the bar have explained at length why, in Libya's view, the characteristics of the Rome Treaty, the circumstances in which it was concluded and the reasons for which it failed to enter into force, help significantly in identifying the territorial scope of the relevant legal titles. The Chadian Party, on the other hand, has refused to enter into a dialogue on the subject and has preferred not to explain its point of view to the Court. Thus, it has not said why, in its opinion, Italy decided not to proceed to an exchange of ratifications when the Treaty was - according to Chad - very advantageous to it since it provided, still according to Chad, for an important cession of territory by France to Italy. Neither, of course, have our adversaries given their version of the reasons that induced France to woo Italy to no good purpose for something like four years, trying by every means to convince it to accept what Chad says was a pretty gift of some 114,000 square kilometres of French territory. If the greedy businessman in the parable recounted to us by an eminent counsel of Chad - if that businessman, who in the parable represents Italy, decided not to conclude the deal, the reason is perhaps that the alleged bargain was not a bargain at all!

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The circumstances in which an unratified delimitation treaty was concluded and the reasons which prevented its entry into force have been considered in your case-law as factors to be taken carefully into consideration for the purpose of settling a territorial dispute: Libya has emphasized this in both its written and its oral pleadings. Chad, while apparently not wishing to reject the lessons of your case-law, disputes that this is possible in the case in point because, in its view, equitable factors such as this could play only a very small role in respect of very small portions of a boundary. I humbly confess, for my

part, that I do not understand why, in the event of absence of the *uti possidetis juris* line, equity *infra legem* should come into play for the purpose of drawing short lines but not long ones: the ratio of such a distinction completely escapes me. But I wish to stress that to allege that Libya is asking for a delimitation based entirely on equity is to distort Libya's argument in a caricatural fashion.

No, Mr. President, Libya has never proposed that you should have recourse to equity *praeter legem* (or *contra legem*). What Libya is asking is only that the 1935 delimitation which never entered into force be equitably taken into account *in order to determine the territorial scope of the legal titles present on either side*. And I also emphasize that when Libya refers to the 1935 delimitation it does not at all mean to invoke exclusively the 1935 line but the whole set of factors, interests and reasons which induced the parties to select that line rather than another, as well as the full set of factors, interests and reasons which later induced France and Italy not to exchange ratifications.

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A last consideration. Listening to the statements of the opposing Party on this subject, I have the feeling (I say this with all respect) that its concept of the role of equity in territorial delimitations and, more generally, the role of equity in the reasoning of the international judge is a rather narrow one. Going through the important separate opinions of Judges Shahabuddeen and Weeramantry appended to your Judgment of 14 June 1993 in the case concerning *Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v. Norway)*, in which these issues are studied in depth, I have noted, for example, the observations made on the subject of the role of equity in the difficult process of weighing and balancing the arguments and submissions of the parties to a judicial settlement procedure, in particular in respect of delimitations.

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May I be allowed to cite, by way of conclusion on this point and refraining from all comment, a short passage of the separate opinion of Judge Shahabuddeen (p. 58): "difficulties of this kind experienced in discharging the task of the Court are not enough to take the Court beyond the province of the judicial mission".

Thank you. Mr. President, may I ask you to call on Mr. Cahier.

Le PRESIDENT : Je remercie beaucoup M. Condorelli de son exposé, et je donne la parole à M. Cahier.

Mr. CAHIER: Mr. President, Members of the Court, the aim of my oral pleading today is to see whether after the Treaty of 1955 the situation was changed in one way or another, but I shall not examine the Treaty of 1956 which does not concern our dispute.

If there were any change it could only have taken place in two ways: (1) either by the conclusion of new treaties; or (2) by the conduct of the States.

1. Let us first look at the treaties that were concluded subsequently

They were concluded between Libya and Chad.

The first dates from 1966, and our eminent opponents attached importance to it, but without analysing it in depth, or rather let us say that they have tried to find in it what suited them. According to them this Agreement proves

(a) that Libya acknowledged that the frontier between the countries was delimited on the basis of that of 1955;

(b) that if that had not been the case Libya would not have concluded an agreement of this type (MC, p. 33).

It is evident that if the first proposition turns out to be wrong the other is wrong as well.

Libya has shown in its written pleadings that the Treaty of 1966 did not delimit any frontier, that there had been no negotiation on this matter between the parties, and that, unlike the Treaty of Good Neighbourliness between France and Libya of 1955, the Treaty of 1966 made no reference to Article 3 of the Treaty of 1955.

The Treaty of 1966 had one aim and that a specific one: its intention was (1) to ensure co-operation in security matters between the two States; and (2) to allow free movement to the local populations.

In a certain sense, the Treaty of 1966 is comparable to the Treaty of Good Neighbourliness of 1955. So why conclude a new treaty? The reason is simple, Members of the Court, and we shall return to it in greater detail. Although Chad became independent in 1960, the French did not leave it and were still present in the region and as Professor Sorel has said "there was a continuity of individuals" (CR 93/25, p. 71).

It was therefore understandable that when the French troops left in 1965, Chad should have wished to conclude a treaty of good neighbourliness with Libya for its own account.

• 060 But let us look a little closer at this Treaty of 1966. According to Article 2:

"The Government of Libya and the Government of Chad undertake to allow free movement to the populations living on either side of the frontier, within the geographical areas delimited by the points listed below:

With respect to the United Kingdom of Libya: Koufra, Gatroum, Mourzouk, Oubari, Ghat.

With respect to the Republic of Chad: Zouar, Largeau, Fada."

The magic word frontier having been uttered, our honourable opponents believe they have triumphed, they cry: "You see that there is a frontier between the two countries, otherwise this article would have no meaning!"

They seem to forget that the Treaty also mentions geographical areas, and, in Article 4, frontier areas. So what areas are involved?

As we have seen, it is an area delimited by a number of points: in Libya: Koufra, Gatroum, Mourzouk, Oubari, Ghat; in Chad: Zouar, Largeau, Fada.

A map is shown on the screen so that the geographical position may be better understood. You see there a grey area with, in the north, the points indicated as being in Libya and those in the south as being in Chad.

Members of the Court, between the point of Faya in the south and the northern limit of this area, there are some 750 kilometres. This is more than the distance between Nice and Paris. And we are meant to believe that a frontier existed between these two countries. Gentlemen, when two States establish a transfrontier régime this hardly extends further than 10 to 20 kilometres, say - even 30. Here we have 750 kilometres. Here the region is so vast that as you can see on the map, the strict south-east line resulting from the 1899 Treaty, the 1919 line and the line deriving from the Treaty of 1935 are easily accommodated. In actual fact a cat would not find her kittens there.

If one wishes to avoid distorting the facts, the objective of the Treaty of 1966 is perfectly clear. In the absence of a delimited frontier line, Libya and Chad wished to attend to the most urgent matter: to ensure freedom of movement of the nomad populations in a vast geographical region.

But it is the second Chadian statement that I wish to send back to our opponents: if Chad was convinced of the existence of a frontier established by the Treaty of 1955, how could it have signed the Treaty of 1966 which proves exactly the opposite? If, as Chad says today, the frontier is represented by the line resulting from the Treaty of 1919,

the Treaty of 1966 should have mentioned Aozou as being in Chadian territory. But this is not the case, Aozou is the grey area of the map which you have before you. This is indeed the proof that in this vast region there was no specific frontier. It still had to be delimited.

Gentlemen, if there was no frontier in 1966, there was certainly none in the succeeding period. The four treaties that our opponents seem to dislike so much add nothing to the matter. The Treaty of 1972 concerned friendship between the two countries. The Treaty of 1974 mentions the term frontiers in order to contest the very concept. Professor Sorel tells us on this subject: "it therefore appears difficult, to say the least, to affirm that this [challenge] is the expression of an absence of a boundary" (CR 93/25, p. 83). Note, I never said that, gentlemen; from the point of view of the determination, or non-determination of the frontier, the Treaty of 1974 adds nothing. I mentioned it only as evidence of the acquiescence of Chad. The Treaty of 1980 is the famous Treaty of Friendship and Alliance. According to what Professor Sorel says, the Treaty was not concluded by a genuine Chadian Government (CR 93/25, p. 83). We shall return to this, but if that were the case why not have raised its invalidity at the time? Lastly, the Treaty of 1981 "opened frontiers" between the two countries but the other side of the bar has discredited it so much that one wonders how Chad can refer to it. In any case, the other Party has not maintained that in 1981 there was a negotiation for the purpose of delimiting the frontier.

Mr. President, Members of the Court, I think I can conclude this point by indicating that between 1955 and 1981 nothing changed, there was no frontier delimitation in 1955, there was none in 1981, the date of the last treaty between Libya and Chad.

In fact the only agreement that could have any interest whatsoever for our dispute was that of 1966. It brilliantly confirms the Libyan contention.

My analysis has therefore shown that no treaty had changed the situation existing in 1955, and it now remains for me to examine the conduct of the parties.

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2. Mr. President, Members of the Court, I now come to the second aspect of my oral pleading, namely the *conduct of the States*. Quite frankly, I had thought that my oral pleading on Friday 18 June was perfectly simple even if naturally it might be contested. But, listening to the representatives of the Government of Chad last Friday, I was surprised at how non-legal their arguments were. We were all treated to a regular firework display which had nothing to do with the territorial dispute brought to the Court and on the other side of the bar they preferred to hide behind the smoke caused by this fire than to tackle the real problem. Professor Sorel started by stating, for the first time and against all credibility, that the Treaty of 15 June 1981 was "signed on the Chadian side by a member of one of the rival factions, and that he had no official function in the Government" (CR 93/25, p. 83).

In examining the oral pleading of Professor Higgins, I have to note that a good deal of it had nothing to do with our dispute. What can be the Court's interest in the rupture of diplomatic relations between Chad and Germany, the taking of several people as hostages, the struggle between the various Chadian factors contesting for power, the references to the Falklands-Malvinas or Kuwait? As to Professor Franck, he gave us an excellent university lecture on the value of the *uti possidetis* principle and that of respect for the territorial integrity of States, principles that Libya has never contested. All that was accompanied by an apocalyptic description of the situation in Chad where governments constantly change, subject as they are to military intervention from Libya, the wicked neighbour to the north.

Mr. President, far be it from me to be ironical about the misfortunes of Chad, which have been very real and which we all deplore. But these misfortunes do not allow it to refrain from taking responsibility for its actions as well as for its omissions, or to retreat behind a false description of the situation on the ground, particularly behind an obvious chronological confusion.

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Mr. President, Members of the Court, let us return to purely legal ground, let us return to earth, or rather to sand, and look in more concrete fashion at the problem opposing us to our colleagues on the other side of the bar.

I shall first examine the question of the conduct of the States during the period from 1956 to 1970. This was a period of calm. France, which was present up till 1960, disappeared, formally but not in substance, until 1965.

I shall then look at the conduct of Libya and Chad from 1971 to 1983; and lastly their positions within the United Nations and the OAU.

The other side of the bar reproaches Libya with its inaction during the period 1955 to 1970. This is only partially correct. It will be remembered that at the time of the negotiation of the Treaty of 1956, the expert assisting Libya had proposed that the frontier as a whole should be delimited. "To facilitate everybody's task we should make a general review of the frontier as a whole, followed by a discussion of the Ghat-Ghadames issue afterwards." (CML, Ann. 9.)

This proposal was rejected by the French.

So what should Libya have done then? It was aware of a French presence in the region, but in the absence of a frontier delimitation it had no grounds for protest. Moreover the period was not conducive to protest (it was the period of the Algerian war) and France had hardly shown itself to be accommodating with Libya, as evidenced by its

reluctance to evacuate the Fezzan despite the Treaty of 1955. Better days had therefore to be awaited.

Did these better days dawn after the independence of Chad? This is doubtful. In Chad's own admission:

"Following the proclamation of independence on 11 August 1960, the B.E.T. ... was administered, up to 1965, by French officers. This situation was in accordance with agreements on defence and technical as well as military assistance, signed by Chad and France in August 1960." (MC, p. 303.)

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It is true, says Chad, that as far as their administrative functions were concerned, the French troops acted on behalf of Chad. We do not doubt this, but nevertheless to the Libyan administration, which was not in much of a position to appreciate the legal niceties, the situation had apparently not changed. What it saw, as Professor Sorel has said, was the "continuity of individuals" (CR 93/25, p. 71). It is not by chance that most of the actions that he indicates as being Chadian *effectivités* are prior to 1986.

In short, it was after the departure of the French that a dialogue began to be established between Libya and Chad. Doubtless the two States could have started to negotiate the delimitation of their frontier, but probably Chad did not know the legal dossier any better than Libya.

This Treaty of 1966 in any case shows, as we have seen, that Chad did not claim the line deriving from the Treaty of 1919, for otherwise the content of this Treaty is inexplicable.

Thus, gentlemen, while the French were there, Libya was silent. It had given France a broad hint for a negotiation, and when this was refused it embarked on a dialogue with Chad by concluding a co-operation agreement in a vast area pending a precise delimitation.

Mr. President, Members of the Court, although our opponents have tried to make much of Libya's attitude at Chad's accession to

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independence and at the time of the declaration of the Heads of State in Cairo in 1964, drowning it all in a sauce baptized "the new rules of decolonization" by Professor Franck, I will be brief, for the Libyan attitude is quite simple, and contradicts no rule of international law. According to Chad, when Chad was admitted to the United Nations, Libya should have entered reservations, whereas its warm approval showed that it had no frontier problem.

Still according to Chad, Libya indeed ought to have been aware of the "new" rules of *uti possidetis* and respect for the territorial integrity of States. As we know, these rules are not new, but in any case, they have absolutely nothing to do with our problem, that of Libya's alleged inaction in the face of this situation. Professor Crawford will return to these principles. As to Libya's attitude, the other Party, while quoting cases in which States have indicated their territorial claims at the time of the independence of other States (CR 93/25, pp. 65-66), was incapable of proving to us that such a practice had become the customary rule. As we said in our pleadings (MC, p. 384), the silence of Burkina Faso and the Republic of Mali on their independence did not prevent them from bringing their territorial dispute to the Court in 1986.

The same is true as far as the declaration of the African Heads of State in 1964 is concerned. By this declaration, the conference: "Solemnly declares that all Member States pledge themselves to respect the frontiers existing on their achievement of national independence."

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This was an affirmation of a general principle of considerable importance for Africa. For what reason, then, should Libya have voted against it? By invoking the lack of a frontier with Chad? But the reply would have been that the declaration referred to "frontiers existing on their achievement of national independence" and not to phantom

frontiers. Moreover, other African States with frontier problems had voted in favour of this declaration, and I shall mention Burkina Faso and the Republic of Mali again.

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Mr. President, Members of the Court, this parenthesis closed, let us return to Libyan-Chad relations after the Treaty of 1966. As we know, in March 1968, the Chadian Government was led to evacuate the Aozou strip definitively following a revolt by its nomad guards. The other Party, and this is worth stressing since subsequently, according to that Party, all Chadian misfortunes came from Libya, the other Party does not attribute what happened in 1968 to Libya.

I do not think it necessary to come back to what happened in 1971, this road map published and distributed in Italy does not seem very important, *I maintain*, without coming back to it, what I said in my second oral pleading (CR 93/18, pp. 33-34).

I would have preferred not to come back to the Tombalbaye letter, which did not deserve the whole oral pleading devoted to it by the talented Mr. Pellet. Libya has attached very relative importance to this letter. In my second pleading I tried to demonstrate that the existence of the letter was likely because it fitted in perfectly with the sequence of events. We did not base our argument on acquiescence on this letter, gentlemen. That said, since a reply must be made, I wish to say first of all that it was Chad and not Libya that first indicated the existence of this letter before the Court.

Then, long-standing rumours have certainly shown that the Tombalbaye letter was reported to have existed (Bernard Lanne, *Tchad Libye, La querelle des frontières*, 1982, pp. 228-231 and *Jeune Afrique* of 11 September 1989).

All this is uncertain, we agree, but on the other hand I greatly regret that I cannot follow Professor Pellet when he says that even if he

concedes, for demonstrative purposes only, that the letter did exist, it would have no value as evidence (CR 93/26, p. 35).

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Why? Because it was not public. Professor Pellet quotes in support the French declaration in the context of the *Nuclear Tests* case before your Court.

The situation is absolutely not comparable. The Court, analysing this declaration, showed that

"An undertaking of this kind, if given publicly, and with an intent to be bound, even though not made within the context of international negotiations, is binding."
(*I.C.J. Reports 1974*, p. 267, para. 42.)

And the Court adds later on that the unilateral statements of the French authorities were made *erga omnes* (*ibid.*, p. 269, para. 50).

In other words, the French declaration, in order to secure its effects, can only be addressed to the international community as a whole. The Tombalbaye letter does not pursue that aim and the international community asks nothing of it.

As to the Ihlen declaration, it was no doubt made public subsequently but the Court did not make its validity conditional upon such publicity. That declaration is moreover reminiscent of the Tombalbaye letter. In both cases there is no cession of territory but rather a renunciation of any rights that those governments believed they might possess, one over Greenland and the other over the Aozou strip.

If a foreign minister can commit his State in a case falling within his competence, then such a commitment can, *a fortiori*, be assumed by a head of State.

As I have said, the existence of the letter is plausible, for it provides a better understanding of subsequent events. What is more, the purpose of the letter goes well beyond the issue of concern to us since it announced to Colonel Qaddafi that Chad had broken off its diplomatic relations with Israel, and that is a fact.

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It was thus from 1971 onwards that Libya began to manifest a certain presence in the Aozou strip. I entirely agree with the assertion of our opponents that in December 1972 no mention was made of the Aozou strip. Thus, on the occasion of the meeting between the two delegations, the Chad Press Agency stated:

"[T]he working meeting proved useful in that it enabled each of the two delegations to state frankly and clearly its views and ... the meeting took place in an excellent atmosphere which made it possible to arrive at satisfactory results." (RC, Ann. 157, Vol. III, p. 184)

We know that the meeting was to give rise to the conclusion of a treaty of friendship and co-operation in 1972. But is that agreement plausible if meanwhile the Libyans are in Aozou unlawfully?

No doubt embarrassed by Chad's attitude to Libya in the subsequent years, the counsel of the Chadian Government argue today that Chad was the victim of aggression, that Libya seized the Aozou strip by force. According to Professor Sorel, that "armed invasion" took place in 1973 (CR 93/25, p. 76).

The accusation is a serious one since aggression has long been regarded as a breach of an international norm of the utmost importance. Now there is no instance in international practice of a victim of aggression not protesting, not complaining to the Security Council. That is an instinctive reaction brooking no delay.

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Chad did nothing of the sort; it kept silent. As a matter of "prudence", we are told on the other side of the bar. There is no prudence of any worth when one is a victim of aggression. The truth is that there was no aggression, that it exists only in the imagination of our opponents. And if there was no aggression, it was because the Aozou strip was regarded by Chad as Libyan.

But that absence of reaction does not suffice. As I have already said, the Chadian-Libyan communiqué of 7 March 1974, on the occasion of Colonel Qaddafi's visit to Fort Lamy, states:

"President N'Gorta Tombalbaye thanked his Libyan colleague and the people of Libya for the effective assistance they had given for the development of Chad."

In truth, publicly thanking the State that has subjected you to aggression is carrying prudence a little far.

Relations between the two States were so good that, still in 1974, they signed several protocols of agreement for the purpose of setting up joint companies in agriculture, fishery, and livestock infrastructure, production and marketing (RC, Ann. 162). Then, it will be remembered, 12 August 1974 saw the signing of the treaty highlighting the historical ties uniting the two brother countries.

We have been told that the treaties must be construed in the historical context, and I have no objection on that point. As may be noted, the historical context of the relations between the two States occasionally shows that their relations are on the whole friendly.

In any case our opponents, who constantly insist on the importance of the text, will not deny that the text of a treaty must have precedence over the historical context; and the text speaks of two brother peoples.

It was therefore round about mid-1977 and in early 1978 that Chad, as we know, took the matter to the OAU and the United Nations. It took Chad four years to realize that it had suffered an act of aggression and that Libya was in Aozou unlawfully! I shall examine those complaints later; let us simply note here that this is a parenthesis. The Security Council was to hold only one meeting. The two States restored their diplomatic relations and everything resumed as before.

I come then to that famous Treaty of 1980 which, as you will recall, prohibited the establishment of foreign military bases in Chad. I had deduced therefrom, logically I think, that such a provision showed that, for the Chadians, Aozou did not form part of Chad. Otherwise the provision was incomprehensible since Libya was in that zone. The

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opposing Party does not reply on this point; it prefers to explain the Treaty by means of two truly extraordinary assertions quite at odds with reality. According to Professor Sorel, I said, "the Treaty was signed on the Chadian side by a member of one of the rival factions and that he exercised no government function" (CR 93/25, p. 83). If that assertion were correct, Chad would long since have raised the issue and sought its invalidation. Yet this is the first time that the argument is advanced, and the Treaty was registered in the United Nations Secretariat in October 1980.

For her part, Professor Higgins tells us on the subject of the same Treaty: "Chad was under military occupation when that Agreement was signed. And the same was true of the Treaty of 1981." (CR 93/26, p. 23.)

I am unclear about the legal consequence that our opponents are seeking to derive from that assertion. In any event, it is completely mistaken.

As regards the 1980 Treaty, it is dated 15 June. Now the French troops completed their evacuation of Chadian territory on 16 May 1980 (I do not think Professor Higgins was referring to them), and it was only in October that Libyan troops intervened. In fact therefore, the 1980 Treaty was concluded in one of the rare periods in which there were no foreign troops in Chad.

What is more, one seems to be forgetting, and this concerns the Treaty of 1981, that the Libyan troops were in Chad at the request of its authorities. If that constitutes military occupation, what is then to be said of the French military interventions that took place in similar circumstances? We can forthwith dismiss the fine Chadian *effectivités*, from the period 1960 to 1965, and which were described to us in great detail by Professor Sorel.

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The aim pursued by our two opponents in their assertions escapes me, for there can be no doubt that in 1980 and 1981 the GUNT constituted the legitimate government of Chad. That government was represented in the United Nations, and the OAU did not question its legitimacy. It suffices, in regard to the latter body, to refer to its Nairobi resolution of 27 June 1987 (AEG/Res. XVIII/Rev.1).

Furthermore, Professor Cot, who was the French Minister for Co-operation at the time, wrote: "We believe that President Goukouni, far from being a puppet of Tripoli, embodies a certain Chadian national will." (J.P. Cot, *A l'épreuve du pouvoir*, Paris, p. 46.)

I wanted to formulate that assertion to avoid any ambiguity.

It will not have escaped you that the oral arguments of the other side on this point of relations between Libya and Chad, by accumulating inaccuracies, digressions and effects of atmosphere, pursue the sole aim of not responding to the argument developed in my second statement, namely that in the period from 1971 to 1983 (and apart from the 1977-1978 interruption) Chad, by its silence and by its active conduct, renounced the very uncertain rights it might have thought it possessed in the region. The entire history of the relationship between the two countries shows this to be so.

By way of a reply, and in view of the scant time at our disposal, I think there is no point in reverting to the close examination made of international jurisprudence regarding acquiescence, particularly since the opposing Party has not criticized it. *I therefore fully maintain what I said on this subject in my statement of Friday 18 June.*

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It is true, as has been observed, that a military occupation does not give the occupying Power any territorial right, but I think I have demonstrated that, as it so happens, there was neither aggression nor military occupation. I shall add that without any delimitation of the

boundary between Libya and Chad, the latter was under an obligation to react against the Libyan presence in the Aozou strip.

I now come, very briefly, to *the attitude of the Parties to the United Nations and the OAU*. Here too, the opposing Party seems to argue that Chad sought a great many remedies and that it laid its legal position exhaustively and rigorously before those organizations.

According to Professor Franck:

"The Libyan invasion of the B.E.T. in 1973 was protested very vigorously by Chad; after bilateral negotiations with, and appeals to Tripoli proved of no avail, Chad then took its case to the United Nations Security Council and the General Assembly, as well as to the Organization of African Unity." (CR 93/26, p. 40.)

The reality of the matter is very different. The bilateral negotiations, as we have seen, were more concerned with friendly co-operation between the two States. As to the vigorous protest, it took place in 1977 or four years after the alleged invasion of the region concerned.

In 1977, before the General Assembly, Chad denounced the military occupation of the Aozou strip and made mention, without any evidence or itemizing, of many negotiations between the two Parties. Furthermore, it developed no legal argument in support of its denunciation. As to the Libyan delegate, rejecting the allegations of interference in the internal affairs of Chad, he referred to the United Nations map of 1952 annexed to the Pelt report.

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In its complaint to the Security Council, in February 1978, Chad was to lay emphasis on the alleged Libyan support for the Chadian rebels, also stressing that Libya had lodged no case to back its claims to Aozou. Before the Security Council, the representative of Chad no doubt began to justify the claims of that State in the region, referring in particular to the Treaty of 1955 (United Nations, *Official Records of the Security Council*, 2060th meeting, 17 February 1978, p. 2).

The delegate of Libya, for his part, was to reaffirm the Libyan character of the Aozou strip: "The representative of Chad accused us of having occupied Aozou in 1973, but that is not true. We did not occupy anything." (*Ibid.*, p. 9.)

Clearly, you do not occupy a territory that belongs to you. But, as we have not denied, it is certain that Libya, while specifying that it is within its rights, does not rest its contention on legal reasoning. That being said, this whole affair cannot have been very serious since Chad withdrew its complaint to the Security Council just a few days after lodging it.

The matter was not heard of again until five years later, in 1983. If, as our opponents make out, Chad was subjected to permanent aggression from Libya, that was quite some length of time. Chad was so little subjected to that aggression that its representative was to state in the United Nations General Assembly in 1981 that:

"Certain friendly countries did not wait for the appeals of the United Nations and the OAU to come to our aid. We refer particularly to the Socialist People's Libyan Arab Jamahiriya ... We wish to express our profound gratitude to those brother countries." (*United Nations, Official Records of the General Assembly, Thirty-sixth Session, Plenary Meeting, 7 October 1981, p. 620.*)

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I have already pointed out, in my second statement, that Mr. Goukouni Oueddeï had in any case, in 1980, expressed that gratitude on the occasion of a visit to Tripoli.

It was in fact in March 1983 that Chad, once more referring the matter to the Security Council, submitted a memorandum (DC S/15 649 of 22 March 1983) specifying its legal claims and therein are to be found many, but certainly not all, of the arguments developed by Chad in your Court.

It is true, and we do not deny this, that Libya was not to go to such lengths. It nevertheless refers, wrongly it is true, to the Franco-Italian Treaty of 1935.

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As we have pointed out, firstly, in 1955 Libya was ill equipped to appreciate the subtleties of the case before the Court today; and, secondly, the case is, as you know, one of extreme complexity. Indeed, a Foreign Office note of 21 July 1955, at the time the Treaty was being negotiated, read:

"We are looking into the exact status of previous international agreements as a matter of urgency. It is an extremely complicated question." (ML, British Archives Annex, p. 335.)

Libya moreover has some excuse for referring to the 1935 Treaty. Professor Cot has shown us that some geographical maps still showed the line deriving from that Treaty. The French Minister of Defence, Charles Hernu, was to substantiate the Libyan contention by saying, in 1985: "The Aozou strip is outside Chad. This is a matter dating back to 1934." (A. Benmessaoud Tredano, *Intangibilité des frontières coloniales et espace étatique en Afrique*, Paris, 1989, p. 176.)

In short, it was no mere hazard that Chad put a relatively consistent case to the United Nations in 1983. For on 31 March 1983 the French representative said in the Security Council:

"I should like to add a final point, which is that all the documents that my Government possesses regarding the course of this boundary have been communicated both to the Government of Chad and to the Libyan Government, which are therefore fully conversant with them."

It is no doubt fitting to hail the objectivity of the French representative on that point. It is nevertheless true that a cursory examination of the case might have inclined one towards the position of Chad, which was to bring this up forthwith, while the file could for Libya be but the starting-point for a long analysis which only really came to fruition four years later before the OAU.

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The United Nations debates that follow the year 1983 do not add much to the legal dimension of our case. We constantly revert to the alleged

instances of Libyan interference in Chad's internal affairs, and Libya was to claim on several occasions that the Aozou strip lies within Libyan territory.

But I should all the same like to emphasize that, as Mr. Maghur has already observed, the Security Council has never condemned Libya for aggression; instead it referred the Parties, in particular, to the OAU for a peaceful settlement of the disputes.

I do not have much to add to what I said in my first statement, on Friday 18 June, on *the attitude of the two Parties before the OAU*, particularly since my colleague Professor Bowett is to take this matter up again. That organization was seized in July 1977 by Chad, which denounced the occupation by Libya of the Aozou strip. Chad based its legal reasoning on the 1955 Treaty.

We know that following that complaint the Conference of Heads of State was to establish an *ad hoc* committee which in turn decided, still in 1977, to appoint a sub-committee. The OAU was in fact preoccupied in the ensuing years by, first, Chad's internal situation and, second, the difficult relations between Libya and Chad. Finally, it was only in 1987 that the Sub-Committee was to turn seriously to the boundary dispute. We know that it submitted two reports, one in 1987 and the other in 1988, the difference between them being that the latter gives a more thorough account of the Libyan contention. Examination of the reports shows that the Sub-Committee made a detailed study of the boundary dispute between the two States. Contrary to what the opposing Party advances, it did not by any means confine itself to the question of the Aozou strip, which it would not for that matter have been able to do since Libya and Chad had put forward very comprehensive legal arguments. The reports likewise indicate that Libya in no way confined its claims to the Aozou strip. Furthermore, contrary to what Professor Franck would have us believe with

the statement that "the OAU would not have been sympathetic to the legal claims Libya now advances" (CR 93/26, p. 56), the Sub-Committee did not in fact come out in favour of the position of either Party and, as we know, the OAU was to recommend to the two States that, failing a political settlement, they take the issue to your Court.

I now come to the conclusion of my oral argument. It will be no surprise to you that it differs little from that of my statement of 18 June.

1. First, an examination of the various treaties concluded between Libya and Chad shows that there has been no delimitation of the boundary between the two countries. This is clear, in particular, from the 1966 Treaty. Had a boundary existed, the two Parties would not have provided for transboundary co-operation in a region of 750 kilometres.

2. Second, the Libyan presence in the Aozou strip did not result from the use of force and Chad, in the period from 1971 to 1983, only protested against that presence from June 1977 to February 1978. Not only was there silence on its part, but its conduct was in complete contradiction with what it contends today. No State signs four treaties of friendship with a State supposed to be occupying part of its territory, not to mention expressions of thanks to Libya by Chadian politicians. The legal force of Chad's conduct as just described to you must be appreciated in the light of the recognition by both Parties of a cut-off date in 1951. As a result, the conduct of the Parties after that date may either confirm or, on the contrary, invalidate the existence of a legal title. I consider that the Libyan presence in the Aozou strip, uncontested by Chad, serves to confirm or even reaffirm Libya's legal title in the region.

3. In conclusion, Libya has argued before the OAU and before the United Nations that the Aozou strip forms part of its territory. It is

true that initially the legal justification relied upon was succinct and even mistaken but, as we have seen, the issue was complex and, besides, only in 1983 did Chad itself really begin to develop its reasoning. Later, before the OAU, Libya was to develop its position more fully from the standpoint both of legal arguments and of its claims, which tie in very substantially with those today advanced before you.

I am most grateful for your patient attention and I should appreciate it, Mr. President, if you would kindly give the floor tomorrow morning to Mr. Crawford. Thank you.

Le PRESIDENT : Je remercie beaucoup M. Cahier. Nous reprendrons demain matin à 10 heures.

The Court rose at 12.50 p.m.
